

**South Hams District Council
West Devon Borough Council**

Environmental Crime Enforcement Policy

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1. Introduction

This Policy supports the Council's Corporate Enforcement Policy and is intended to give guidance and support to officers who deal with Environmental Protection Enforcement. It follows the principles and good practice set out in the Corporate Enforcement Policy and the aim is to enable the Council to exercise its enforcement powers in a way that is proportionate and reasonable.

Environmental issues, such as litter, fly-tipping, dog fouling and abandoned vehicles, can be a serious problem. South Hams District and West Devon Borough Councils are committed to ensuring that we maintain the local environment to a high standard by keeping the streets and green spaces clean and free of such issues.

The Clean Neighbourhood and Environment Act (CNEA) 2005 extended and amended the powers available to the Councils to deal more effectively with environmental crime and other local environment quality issues. It places an emphasis on the role of proper enforcement as an important tool in our armoury when dealing with environmental protection. In addition, the Anti-Social Behaviour Crime and Policing Act 2014 allows the Council to tackle anti-social behaviour by the introduction of Public Space Protection Orders.

South Hams District and West Devon Borough Councils' aim is to persuade people to change their behaviour through information, education and advice, but will not hesitate to take enforcement action against those who wilfully spoil the environment.

This strategy supports best practice and lays out how we propose to use the range of enforcement options available to help achieve our aims, which are:

- Improved quality of the natural and built environment.
- A more pleasant place to live, visit and work.
- Reduced fear of crime.
- Greater awareness of local environmental quality issues across the District and Borough.
- Improved understanding by residents, businesses and visitors of their responsibilities in relation to the waste that they produce, and the offences they might commit.
- The establishment of well-considered and appropriate officer actions to achieve the above objectives.

2. Priority areas

Certain aspects of environmental protection should take priority, taking into account:

- Severity and scale of problem.
- Risk to public health.
- Trends and patterns of offences.
- The needs of the public, businesses, visitors and other organisations.
- The needs of statutory partners and stakeholders.
- Government legislation/ directives.

The main issues include:

- Fly-tipping and other unauthorised means of disposal.
- Litter.

- Household waste collection issues, such as putting waste out too early for collection.
- Abuse of household waste collection and disposal facilities.
- Unlicensed waste carriers.
- Abandoned vehicles.
- Dog fouling.
- Abuse of litter bins.
- Fly-posting.

3. Our approach – how to we intend to enforce?

The Councils' approach is based on Government guidance and legislation. We aim to provide a balanced and consistent approach of education (information, advice, and guidance), encouragement and enforcement measures to help achieve our aims.

We will:

- Treat people in a courteous and respectful manner.
- Treat all people fairly and equitably.
- Ensure that responses are proportionate to the seriousness of the issue.
- Focus on education and awareness raising, with a view to reducing the requirement for enforcement action.
- Respond to reported incidents promptly.
- Be open and transparent in our approach.
- Work with communities and other stakeholder organisations.
- Deter offences through provision of a visible presence, warning signs and publicising successful enforcement actions where considered appropriate to do so.
- Where it is proportionate and reasonable to do so, use covert surveillance equipment in respect of the most serious offences and in accordance with the Government guidelines, requirements of the Regulation of Investigatory Powers Act (RIPA), and the Council's RIPA policy.
- Take formal action against those who wilfully disregard the law.

4. Enforcement options

The Councils have a range of powers and enforcement options to help them deal with environmental crime. The following are the main options that will be used and the Council will use the most appropriate and proportionate in the particular circumstances:

- **No action**
There will be circumstances where a contravention may not warrant action, or it may be inappropriate, or not in the wider public interest. Many minor contraventions can most appropriately be dealt with via advice and guidance.
- **Compliance advice, guidance and support**
For minor breaches of the law we will give advice on how to put matters right, including a deadline by which this must be done. The time allowed to put things right will be reasonable, and take into account the seriousness of the breach, and the implications of the non-compliance.

- **Verbal warning**
Used for minor contraventions that are rectified at the time by the person(s) responsible. A record will be made of the warning.
- **Written warning**
Used for minor offences where the person responsible has not complied with a request to rectify the issue, or where the Council requires to have documented evidence of the warning. This approach is also used when considering utilising powers under the Anti-social Behaviour, Crime and Policing Act 2014.
- **Fixed penalty notice**
Fixed Penalty Notices (FPNs) for varying amounts are available in relation to a number of offences. By accepting a FPN the offender accepts responsibility for an offence and discharges their responsibility to attend court. The Council will set FPN fines at national default levels. Failure to pay a FPN may result in prosecution for the original offence.
- **Prosecution**
Prosecution action is normally taken for more serious and repeated offences and where other enforcement actions have not been effective. It requires the preparation of a case that is presented at court.
- **Criminal Behaviour Orders**
Anti-social behaviour will be dealt with in accordance with the statutory guidance issued by the Home Office 'Anti-social Behaviour, Crime and Policing Act 2014: reform of anti-social behaviour powers – statutory guidance for professionals'. We will liaise with our statutory partners to ensure that anti-social behaviour is effectively dealt with, and that our actions are proportionate.
- **Legal notices**
Legal notices can be served in a variety of circumstances. They take the form of a written instruction to behave in a certain way, or provide information. Examples are an instruction to a resident to present their waste for collection at a certain time and in a certain way, or the requirement of a registered owner of a vehicle to state who was driving it at the time of an offence.
- **Stop and search**
Any person collecting waste as part of their business must be registered as a waste carrier with the Environment Agency. The Councils can inspect associated documentation and issue FPNs where not produced.
- **Power to enter and require details**
In pursuance of evidence to prosecute an offence, the Councils have various statutory powers to enter land, seize evidence, and require the name and address details of offenders. Failure to provide, or provision of false details, is an offence and the Council's powers depend on the particular office.

5. Applying enforcement options

When deciding which enforcement option to apply, a number of factors will be considered, including the seriousness of the offence, previous conduct of the offender, likelihood to re-offend, and the impact of the offence on others.

In certain circumstances, outlined below, further consideration will be given to the appropriate action that should be taken in relation to dealing with an offence.

- **Dealing with vulnerable people**

It is recognised that usual enforcement procedures are not appropriate in all circumstances, and that individual circumstances, such as mental health issues, must be considered when deciding on appropriate action.

- **Approach to juveniles**

In line with Government guidance, the Council will not take formal enforcement action against juveniles below the age of 16 years, except in exceptional circumstances.

6. Litter

Litter includes a variety of small items that are often dropped without consideration of the mess that it causes and the resources required to clean it up. Common litter items include take-away wrappings, empty drink cans and bottles, cigarette butts, chewing gum and flyers. It is estimated that 2.25 million pieces of litter are dropped in the UK every day.

Principal litter controls are included in the Environmental Protection Act 1990 (EPA), as amended by the Clean Neighbourhoods and Environment Act 2005. The legislation places duties on local authorities and others to maintain high levels of environmental quality (through street cleaning etc). It also provides local authorities with a range of enforcement powers to deal with litter.

Litter offences include:

- A simple litter offence.
- Dropping litter from vehicles.
- Distribution of printed materials.
- Litter which has a detrimental effect on the quality of life in the locality.

The offence of dropping litter is contained in Section 87 of the EPA and may be dealt with by issuing a FPN or by prosecution.

7. Waste

The two main issues with waste are:

- Traders and businesses presenting commercial waste as domestic waste to avoid paying for a trade waste/ controlled waste collection.
- Households not following the Councils' instructions about the proper use of waste collection services, eg putting waste out too early for collection.

Taking enforcement action will help to reduce the litter problems caused by the two issues above.

Where the Councils consider that commercial waste is likely to cause a statutory nuisance or to be detrimental to the amenities of the locality the officers may service a notice under section 47 of the EPA. Customers will be given 21 days to comply with the notice. If the notice is not observed within the timescale the Council will either pursue a prosecution for non-compliance or issue a FPN.

If householders breach their duty of care requirements, section 46 of the EPA allows the Councils to service a notice on an occupier requiring them to follow the Council's instructions in respect of the proper use of waste collection services, including the sorting, separating and presentation of waste. If the notice is not complied with the Council may issue a FPN which, if unpaid, may result in prosecution for the original offence.

Should a householder require other waste to be removed they must ensure that the person taking the waste is a Registered Waste Carrier and householders found to be in breach of this may receive a FPN or be prosecuted. In addition, section 34B of the EPA allows the Councils to seize and impound any vehicle they suspect is being used for the illegal movement of waste and waste duty of care breaches.

The Councils provide a link on their websites to the Environment Agency register of approved contractors, so that members of the public can easily check this before employing a contractor.

8. Fly-tipping

Fly-tipping can seriously degrade any area and cause health issues. The problem varies in scale from one or two rubbish bags left in the street to several tonnes of commercial waste tipped in a quiet lane. The Councils deal with a substantial number of fly-tips each year. In addition to spoiling the appearance of an area and creating a risk to people and wildlife, fly-tipping is costly for both Councils to deal with. Furthermore, once an area has been blighted with tipped material it is often perceived to be a legitimate area for further tipping and anti-social behaviour.

Responsibility for investigation and action in relation to fly-tipping offences is split between local authorities and the Environment Agency (EA) and there is an agreed memorandum of understanding between the Local Government Association and the EA that sets out responsibilities. Local authorities are responsible for clearing illegally dumped waste and may investigate fly-tipping on relevant land including:

- Small-scale deposits (less than 20 cubic metres).
- Waste operations without planning permission (Devon County Council are the lead authority for offences of this nature).
- Fly-tipping by waste producers/ householders.
- Drums or containers of hazardous waste totalling less than 75 litres.

There are a number of offences to be considered when dealing with a fly-tipping incident. The main offence, however, is contained within section 33 of the EPA which makes it an offence to 'deposit controlled waste or extractive waste, or knowingly cause or knowingly permit controlled waste or extractive waste to be deposited in or on any land unless an environmental permit authorising the deposit is in force and the deposit is in accordance with the licence.'

Section 33(5) adds that 'where waste is deposited from a motor vehicle, the person who controls or is in a position to control the use of the vehicle, shall be treated as knowingly causing the waste to be deposited whether or not he gave any instructions for this to be done.'

Where an investigation into a fly-tip leads to the offender, a FPN will be issued for the maximum amount in line with statutory levels. Should the FPN be paid within 10 days, a discounted amount will apply in line with statutory levels. respectively.

For the most serious fly-tipping offences, the Councils will pursue prosecution action.

9. Dog control

Most dog-related offences are contained within the Public Space Protection Orders (PSPO) and include:

- Not removing dog faeces.
- Not keeping a dog on a lead.
- Prohibiting dogs from certain areas (eg children's play areas).
- Taking/ walking more than a specified number of dogs onto land.

In addition, Councils now have the ability to undertake enforcement in respect of microchipping, where an officer is authorised to serve a notice on the keeper requiring them to have their dog microchipped within 21 days. If the keeper fails to microchip the dog within the timescale, the Council may:

- Take possession of the dog to check if it has been microchipped.
- Arrange for the dog to be microchipped.
- Recover the cost of microchipping the dog from the keeper.

For offences covered by the PSPO, the initial steps taken will include education and enhancing awareness. However, where this is having no effect on behaviour, authorised officers will issue FPNs where offences occur.

10. Abandoned vehicles

Abandoned vehicles not only make an area appear run down, but can also pose a danger to people, especially children, who may be tempted to play in or around the vehicle.

A vehicle may be considered as abandoned where one or more of the following apply:

- Is untaxed.
- No current keeper registered with the DVLA.
- Has been stationary for a substantial period.
- Has litter or detritus in, under or around it.
- Is damaged, run down, un-roadworthy, burnt out etc.
- Is missing one or more number plates.
- Is being used for any criminal or anti-social behaviour activities, or to dump/ contain waste.

Caravans, trailers, motorbikes and any large part of a vehicle, such as an engine block, fall within the definition of an abandoned vehicle.

If contact cannot be made with the vehicle owner, a notice will be placed on the vehicle advising that it is considered to be abandoned and will be removed and disposed of, unless moved to an alternative location by the owner.

Section 2 of the Refuse Disposal Amenity Act 1978 makes it an offence to abandon a vehicle on any land. Section 3 of the same act places a duty of care on the Councils to remove any vehicle it suspects of being abandoned, hold it for seven days, and then destroy or sell it.

Costs will be recovered from the owner where they can be traced. In addition a FPN will be issued for the maximum amount permissible. If the FPN is not paid, the Councils will prosecute for the original offence.

We will remove abandoned vehicle from private land where required, but will recharge the land-owner for costs incurred.

11. Graffiti

There are two specific situations where a graffiti offence is committed:

- Any person who, without authority or reasonable excuse, permits or otherwise inscribes or affixes any picture, letter, sign or other mark upon the surface of the highway or upon any tree, structure or works on the highway is guilty of an offence under section 132(1) of the Highways Act 1980.
- Any person who damages property by the painting or writing on, or the soiling, marking or other defacing of any property by whatever means is guilty of an offence under section 1(1) of the Criminal Damage Act 1971.

Offences will be dealt with by way of a FPN. Failure to pay the FPN amount may mean that the Councils will prosecute the offender.

The Councils also have the power to require a building owner to remove graffiti. As the owner may be viewed as the victim of a crime, we will only use these powers in exceptional circumstances, such as where an item of graffiti is likely to cause offence due to its content, eg vulgar language, abusive marks, such as swastikas, or pictures of a graphic or obscene nature. Where action is deemed necessary, it will be taken under the Anti-social Behaviour, Crime and Policing Act 2014, and a warning letter served on the owner prior to a community protection notice being served. This will allow works in default to be undertaken and recharged to the owner.

12. Fly-posting

Fly-posters are unlicensed advertisements for events and businesses, and can give the impression that an area is run down or neglected. If commercial fly-posting is tolerated, the number of posters will quickly increase.

Fly-posting can vary hugely but generally falls into one of three categories:

- Posters for large local or national events which are professionally produced and often put up by professional poster companies. These often target vacant and/ or boarded up properties and larger street furniture, and large numbers are often put up in high density.
- Adverts and posters for smaller local events such as car boot sales, fetes, firework displays and local gigs. The posters are generally smaller than those mentioned above but can still be fairly numerous. They are often attached to street furniture and railings, but may also be pasted onto buildings.
- Political or pressure group posters that advertise political parties or candidates, or relates to a topical local issue. These are far more sporadic and will often link to individuals/ properties that support or opposed a particular topic or party.

Fly-posting does not apply to the use of A-boards.

There are three pieces of legislation that can be used to control fly-posting:

- The Town and Country Planning Act 1990 deals with the display of advertisements which are contrary to the Town and Country Planning (Control of Advertisements) (England) Regulations 2007.
- Section 132(1) of the Highways Act 1980 makes it an offence for any person to inscribe or affix any picture, letter, sign or other mark upon the surface of the highway or any tree, structure or works on the highway (without authority or reasonable excuse).
- The Anti-social Behaviour, Crime and Policing Act 2014 allows the service of a community protection notice where an issue is unreasonable, persistent or continuing and has a detrimental impact on the quality of life in the locality.

Initially, the Councils will deal with offenders by way of education and enhancing awareness. However, where this is not successful, officers will gather evidence to prepare a prosecution case to take to court.

13. Working with partners

Working with partners and other stakeholders is a vital part of any enforcement strategy. We have worked successfully to undertake prosecutions with partner organisations and will continue to do so. We will exchange information and best practice with partners, who may include:

- Town and Parish Councils.
- Neighbouring authorities.
- Devon County Council.
- Environment Agency.
- Dartmoor National Park Authority.
- Housing associations.
- National Trust.
- DVLA.
- Police.
- FCC (our waste contractor).

