Environmental Crime Enforcement Strategy

Southend Borough Council logo
1 Introduction

Southend Borough Council is committed to maintaining a clean and safe environment for the benefit of everyone in the borough. This commitment recognises our responsibility to keep the streets and local environment clear of litter, obstructions and other local environmental quality issues.

The Council’s Corporate Plan and the Community Strategy identifies that residents want cleaner streets, less litter, less graffiti and more attractive parks, seafront and open spaces.

The presence of dumped waste, litter, graffiti and other environmental crime also contributes to people’s fear of crime. A cleaner and safer environment will, therefore, help improve the quality of life for all those who live in, work in and visit the town.

The Waste and Street Scene service has a responsibility to keep Southend’s streets clean and ensure refuse is collected.

Enforcement plays a vital role in maintaining a clean and safe environment by providing information and advice to individuals and businesses regarding regulations and duties. Enforcement ensures that those individuals and/or businesses that spoil the environment are made accountable for their actions. The Clean Neighbourhoods and Environment Act (CNEA) 2005 introduced new powers for local authorities to help tackle local environmental quality problems. The Act introduced effective powers and tools to tackle poor environmental quality and anti-social behaviour, such as litter, graffiti, waste and dog control. This Strategy sets out how we will use these new powers alongside existing powers and our current enforcement work to ensure an effective, consistent and clearer approach to enforcement.
2 Aim and objectives

The strategy sets out a robust and consistent approach to tackling local environmental issues. The strategy is also in line with borough-wide priorities concerning tackling inequalities, improving public spaces and improving the quality of life for everyone. Enforcement work can, and in some cases will, extend beyond public land onto adjacent, private land when necessary.

To meet this aim the Strategy has the following objectives:

- Raise awareness of good waste management, litter control, dog control, highway obstructions and other local environmental quality issues to everyone across the borough.
- Educate residents, businesses and visitors about their relevant duties and responsibilities in terms of good waste management, litter control, dog control, highway obstructions and other local environmental issues and what constitutes an offence.
- Undertake any enforcement action as necessary, in a reasonable, equitable and proportionate manner.
- In appropriate circumstances we will take enforcement action without education and advice when the severity of the situation dictates.

These objectives reflect the Enforcement Concordat, which is a set of enforcement principles adopted by central and local government and published by Central Government. The Concordat states that good enforcement practice should set clear standards be carried out in an open, helpful manner, and have a proportionate and consistent approach together with a clear complaints service.

This approach will ensure that:
- enforcement is carried out in a fair and equitable way;
- we assist businesses and others in meeting their legal obligations;
- we focus on prevention rather than cure;
- we take firm action against those who flout the law.
3 Scope

3.1 The scope of this strategy covers all waste and local environmental quality issues experienced on both public and private land. These issues affect the environmental, social and economic well being of the town, add to people’s fear of crime and so have a major impact on the quality of life of those who live in, work in and visit Southend.

3.2 We will seek to prioritise work on certain issues in order to approach enforcement work in a structured way, targeting the predominant issues affecting environment.

3.3 The strategy priorities are driven by both quantitative (Local Environmental Quality Survey) and qualitative (community consultation and officer reports) information.

3.4 Priority areas for the maintenance of a clean and safe Southend are:

- Domestic refuse bags deposited on streets out of collection times
- Commercial waste bags deposited on streets out of collection times
- Flytipping of waste on public and private land (dumped waste)
- Litter in high street areas and other highways
- Graffiti on public transport infrastructure and in footpath areas
- Irresponsible dog ownership
- Fly posting
4 Implementation

4.0 Implementation

This Strategy draws on a wide spectrum of personnel and resources to meet its aim. Street scene Officers will carry out a majority of enforcement action. Authorised officers from other Council departments and can include foreshore inspectors, and the Police Safer Neighbourhood Teams.

Only officers authorised by the Corporate Director of Enterprise Tourism and Environment may undertake the enforcement duties highlighted in this strategy. This authorisation is in accordance with the Council’s scheme of delegation as set out in the Council’s Constitution.

Training will be provided to ensure all authorised enforcement personnel have the skills and knowledge required to undertake their enforcement duties and to ensure a consistent approach by enforcement officers.

4.1 Awareness Raising and Education

Awareness raising and education are fundamental to the operation of any enforcement work. The community must know and understand what standards are expected of them so that they can operate to these levels. We aim to carry out this element of enforcement by providing consistent advice and guidance about relevant duties and responsibilities through face-to-face operations, leaflets, the website, local press, specific campaigning and work alongside our partners and stakeholders.

Over and above the targeted awareness raising and education work carried out by officers and partners, specific focused campaigns will be developed to highlight certain local environmental quality problems to a certain group or within a certain area. Through the Strategy we will support national LEQ campaigns run by ENCAMS.

ENCAMS is a national environmental charity that runs the Keep Britain Tidy campaign

4.2 Partnership Working

To ensure the strategy is effective we aim to work with others, including partners.

This will help raise awareness, through consistent information and advice, to assist in the education of the community regarding their responsibility to help keep the town clean and safe.
4.3 Enforcement Action – general

Southend Council recognises the importance of ensuring that all enforcement decisions are consistent, proportionate, clearly explained and relate to common standards to ensure the public is adequately protected. Officers work to the Council’s Customer Care Standards, which state that everyone must be given the same care and attention no matter what their age, religion, sex, disability, sexuality or ethnic background. This approach will help ensure that everyone is treated fairly. Having considered all the relevant information of a case the enforcement options open to the Council are, but not necessarily limited to, as follows:

Verbal Warning
Warnings are appropriate for advising offenders about contraventions that are easily remedied. Officers will issue suitable advice and guidance and set an appropriate timescale for remedial action. A verbal warning is noted in an authorised officer’s pocket book.

Written Warning
Council officers have the option to serve the offender with a written warning regarding the offence stating the necessary future conduct. The warning will note that no formal action will be taken, but it will stay on file for 12 months and can be used as a factor in any future assessment where a similar offence occurs.

Simple Caution
A Simple Caution (previous known as a Formal Caution) is a non-statutory disposal for adult offenders. It may be used for cases involving first time, low-level offences where a Simple Caution can meet the public interest. An admission to committing the offence is needed from an offender, which should be recorded by the Council officer. A Simple Caution forms part of an offender’s criminal record and may influence how they are dealt with, should they come to the notice of the Council again. The fact of the Simple Caution may also be cited in court in any subsequent court proceedings. Simple Cautions are not covered under the Rehabilitation of Offenders Act 1974 and therefore, never become spent.

Fixed Penalty Notice (FPN)
Authorised Officers can offer FPNs for certain environmental crime offences (listed in Appendix 1). FPNs are used as an alternative to prosecution and the alleged offender being taken to court. See section 4.5 for further information relating to FPNs.

Serving a Statutory Notice
Some offences require the serving of a formal notice on individuals, businesses or other organisations requiring them to carry out specific legal requirements. Offences of this type include (but is not limited to) street litter control, wilful obstruction of the highway and abandoned vehicles. The notice will explain what is wrong, what is required to put things right and what the consequences are if the notice is not complied with.

Seizure
Certain circumstances including wilful obstruction of the highway can lead to seizure of the obstructing item(s) as well as prosecution. The item(s) are stored and as part of a prosecution a Forfeiture Order can be requested from the Magistrates’ Court.
Prosecutions
Where the circumstances warrant it and the alternative actions mentioned in the Strategy are considered inappropriate for the offence, then prosecution may result. Consideration will be given to the facts leading up to the matter. The Council will also assess whether there is public interest in proceeding with the matter while taking into account the Enforcement Concordat and Crown Prosecuting Guidelines.

Anti-Social Behaviour Order
When there are situations where behaviour by individuals/companies causes significant harassment, alarm or distress to persons not of the same household of the perpetrator, the Council can consider the option of applying to the Magistrates' Court for an Anti-Social Behaviour Order, where it deems it necessary. Anti-Social Behaviour Orders are preventative. An order can contain conditions prohibiting an offender from carrying out specified acts or from entering defined areas and is effective for a minimum of 2 years. The orders can be made against anyone aged 10 years or more who has acted in an antisocial manner and where an order is needed to protect person(s) from further anti-social acts. A breach of an order constitutes a criminal offence.

Post conviction Anti Social Behaviour Orders can also be applied for.

Breach of an order is a criminal offence which is arrestable. The maximum penalty on conviction in the Magistrates Court is 6 months in prison or a fine not exceeding £5,000 or both; at the Crown Court the maximum penalty is 5 years in prison or a fine or both.

Acceptable Behaviour Agreements
An Acceptable Behaviour Contract (also known as Acceptable Behaviour Agreement) is an intervention designed to engage an individual in acknowledging his or her anti-social behaviour and its effect on others, with the aim of stopping that behaviour. It is a written agreement made between a person who has been involved in anti-social behaviour and their local authority, Youth offending Team (YOT) landlord or the police where applicable. ABCs do not have a legal status but are a tool that can be used for a person of any age to address various types of anti-social behaviour. An agreement may contain the agreed consequences of a breach. Any evidence of a breach may be used to support more formal enforcement methods.

Injunction
Where the Council considers it expedient for the promotion or protection of the interests of the inhabitants of the borough, the Council could make an application for Injunction. An Injunction could be applied for to stop certain actions or to force a person to perform certain actions.

Direct Action
The Council can in some circumstances take direct action to rectify the results of an offence.

Note: The listed enforcement actions should not be seen as a sequential procedural list and each case will be judged on its merits. Investigations will be carried out in line with the Police and Criminal Evidence Act 1984 codes of practice and agreed procedures. For the purposes of the Criminal Procedure and Investigations Act 1996 the Group Manager Waste and Street Scene shall perform the function of Disclosure Officer. For the purposes of the Regulations of Investigatory Powers Act 2000,
a designated officer has the delegated authority to authorise surveillance.

4.4 Human Rights Act
The European Convention on Human Rights is incorporated into domestic law by virtue of the Human Rights Act 1998. Waste and street scene Services recognises that the Act requires public authorities to operate in a way that is compatible with those rights, subject to occasions when interference is justified.

It is noted that the rights likely to be most affected by this Strategy are those under Article 1 (right to peaceful enjoyment of property and possessions), Article 6 (the right to a fair trial) and Article 8 (respect of privacy and family life). We will at all times seek to strike a fair balance between the needs to protect the rights of residents, businesses, and the public interest.

4.5 Fixed Penalty Notices
A number of offences listed in this Strategy can be dealt with through the use of FPNs. Approved offences and fines are shown in Appendix attached.

FPNs may be issued when an authorised officer believes that an offence has been committed. The FPN gives the alleged offender an opportunity to avoid prosecution by payment of the penalty. It is essential, therefore, that FPNs are only issued where there is adequate evidence to support a prosecution if a notice is not paid, and that unpaid notices are followed up. The use of FPNs will improve the effectiveness and efficiency of the enforcement process, resulting in officers being able to focus more detailed attention on more complex and involved cases.

Southend sees the issues covered by FPNs under the Environmental Protection Act 1990, Anti Social Behaviour Act 2003 and Clean Neighbourhoods and Environment Act (CNEA) 2005 as important to individuals’ quality of life and so wants to send out a strong message, through their usage, to those who deface the local environment.

FPNs are only issued where there is adequate evidence to support a prosecution if a notice is not paid. Unpaid notices will be followed up and considered for prosecution.

The Council offers a discount for early payment of a FPN. The discount period runs for 14 days from the date the notice was served. The FPN must be paid within 28 days of it being served. If the FPN is not paid the case will be considered for prosecution in the Magistrates’ Court.

The use of FPNs is one of the powers we shall use to meet the strategy’s aim in an effective and efficient manner.
4.6 Issuing Fixed Penalty Notices to Juveniles
A FPN can be issued to anyone over the age of 10. The Council’s duty under the Children Act 2004 requires that we discharge our functions with regard to the need to safeguard and uphold the welfare of children. With this in mind different procedures will be followed when issuing FPNs to young people (10 years old to 17 years old). Any young person caught by an authorised officer committing an offence can be referred to the Youth offending Team (YOT) for assistance and can advise on activities and interventions and can issue Acceptable Behaviour Agreements, Anti-Social Behaviour Orders and advise on the issuing of FPNs to young people as appropriate.
5 Complaints

If you are unhappy with any aspect of enforcement action then please contact us:

By post: Group Manager
Waste & Street Scene
Enterprise Tourism and Environment
PO Box 6
Civic Centre
Victoria Avenue
Southend-on-Sea
SS2 6ER
6 Monitoring and Measurement

6.1 In order to assess the effectiveness of meeting the Strategy’s aim a number of evaluation tools will be measured and reported on. This evaluation will highlight the successes of the strategy and also illustrate any gaps in the performance of the environmental enforcement function.

These evaluation tools are listed right;

- Improvements in NI195
- Reduction in the level of flytipping as recorded by the Department of Environment, Food and Rural Affairs’ Flycapture database;
- Improvements in resident satisfaction relating to a clean;
- Reduction in levels of abandoned vehicles;
- Number of FPNs issued and the subsequent payment rate.

7 Evaluation and Review

7.1 The Waste and street scene Services will undertake to review progress and evaluate enforcement action against those highlighted priority areas and their effectiveness in reducing the impact on local environmental quality.

This review will also seek to introduce where necessary any new powers granted to the Local authority in managing local environmental quality. The outcomes for progress will be linked to local environmental quality survey of results, which will help set annual priority areas.
## Appendix 1 - Environmental Enforcement Strategy - Fixed Penalty Notice offences and fine levels

<table>
<thead>
<tr>
<th>Description of Offence</th>
<th>Section and legislation</th>
<th>Amount</th>
<th>Early Payment Rate</th>
<th>Maximum fine in Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nuisance Parking</td>
<td>Section 6(1) CNEA 2005</td>
<td>£100</td>
<td>£60</td>
<td>£2,500</td>
</tr>
<tr>
<td>Abandoning a Vehicle</td>
<td>Section 2A(1) Refuse Disposal Amenity Act 1978</td>
<td>£200</td>
<td>£120</td>
<td>£2,500</td>
</tr>
<tr>
<td>Litter</td>
<td>Section 88(1) EPA 1990</td>
<td>£80</td>
<td>£50</td>
<td>£2,500</td>
</tr>
<tr>
<td>Breach of a Street Litter Control Notice or Litter Clearing Notice</td>
<td>Section 22 CNEA 2005( amends section 94A(2) EPA 1990)</td>
<td>£110</td>
<td>£60</td>
<td>£2,500</td>
</tr>
<tr>
<td>Unauthorised distribution of literature on designated land</td>
<td>Section 23 CNEA 2005( amends schedule 3A paragraph 7(2) EPA 1990)</td>
<td>£80</td>
<td>£50</td>
<td>£2,500</td>
</tr>
<tr>
<td>Graffiti</td>
<td>Section 43 ASBA 2003</td>
<td>£80</td>
<td>£50</td>
<td>£2,500</td>
</tr>
<tr>
<td>Fly posting</td>
<td>Section 31 CNEA 2005( amends section 43 ASBA 2003)</td>
<td>£80</td>
<td>£50</td>
<td>£2,500</td>
</tr>
<tr>
<td>Failure to produce waste transfer notes</td>
<td>Section 45 CNEA 2005 ( amends section 34 EPA 1990)</td>
<td>£300</td>
<td>£180</td>
<td>£5,000</td>
</tr>
<tr>
<td>Failure to present waste carrier’s licence</td>
<td>Section 38 CNEA 2005 (amends sections 5B and 5C Control of Pollution Act 1989)</td>
<td>£300</td>
<td>£180</td>
<td>£5,000</td>
</tr>
<tr>
<td>Offences in relation to waste receptacles</td>
<td>Section 47ZA(2) EPA 1990 now inserted by section 48 of the CNEA 2005</td>
<td>£110</td>
<td>£60</td>
<td>£1,000</td>
</tr>
<tr>
<td>Breach of Dog Control Conditions</td>
<td>Section 59(2) CNEA 2005</td>
<td>£80</td>
<td>£50</td>
<td>£1,000</td>
</tr>
</tbody>
</table>
## Appendix 2 Glossary of terms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>ABA</td>
<td>Acceptable Behaviour Agreement</td>
</tr>
<tr>
<td>ASB</td>
<td>Anti Social Behaviour</td>
</tr>
<tr>
<td>ASBA 2003</td>
<td>Anti Social Behaviour Act 2003</td>
</tr>
<tr>
<td>ASBO</td>
<td>Anti Social Behaviour Order</td>
</tr>
<tr>
<td>CNEA 2005</td>
<td>Clean Neighbourhoods and Environment Act 2005</td>
</tr>
<tr>
<td>EPA 1990</td>
<td>Environmental Protection Act 1990</td>
</tr>
<tr>
<td>FPN</td>
<td>Fixed Penalty Notice</td>
</tr>
<tr>
<td>LEQ</td>
<td>Local Environmental Quality</td>
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</tbody>
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