

TAUNTON DEANE BOROUGH COUNCIL

EXECUTIVE

7th December 2005

LITTER CONTROL IN TAUNTON DEANE.

(This matter is the responsibility of Executive Councillor Edwards)

REPORT OF CHIEF ENVIRONMENTAL HEALTH OFFICER (James Barrah)

1. PURPOSE

- 1.1 The purpose of this report is to consider the legislative powers that are now available to allow local authorities to deal with litter, and to advise on progress with the partnership between Taunton Deane Borough Council and Avon and Somerset Police on the use of Fixed Penalty Notices for the offence of dropping litter.

2. EXECUTIVE SUMMARY

- 2.1 Litter is of increasing public concern and is a key indicator of how people feel about their community. The costs of litter collection and disposal are significant for local authorities and continue to rise. Recent legislative developments have sharpened the powers available for local authorities to deal with those who drop litter. This has culminated locally in a new agreement for Police Community Support Officers to issue Fixed Penalty Notices for persons they witness dropping litter in the Borough. This project along with other issues raised in this report constitutes a fresh initiative to deter persons from littering in the Borough, that will hopefully result in an improved local environment for all.

3. BACKGROUND

- 3.1 Litter is not specifically defined however the Courts have considered the definition to be wide. It is most commonly assumed to include materials, often associated with smoking, eating and drinking, that are improperly discarded and left by members of the public. Litter now also specifically includes cigarette ends and other smoking related materials and chewing gum.
- 3.2 Research in 2003 stated that it costs taxpayers in England and Wales £450 million a year to keep the streets clean, whereas in 1963 the figure stood at just £13 million. Over 30 million tonnes of litter are collected from our streets every year and 1.3 million bits of litter are dropped on our roads every weekend. The amount of fast food litter on our streets rose by 12% in 2003.
- 3.3 It is now firmly established that there is a clear link between the cleanliness of the environment, anti-social behaviour and crime and disorder. The Clean Neighbourhoods and Environment Act 2005 has extended the powers available to Local Authorities to deal with litter, previously contained in Part IV of The Environmental Protection Act 1990.
- 3.4 Taunton Deane Borough Council is seeking to tackle the issue of littering in the Borough by utilising these new powers. It is apparent that there is insufficient resources to patrol the Borough and take enforcement action for litter within the Waste Services Team, particularly at this time when the Sort It Recycling campaign is fully underway, or indeed within Environmental Health. As a result, other options were considered and it was agreed to

investigate the possibility of Police Community Support Officers being empowered to take enforcement action, by issuing fixed penalty notices. This option has now been agreed in principle by Avon and Somerset Constabulary, and this report now seeks to address some of the policy issues that arise from this activity.

4. FIXED PENALTY NOTICES FOR DROPPING LITTER.

- 4.1 Section 87 of the Environmental Protection Act 1990 (EPA 1990), as amended, makes it an offence to “drop litter”. This offence now applies to all places that are open to the air, including private land and land covered by water. Failure to comply with this requirement is a criminal offence. The Local Authority, (as the Principal Litter Authority), can either prosecute the offender in the Magistrates Court, or issue Fixed Penalty Notices (FPN’s) requiring payment of a fine within 14 days. To date the Council has not adopted these powers and therefore has not issued any FPN’s for litter.
- 4.2 The Dog Warden Service within Environmental Health has in the past issued FPN’s for dog fouling. This was found to be a successful approach both in terms of improved environmental standards and heightened awareness amongst dog owners of their responsibilities. Therefore there is some familiarity with the legislation covering the issue of FPN’s and the procedural requirements. The proposed partnership with Avon and Somerset Constabulary will include PCSO’s having the power to issue FPN’s for dog fouling as well as litter.
- 4.3 The Clean Neighbourhoods and Environment Act 2005 (CNEA 2005) received Royal Assent on 7th April 2005. It amends some of the litter provisions of the EPA 1990.

The main changes are:

- Under the original 1990 legislation it referred only to an “officer” of a Principal Litter Authority, i.e. the District Council. Such authorities can now enter into arrangements so as to enable ‘any person’ to give such notices.
- A Principal Litter Authority may specify the level of fixed penalty that will apply in its area. If the local authority chooses not to set its own level, a standard default amount of £75 applies.
- A Principal Litter Authority may offer a discount for early payment of a fixed penalty.
- An authorised officer can require the name and address of a person on whom he proposes to serve a fixed penalty notice. It is an offence to fail to provide these details, or to give a false or inaccurate name or address.

5 OTHER LITTER RELATED POWERS.

- 5.1 The Environmental Protection Act 1990 as amended by the Clean Neighbourhoods and Environment Act 2005, provides a range of additional powers to deal with litter. These powers specifically relate to areas where there is a particular problem with litter often resulting or associated with a specific premises or site. Taunton Deane Borough Council may wish to use some of these powers at some point in the future however they are not considered as part of the partnership project with Avon and Somerset Police.
- 5.2 These powers are summarised below, and consent is requested for officers to use these powers in the future and if appropriate to do so, and where applicable following the commencement of these powers in April 2006.

- **Litter Abatement Notices.** Section 92 of the EPA 1990 enables local authorities to take action where a specified duty body is failing to keep its relevant land clear of litter or refuse. A duty body is one of a range of specified organisations as described below, that have a statutory duty to keep land that they are responsible for free of litter and refuse. The power to issue a Litter Abatement Notice may be used where any relevant Crown land or land of a designated statutory undertaker, or educational institution is defaced by litter or refuse, or the defacement is likely to recur.
- **Litter Clearing Notices.** Section 20 of the CNEA 2005 introduces sections 92A-92C to the EPA 1990, providing for Litter Clearing Notices, these replace the previous provision of Litter Control Areas. Litter Clearing Notices enable local authorities to require the occupier of land which is defaced by litter or refuse to clear up and where appropriate take steps to prevent it from becoming heavily littered again for example by securing the land or the provision of litter bins.
- **Street Litter Control Notices.** Sections 93 and 94 of the EPA 1990, as amended by CNEA 2005, give local authorities the power to tackle street litter generated from premises. This power is generally intended to address food and drink packaging and other litter caused by “eating on the go”, and other localised litter problems such as litter from cash points or lottery ticket sales. Street Litter Control Notices require businesses to clear up litter and take steps to ensure the street does not become defaced again. This power can now also be used where mobile operations such as burger vans cause a problem.
- **Distribution of Free Literature.** Problems can be encountered by the distribution of leaflets and the like, which are often subsequently dropped as litter. Section 94B and Schedule 3A of the EPA 1990 as inserted by the CNEA 2005, gives local authorities the power to control such distribution. The regime allows areas to be designated by order where the free distribution of literature is only permitted with the local authority’s consent.

6. PROGRESS ON THE PROPOSED PARTNERSHIP.

- 6.1 There are currently 14 PCSO’s operating in the Borough of Taunton Deane and they currently have the power to issue FPN’s for offences other than litter and dog fouling. Three PCSO’s are currently attached to the Town Centre Team.
- 6.2 The Police use two agencies to register FPN’s issued by police officers and to accept payments. These are the Fixed Penalty Office (FPO), based in Taunton and the Central Ticket Office (CTO), based in Bristol. Earlier this year several meetings took place to discuss the partnership scheme. At the meetings were representatives from the following:
- Taunton Deane Borough Council
 - Taunton Police (manage the PCSO’s)
 - The Central Ticket Office
 - The Fixed Penalty Office
- 6.3 The purpose of the meetings was two fold. Firstly, to determine if it was going to be practicable and effective for the PCSO’s to issue FPN’s on the Council’s behalf. Secondly, to determine whether the registration and payment services provided by the Fixed Penalty and Central Ticket Offices could also be used to process FPN’s in the proposed scheme.
- 6.4 As a result of these meetings the Police confirmed that they wished to go ahead with the scheme. It is difficult to judge but the Police anticipate that 20 to 50 FPN’s might be served in the first year. This might be as a result of a particular campaign over a short period of time or as and when they are patrolling.

6.5 It was decided that it was not cost-effective or practical to involve the FPO or the CTO in registering FPN's or accepting payments on behalf of the Council, due to the relatively low numbers of FPN's likely to be issued and the fact that the follow up arrangements for non payment of FPN's that the Police already issue and that which would be required for litter FPN's is different. For many existing Police FPN's if a person fails to pay the fine they will be guilty of an offence, and the Police have the option to Prosecute for this offence. With Litter FPN's the offence arises from the dropping the litter in the first instance, and not for failure to pay the FPN. Therefore if a litter FPN is not paid the Council will have to consider whether to prosecute this individual for the original offence of dropping the litter.

7. ISSUES TO BE CONSIDERED AND RESOLVED BY THE COUNCIL

Note: DEFRA have recently issued draft guidance on the CNEA 2005 and associated matters for consultation, this includes a draft guidance note on the use of FPN's. Where appropriate recommendations have taken account of this draft guidance.

7.1 Litter Control Strategy.

Draft DEFRA guidance urges Local Authorities to consider the use of any specific measures such as FPN's in the context of a wider Litter Control Strategy, developed with key partners, and made available to the public and business. In this way other initiatives can run alongside legal sanctions such as the issue of FPN's.

Examples utilised by other Local Authorities include:-

- The definition of litter now includes chewing gum and cigarette ends, consideration could be given to initiatives that have been used by other LA's such as the provision and distribution of Cigarette "Stubby" bags, or erecting small discs on lamp posts in main thoroughfares that people can stick their used chewing gum on possibly with the picture of a disliked celebrity.
- Some authorities ask members of the public to report the registration number of drivers who they see throwing litter from their vehicles, in order for the LA to pursue the registered keeper with an FPN.
- A local authority employs "Megaphone Man" who dressed in a recognisable outfit and waits in main public areas with a Megaphone. When he sees someone dropping litter he proceeds to publicly embarrass them by bringing the issue to everyone's attention with the megaphone.

It is recommended that TDBC starts to develop a Litter Control Strategy to support and complement the work underway on FPN's. (Recommendation 1)

7.2 Adoption of the relevant litter parts of the EPA 1990 and CNEA 2005.

Part IV of the EPA 1990 concerning litter as amended by the CNEA 2005, contains a range of discretionary powers. These powers include the power to issue fixed penalty notices for the offence of dropping litter. In addition the powers include those other measures that have been summarised in section 4 above. The Council must decide to act under these sections in order to proceed. (Recommendation 2)

7.3 Authorisation of the PCSO's under the EPA 1990 and CNEA 2005.

The Police Reform Act 2002 (Section 38(6) and Schedule 4) already provides powers for PCSO's to issue FPN's for dropping litter.

The Police Reform Act 2002 also allows PCSO's to issue FPN's for dog fouling under the existing Dogs (Fouling of Land) Act 1996. The CNEA 2005 will have the effect of repealing the Dogs

(Fouling of Land) Act 1996 from April 2006 and replacing and updating these provisions with new "Dog Control Orders". The Police Reform Act allows for this change.

It is therefore not necessary for TDBC to specifically authorise the PCSO's.

7.4 Devise and implement a procedure for the issue of an FPN by a PCSO.

A procedure will need to be devised in conjunction with the Police and PCSO's that covers:

- The offence of dropping litter and how to serve an FPN.
- When it is appropriate or not appropriate to issue the FPN.
- How hard copies of the FPN are delivered to Deane House so that payments can be reconciled with the FPN issued.

However prior to the creation of this procedure there is a key issue that will need to be resolved. Notwithstanding any introductory period referred to below, consideration needs to be given to the circumstance where a PCSO witnesses someone dropping litter, prior to issuing a FPN, should the individual be given a warning and as part of this warning be invited to pick up the litter that they have just dropped and dispose of it correctly?

Many authorities have adopted a "zero tolerance" policy in this regard, because it is felt that giving a warning very soon starts to undermine the deterrent factor of FPN's if the public know if they are caught littering, then all they have to do is pick up the litter and they will not be issued with an FPN. It is therefore recommended that a zero tolerance policy be adopted for the issue of FPN's. (Recommendation 3)

7.5 Set up payment mechanism at Deane House.

The procedure will have to be transparent and practicable for the offender wishing to pay the FPN and will have to ensure that payments made are linked to tickets issued. The Revenues Manager has advised that due to the relatively low numbers of FPN's involved, it would be more efficient if payments were accepted via Waste Services / Environmental Health administration. Payments can then be reconciled immediately with hard copies of the FPN's. It is planned to accept payment by post and if possible arrangements will also be made for payments to be made by phone and "on line".

7.6 Devise and implement a procedure for taking prosecution.

Prosecutions may be taken against those offenders who chose not to pay the FPN. The decision as to whether to take a prosecution will be in accordance with the Environmental Health Enforcement Policy and takes into account both the evidence available and whether the prosecution would be in the best interests of the public. In general terms local authorities will need very good reasons not to prosecute an offender that failed to pay an FPN, recent Government guidance confirms that lack of LA resources is not sufficient justification. This position is to ensure that the threat of the legal sanctions remain credible.

Agreement will have to be made with the PCSO's as to the collection of evidence, provision of witness statements and appearance in Court, and training provided where necessary, to ensure that evidence collected at the time that the offence is witnessed is sufficient to support a successful prosecution.

7.7 Audit implications

South West Audit have advised that written procedures will have to be in place to cover issues for example, on controlled stationery (authorised signatory on receipt, authorised release of books of tickets, use of sequential serial numbers, secure storage), reconciliation of payments with tickets issued and cancelled tickets. The procedures to be agreed between the Council and the Police. South West Audit will need to verify the process agreed.

7.8 Setting the level of FPN and use of money generated by payment of FPN's

The CNEA 2005 allows for local authorities to set the level of fine to be used in FPN's, if a figure is not set locally, the prescribed default amount will automatically be £75. DEFRA draft guidance states that the lower and upper limits for setting such penalties are £50 and £80 respectively. It is therefore proposed that the level of fixed penalty for littering in Taunton Deane is agreed as £75. (Recommendation 4)

The CNEA 2005 also provides the opportunity for local authorities to allow an early payment discount for FPN's. DEFRA draft guidance states that where this is provided the lowest discounted rate should be £40. The Council needs to decide if an early payment discount will be offered and if so the amount. It is recommended that an early payment incentive offered for payment of FPN's within 7 days and that the discounted rate will be £40. (Recommendation 5)

In addition the CNEA 2005 allows local authorities to use the receipts from FPN's for their own purposes. The use of any money that is accrued as a result of payment of fines or a prosecution case should be agreed prior to implementation. It is proposed that any net money left following subtraction of TDBC expenses is transferred to street cleansing budgets to further contribute to litter control. (Recommendation 6)

7.9 Publicity

There will be a need to heighten the public's awareness of this arrangement prior to implementation. Therefore it is anticipated to utilise local media coverage prior to a going live date for this scheme. In addition local signage will be required in the main public areas where litter is considered a particular problem to warn potential offenders of the potential implications of dropping litter.

Consideration could be given to a 3 month promotional period at the start of the project where if the PCSO's witness anyone littering, they will give them a warning and invite them to pick up the litter and provide advice on litter, and then after a certain date FPN's will start to be served. (Recommendation 7)

Once FPN's have been issued TDBC and the Police will wish to maximise the positive publicity to be gained from press coverage of issuing the first FPN's and any successful prosecution of offenders.

7.10 Review period and evaluation.

The scheme is likely to run for a period of 12 months initially. The effectiveness will be monitored frequently however a formal review will be necessary. It is recommended that the scheme will be evaluated after 6 months full operation. (Recommendation 8)

The evaluation of the project to determine if the incidence of littering have reduced in the Borough, will be undertaken utilising Best Value Performance Indicator 199. This indicator provides a

prescribed method of collecting information on the level of litter, and is routinely collected across the Borough most frequently in the retail area of Taunton Town Centre. In addition observations from areas such as Vivary Park in the Summer months will assist in forming a view as to whether the introduction of FPN's for litter has had a positive impact on the local environment.

8. RECOMMENDATIONS

It is recommended that the partnership scheme be implemented and in so doing the following issues agreed:-

1. That TDBC develops a Litter Control Strategy to complement the use of enforcement measures such as FPN's.
2. That TDBC agrees to act under Part IV of the Environmental Protection Act 1990 as amended, and when appropriate to utilise the powers identified in Section 4 above.
3. That TDBC adopts a zero tolerance policy for the issue of FPN's following the proposed introductory period.
4. That the level of Fixed Penalty for dropping litter should be set at £75.
5. That TDBC provides an early payment incentive for litter FPN's where a reduced fee of £40 will be payable where payment is made within 7 days.
6. That TDBC will transfer the net money following subtraction of TDBC administrative expenses to the street cleansing service.
7. That TDBC agree a three month introductory period for the issue of FPN's where persons witnessed dropping litter will receive a warning and be invited to pick the litter up, during this period extensive promotional work will be undertaken to make the public aware that after a certain date FPN's will be issued for any person witnessed dropping litter.
8. That TDBC agrees to review the project following 6 months of the start date.

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