

Clean Neighbourhoods

Environmental Enforcement Policy & Procedures



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1. Introduction

This document supplements the HBBC general enforcement policy and identifies the enforcement used by the Clean Neighbourhood Officers to contribute to the Council's corporate objective of "Clean Neighbourhoods for everyone".

The Clean Neighbourhoods strategy identifies how the council will achieve this aim by adopting the 5 E's:

1. Efficient - we will work efficiently and effectively to remove litter, dog foul, fly- tip, graffiti, fly posters and abandoned vehicles
2. Education – we will work with all ages and sectors of the community to increase awareness of the benefits of clean neighbourhoods and of the

harm litter, dog foul and other forms of environmental nuisance can cause

3. Engagement – we will encourage, support and work in partnership with local communities to improve the cleanliness of their neighbourhood
4. Environment – we will act to remove the sources of litter and other nuisances and create environments where everyone can act responsibly to achieve clean neighbourhoods
5. Enforcement – we will use enforcement to change the behaviour of the minority of people who fail to take personal responsibility to keep Hinckley and Bosworth clean, tidy and litter free

This document outlines the procedures used to deliver the enforcement part of this strategy. It updates the process developed in 2010 which was developed following consultation with residents.

2. Hinckley & Bosworth Borough Council - General Clean Neighbourhoods Enforcement Policy

This policy builds upon the principles of good enforcement set out in the council's General Enforcement Policy Statement in relation to environmental and street scene crime.

General Clean Neighbourhoods Enforcement Policy Statement

This council is committed to improving the street scene environment to create “a borough to be proud of” through education, training and enforcement. Ideally education through effective and targeted campaigns will lead to a reduction in environmental crime. However where legislative breaches occur the council will apply appropriate legal sanctions.

The council will enforce in a consistent, fair and proportionate manner. Authorised officers will, wherever possible, seek to remedy non-compliance by a graduated approach to enforcement. When necessary, the option to issue Fixed Penalty Notices (FPN's) should be considered. Authorised officers should consider these options before commencing any other enforcement action.

The effectiveness of enforcement activity will be monitored through indicators such as assessments of street cleanliness; number of FPN's issued and paid, number of complaints / incidents, number of campaigns and residents' satisfaction with our services.

This enforcement policy deals with the various enforcement actions available to tackle the environmental crimes set out within this policy & procedures.

Only trained officers will be employed by the council on environmental enforcement activities. Suitably trained officers employed through partnership arrangements may be authorised to undertake enforcement on behalf of the Borough Council. Examples could include Civil Enforcement Officers, Parish Council Clerks and staff, PCSO's etc.

Officers will be fully familiar with, and abide by, the policy when making enforcement decisions. Any departure from the policy will be exceptional, capable of justification and be fully considered by senior managers within the Street Scene Services before the decision is taken, unless it is considered there is significant risk to the public in delaying the decision.

The policy shall be reviewed regularly or in the light of new legislation or guidance with any developments incorporated.

3. Partnership working

Agreement on co-operation between District Councils in Leicestershire

1. A memorandum of understanding was signed by all the Leicestershire District Councils in July 2009. This memorandum acknowledges that environmental crime, particularly fly tipping, does not recognise administrative boundaries and that for authorities to deal with it effectively inter-authority co-operation is necessary. It sets out the principle of mutual assistance and the exchange and sharing of information necessary to tackle environmental crime.
2. The Clean Neighbourhoods team work closely with the Endeavour team, which is a multi-agency group dealing with anti-social behaviour and other emerging threats within the borough. The team consists of various council departments the Police, Trading Standards, Fire Service and other enforcement teams.

4. Authorisation and delegation

In relation to the legislation, part 3 page 85 of the council's constitution sets out the delegated authority to:

- commence a prosecution
- authorise named officers for enforcement

5. Training

The council will provide appropriate initial and updated training to Clean Neighbourhood Officers and others authorised to undertake environmental enforcement as is deemed necessary to enable them to carry out their duties efficiently and effectively. This will include the following:

- (a) Minimum update training of five hours per year for continual professional training
- (b) Minimum of 10 hours revision training for authorised officers returning to environmental enforcement

- (c) Minimum of three months monitoring of newly qualified or appointed officers or officers returning to environmental enforcement duties after an absence of more than three years

In most instances, action other than fixed penalty notices will be instigated by Clean Neighbourhood Officers and other officers within Street Scene Services.

In addition all officers must remain fully conversant with this policy and the standard responses for different types of environmental crimes.

6. Enforcement options

- (a) No Action

Where an intervention or investigation reveals full compliance with the relevant Legislation / Codes of Practice, no further action is required

- (b) Informal Action

Informal action to secure compliance with legislation may be given in the form of:-

- (a) Verbal advice

- (b) Written advice

- (c) Written warnings

In deciding to take informal enforcement action many criteria will be considered, including:-

- i. Whether the act or omission is serious enough to warrant formal action
 - ii. Whether past history indicates that informal action can be expected to achieve full compliance
 - iii. Whether Officers' confidence in the management of the issue is high
 - iv. Whether the consequences of non-compliance will pose a significant risk to public health or safety or to the environment
 - v. Whether, even when some of the above criteria are not met, there may be circumstances in which informal action will be more effective than a formal approach
 - vi. The availability of a due diligence defence (acting with reasonable care)

- (c) Informal caution

The council has the power to issue informal cautions as an alternative to

prosecution for some less serious offences, where a person admits an offence and consents to the informal caution. Where an informal caution is offered and declined, the council is likely to consider prosecution.

An informal caution will be kept on the council's Register of Cautions. It is likely to influence how the council deals with any similar breaches in the future and may be cited in court if the offender is subsequently prosecuted for a similar offence.

(d) Formal action

(a) Fixed Penalty Notice

Fixed penalty notices (FPN's), where legislation allows them, provide a simple and effective method of dealing with low level crimes for both the council and the offender. They will normally be offered initially as an opportunity to discharge offences that would otherwise be taken to court.

FPN's for certain offences can only be issued by officers working for the Borough Council. In these instances, others authorised to act on behalf of the council will need to issue an incident notice. These will then be passed to the Clean Neighbourhood Officers who will determine whether to proceed with issuing a fixed penalty notice of prosecution in line with this policy.

Levels of payment for FPN's will be set through the council's fees and charges annually. A reduced fee will apply if early payment is made to encourage prompt payment by offenders.

Exceptions to the use of FPN's will apply for more serious offences such as large or hazardous fly tipping and in relation to repeat offenders where the payment of earlier FPN's has not deterred them from reoffending. In these cases prosecution will normally occur.

(b) Incident notices

Incident notices are recommended by Keep Britain Tidy Group as an effective method of highlighting minor breaches of the Clean Neighbourhoods and Environment Act 2005 with the general public. These can be issued by Officers not employed by the Borough Council and followed up by suitably authorised enforcement officers who will determine if it is appropriate to issue an FPN.

These are an effective method of highlighting inappropriate behaviour, tracking offenders where they are initially given a caution for a first offence, and increasing the number of people able to deliver enforcement on the street. Such notices could for example be used by an enforcement officer not employed by the Borough Council to alert residents to inappropriate behaviour.

(c) Prosecution

This will be used where necessary when other means of enforcement are not appropriate or have proved ineffective.

(e) Prosecution Criteria

Purpose

This section details the council's criteria on which a decision is made whether to prosecute.

Prosecutions

The council always has the discretion of whether or not to prosecute for an offence. The decision to prosecute is a very significant one and is not taken lightly and is based on the circumstances of each case laid out in the policy below.

The Policy

A breach of law will not automatically result in legal proceedings. The circumstances which are likely to warrant prosecution may be characterised by one or more of the following criteria:-

- (a) There is a flagrant breach of law such that public health, safety or well being is put at risk, there is a risk of negative environmental impact, or there is a serious offence under clean neighbourhoods legislation
- (b) A failure by the offender to correct an identified offence having been given a reasonable opportunity to do so
- (c) There is a history of similar offences
- (d) A fixed penalty notice has previously been issued for a similar offence, or payment of a FPN has not been made

The examples above are not exhaustive and not all of the examples may be relevant in every case. The weight to be attached to each of the examples, and the factors identified, will also vary according to the facts and merits of each case.

Before a prosecution proceeds, the enforcement officer will need to be satisfied that the case is in the public interest and is supported by sufficient relevant evidence which is:-

- (a) Admissible
- (b) Substantial
- (c) Reliable

The guidance contained in Section 40 of the Code for Crown Prosecutors will be followed.

7. Equalities

The Borough Council is committed to achieving equality for all by removing direct and indirect discrimination set out within the council's Equality Policy.

Therefore when determining what enforcement action (if any) should be undertaken, Officers will assess if there are any circumstances which may

affect the individual or business concerned from complying with the legislation. If such issues are identified then options for enforcement will be assessed to ensure the council is not discriminating against any individual. All necessary measures to ensure people are treated equally will be introduced where necessary e.g. use of language translation, sign language interpretation, support for people with learning difficulties etc.

In line with current DEFRA guidance FPN's will not be issued to anyone under 16 years of age for a first offence. Instead, an incident notice will be issued and advice and guidance will be provided by the Clean Neighbourhood Officers. For second and subsequent offences, an incident notice will be issued and, dependent upon the circumstances, a FPN may be issued if it is felt that this is the best way to change the offender's behaviour. This decision will be made after consultation with the offender's family. If necessary an Anti-social Behaviour Contract will be developed in conjunction with Community Safety Officers.

Where a disabled person has committed an offence, if it is reasonable to establish a link between the disability and the offending behaviour, the decision to issue a FPN will be reviewed.

Where the offender can demonstrate that they are experiencing financial hardship, then a payment plan may be agreed. This is done on a case by case basis at the discretion of the Senior Clean Neighbourhoods Officer. Where offenders fail to follow a payment plan, the council may withdraw the plan and the offender would be required to settle any balance immediately.

8. Procedures

The following procedures / strategies will be employed to tackle these issues. These will be updated on a regular basis to ensure we are up to date with the best practice and are in line with national campaigns and guidance.

8.1 Dog Foul & Littering Offences

Results from the Public Space Protection consultation in 2015 showed most residents are in favour of using FPN's for dog fouling offences, setting the FPN at £100.

Consultation results from 2009 showed opinion was divided over whether a fine should be issued for littering or if offenders should be issued with a warning. However complaints about littering have increased in 2015/16 and the resident's satisfaction survey 2015 showed an increase in dissatisfaction about the levels of cleanliness so setting this FPN at £80 for all littering offences can be justified.

Therefore the following approach will typically be used:-

1. Hot spots will be identified through complaints received from residents, feedback from streetscene service staff, parish council staff and through ASC Surveys (street cleanliness) inspections
2. Pavement stencils and signage will be installed to warn of penalties
3. Where appropriate "report it cards" will be delivered to local residents asking for their co-operation in bringing about a reduction. This will include the collection of intelligence from local residents to identify perpetrators
4. Where necessary the installation of additional litter bins will be considered (subject to budget restrictions for HBBC land and for referral to land owners if not Borough Council land)
5. Clean Neighbourhoods staff will monitor the site for two weeks to establish if there has been a reduction
6. If no reduction happens after two weeks, the use of CCTV will be considered to catch offenders. More prolonged and sustained monitoring of the site will also be deployed
7. When appropriate, PACE interviews will be conducted from evidence received from a third party, FPN's will be issued for first offences where the witness statement and evidence is robust and conviction would be likely should prosecution prove necessary.
8. When an incident of dog fouling or littering is observed in the course of normal duties, for first offences a FPN will be issued
9. Community Protection Notices will be used where complaints are received relating private land / property
10. If appropriate local schools and other organisations will be targeted with information to try to reduce the problem, this may include press releases, posters, litter picks by children etc
11. Offenders who litter from vehicles often do so in a neighbourhood which is not their own. Therefore an FPN will be issued in every case. Registration details will be taken and driver details will be established

8.2 Fly Tipping and Duty of Care

Consultation in 2010 revealed the public strongly support the use of CCTV to catch fly tipping offenders.

Therefore the following approach will be followed:-

1. Fly tipping incidents will be monitored. Clean Neighbourhoods Officers will seek to establish hot spots and patterns in fly tipping behaviour in order to target offenders
2. All fly tips will be investigated to try to establish the source. Where any evidence is found, it will be fully investigated and where appropriate the offender will be prosecuted / fined
3. For first offences FPN's for fly tipping will be issued for minor fly tips (single items or up to an equivalent of six bags of domestic rubbish) Serious offences such as large fly tips (items above the equivalent of seven bags), offences committed by businesses, hazardous material and repeat offenders will be prosecuted. The FPN has been set at £400.00
4. Where evidence identifies an individual in most cases they will be invited in for a PACE interview as part of the investigation. If they claim to not be responsible, they will be requested to give a witness statement identifying

- who is responsible. Failure to do this could result in a FPN for Duty of Care being issued or prosecution
5. Signs will be placed at hot spots to inform residents / visitors that offenders will be prosecuted and CCTV may be in operation
 6. Where hot spots are identified, CCTV will be deployed to catch offenders
 7. Duty of Care inspections will be made to establish premises have correct procedures for dealing with trade waste.
 8. Where a particular type of waste is fly tipped then appropriate premises will be visited for duty of care inspections for trade waste. For example if tree cuttings are found repeatedly, then local tree surgeons and landscape gardeners will be targeted, tyre fitters would be visited if tyres were found etc. Waste transfer notes will be requested and FPN's issued if records are not accurate or business have failed to take responsibility for the correct disposal of their trade waste
 9. Where appropriate the Clean Neighbourhoods Officers will join with other appropriate agencies such as the Environment Agency to target high priority premises. This could include stop and search measures, vehicle seizures etc. by the appropriate authority
 10. Site waste management plans will be requested from construction sites where fly tipping has occurred in the vicinity. Where this is not provided on first occasions a FPN will be issued in line with the site waste management plan regulations 2008. The level of this FPN will be £300.00

8.3 Graffiti

Consultation established that the public support on the spot fines and prosecution for this type of offence. As such incidents of graffiti will be dealt with as follows:-

1. Hot spots for graffiti will be identified through site visits by the Clean Neighbourhoods team, complaints for the public, reports from staff and results from street cleansing inspections
2. Offensive graffiti will be removed within 24 hours regardless of its location i.e. private property or public land. Property owners will be charged for this removal
3. All other graffiti will be removed within five working days if on HBBC land or property
4. Where non offensive graffiti is on private land or property, 28 days notice to remove graffiti will be issued to the person responsible for the property. This notice is given under the Anti Social Behaviour Act 2003
5. Graffiti will be photographed and frequently seen tags will be referred to the Community Safety Team who will work with local schools and the police to identify offenders
6. FPN's will be issued for all first offences
7. Alternative measures will be used in particular hot spots e.g. graffiti walls (subject to funding being available)
8. As an incentive to deter further incidents of graffiti and to assist the owners of private property which is repeatedly targeted, the Borough Council will develop a service where graffiti on private property will be removed free of charge for one incident providing the area is immediately treated with anti graffiti paint to ensure ease of removal by the property owner in the future.

The Borough Council will offer a service to apply this anti graffiti paint which will be provided on a cost basis

8.4 Abandoned Vehicles & Untaxed Vehicles

To develop a more effective service the Clean Neighbourhoods Officers have been authorised by the DVLA to remove untaxed vehicles from the highway and council owned public car parks. The DVLA wheel clamping and removal instructions will be followed at all times.

1. Reports of abandoned vehicles will be investigated within 24 hours (one working day)
2. Officers will determine if the vehicle is abandoned through DVLA registration checks, locality of keeper relative to vehicle, state of vehicle, length of time in place. The vehicle must have been in place for seven days before the officer will begin the investigation
3. Burnt out and dangerous vehicles will be removed within 24 hours
4. If the vehicle appears to be abandoned, a notice of the council's intention to remove is attached to each vehicle. This notice will require removal within seven days if on public land or 15 days on private land. Failure to remove the vehicle will result in the council removing and scrapping the vehicle
5. Vehicles will be removed within 24 hours of the end of the notice period
6. Officers will investigate who has abandoned the vehicle and where appropriate and relating to a first offence a FPN will be issued to the person who has abandoned the vehicle
7. If a vehicle is reported as untaxed, the officer will follow the rules set out by the DVLA to establish how and when it will be removed

8.5 Fly Posting

Random and unauthorised advertising on lamp posts, highway infrastructure such as traffic lights, telecoms cabinets, is known as 'flyposting'. Flyposting is illegal, unsightly and can make areas look unsafe and uncared for. A-boards and signage installed into highway verges are enforced by Leicestershire County Council who are the Highway Authority. Consultation revealed 48% of the public thought the council should educate offenders and 42% thought we should issue on the spot fines to offenders.

Therefore the following approach will be used in relation to reducing incidents of fly posting.

1. All fly posters will be removed immediately when they are seen or within five working days of being reported. This will not include charitable events or signage which has been granted permission to be installed by Leicestershire County Council. Where the date for the event has passed all signs will be removed regardless of any permissions from LCC
2. All fly posting will be investigated, warning letters will be issued where possible advising offenders of further action, which could include a FPN being issued

3. Where offenders are witnessed installing a fly poster, officers will issue an on the spot FPN for first offences. A statement will be required if the offence is witnessed by a third party. This could then lead to a FPN being issued
4. Where signs are fixed to private property the owner will be consulted /asked to remove. If required the Clean Neighbourhoods team will refer the case to the Planning enforcement service to enforce

8.6 Unauthorised distribution of printed matter

Examples would include leaflets handed out on the street or placed under car windscreens

1. FPN's will be issued for all first occasion offences witnessed
2. Warning letters will be sent where an offence has been committed but not witnessed
3. Where printed matter continues to be distributed an FPN will be issued for first offences even if the distribution has not been witnessed

8.7 Nuisance Vehicles

It is illegal to sell two or more vehicles on the road within 500 metres of each other as part of a business. These are considered to be nuisance vehicles. Repairing vehicles on the highway can also be deemed to be a nuisance.

Therefore the following approach will be used:

1. At the initial visit, where appropriate owners will be verbally requested to remove vehicles/stop the repairs. NB repairs to your own vehicle if it has broken down can be carried out as long as this doesn't cause an ongoing nuisance to the people who live nearby and the work is completed within 72 hours. A warning letter will follow the verbal request outlining the offence, time frame for compliance and the enforcement action
2. If the request has not been complied with then a FPN will be issued for first offences. NB once a verbal request has been issued to an owner this will apply to all vehicles owned by that individual / company
3. Where necessary the Clean Neighbourhoods Team will work with LCC highways and trading standards department to ensure nuisance vehicles are removed

8.8 Community Protection Notice

If we conclude that an issue is persistent, unreasonable and has a detrimental effect on the quality of life of those in the locality the issue is enforceable using a Community Protection Notice under the Anti-social Behaviour Crime and Policing Act 2014. Some issues which may fall under this behaviour may relate to untidy land.

Therefore the general approach shall be:

1. The investigating officer must first establish that it meets the criteria above; this could be by way of receiving a complaint from a member of the public
2. When satisfied that the behaviour is unreasonable and is having a detrimental effect on the quality of life of those in the locality a Community Protection Warning Notice would be sent to the person/persons causing the unreasonable behaviour for example if the complaint related to untidy land the property could be owned but leased out to another individual so the land owner would not be responsible for the nuisance. The warning notice would set out clear guidance on what changes needed to be made and, depending on the issue, would allow a reasonable amount of time to complete the request
3. If the warning notice period ends and the actions haven't been completed the officer would then obtain the relevant evidence to establish that the issue is still persistent. Once satisfied that this is the case they would then serve a Community Protection Notice, this notice allows a further reasonable time frame to complete the requested work and clearly sets out what the next action would be.
4. The officer will issue a FPN for non compliance of a Community Protection Notice for a first offence; if the FPN was to go unpaid this would lead to prosecuting the offender

9. **Public Space Protection Order**

Under The Anti-social Behaviour, Crime and Policing Act 2014 following a public consultation in 2015 HBBC has created a Public Spaces Protection Order (PSPO's). PSPO's are designed to stop individuals or groups committing anti social behaviour in a public space.

The agreed sanctions under the order are as follows, specific areas and sanctions covered are listed within the Public Space Protection Order:

- a) Prohibit the use of fires and barbeques, camping with or without a vehicle, the use of remote controlled vehicles, and the use of a motorcycle
- b) Refusal to leave a site when required
- c) Put dogs on lead if instructed to do so by an Authorised Officer from the council
- d) Restrict dogs from going into certain places i.e. children's play areas
- e) Keep dogs on a lead, in specified areas
- f) Fouling of Land by Dogs

Therefore the general approach to tackle the above PSPO breaches will be as follows:

1. Hot spots will be identified through reports received from resident's feedback, from council staff and other partners
2. Signage will be installed at all affected sites, highlighting the restrictions
3. Where appropriate "Report it cards" will be delivered to local residents asking for their co-operation. This will include the collection of intelligence from local residents to identify perpetrators
4. Clean Neighbourhoods staff will monitor the site for two weeks to establish if there has been a reduction
5. If no reduction happens after two weeks, the use of CCTV will be considered to catch offenders. More prolonged and sustained monitoring of the site will also be deployed
6. PACE interviews will be conducted using evidence received from a third party, for first offences FPN's will be issued where the evidence is robust and conviction would be likely should prosecution prove necessary
7. When a breach of the Order is observed in the course of normal duties then a FPN will be issued for the first occasion
8. If appropriate local schools and other organisations will be targeted with information to try to reduce the problem. This may include press releases and additional signage

10. Exemptions relating to PSPO

The powers/restrictions referred to above would not apply to those who:

- (a) Is registered as a blind person in a register compiled under section 29 of the National Assistance Act 1948; or
- (b) Is deaf, in respect of a dog trained by Hearing Dogs for Deaf People (registered charity number 293358) and upon which he relies for assistance; or
- (c) Has a disability which affects his mobility, manual dexterity, physical coordination or ability to lift, carry or otherwise move everyday objects, in respect of a dog trained by a prescribed charity and upon which he relies for assistance.

11. Appeals and complaints

Extenuating circumstances are taken into account when relating to the payment of a fixed penalty notice; appeals must be given in writing to the Clean Neighbourhoods Team stating the reason why payment should not be made within 14 days of the date of the notice.

We are committed to providing access to those wishing to appeal or complain about enforcement action, in accordance with the council's corporate complaints procedure. However a formal right of appeal must be resolved through the legal process.

Should anyone wish to complain, initially contact should be made with the Senior Clean Neighbourhood Officer. This may be by person, telephone, writing or e-mail. If not satisfied with the response at this stage, a written complaint should be made to the Head of Street scene Services who will carry

out a further investigation. If still dissatisfied at this stage, the Director (Environment and planning) should be asked to arrange for an independent review of the case.

At this point all the stages of the council's Complaints Procedure will have been initiated and will have resolved the problem satisfactorily. If still dissatisfied, the complainant can approach the Local Government Ombudsman for adjudication.

12. Table of Offences

Offence	Legislation	Fixed Penalty	Discount Rate	Max Penalty on Conviction
Nuisance Parking	S6(1) Clean Neighbourhoods & Environment Act 2005	£100	£80	£2,500
Abandoning a Vehicle	S2A(1) Refuse Disposal Amenity Act 1978	£200	£160	£2,500
Litter	S88(1) Environmental Protection Act 1990	£80	£60	£2,500
Non Compliance of Community Protection Notice	S48 Anti-Social Behaviour Crime and Policing Act 2014	£100	£80	£2,500
Unauthorised Distribution of Literature	Sch 3A Paragraph 7(2) Environmental Protection Act 1990	£80	£60	£2,500
Fly Posting or Graffiti	S43 Anti-Social Behaviour Act 2003	£80	£60	Variable
Fail to Produce Authority (Waste Transfer Notes)	S34A Environmental Protection Act 1990	£300	£230	Unlimited
Fail to furnish documentation (Waste Carriers Licence)	S5B Control of Pollution (Amendment) Act 1989	£300	£180	Unlimited

Waste receptacles and putting waste out	S47ZA Environmental Protection Act 1990	£60	£40	
Allowing a dog to foul in a public place	The Dog (Fouling and Land) Act 1996 section 4	£50	£50	£1,000
Breach of Public Spaces Protection	S67 Anti-Social Behaviour Crime and Policing Act 2014	£100	£80	£1,000
Fly tipping	S33(1)(a) Environmental Protection Act 1990	£400	£125	Unlimited

The discounted rate applies when notices are paid within 10 working days. This is applied to encourage offenders to pay quickly to reduce the costs of collecting payments, and to reflect the lower costs the council incurs when offenders pay promptly.

13. **Relevant documents**

Clean Neighbourhood Strategy
Hinckley & Bosworth's Equality's policy 2010-2016
Hinckley & Bosworth's General Enforcement policy
Public Space Protection Order
Constitution of the council