

Meeting: Executive

Date: 12th January 2010

Subject: Policy approach to enforcement of the Environmental Protection Act 1990, Clean Neighbourhoods and Environment Act 2005 and associated legislation

Report of: Cllr McVicar, Portfolio Holder for Safer & Stronger Communities

Summary: The report proposes to consider how the Council, through its Sustainable Communities Directorate implements the range of environmental duties (including environmental crime) for which it is responsible, under the Environmental Protection Act 1990, Clean Neighbourhoods and Environment Act 2005 and associated legislation.

Advising Officer: Gary Alderson, Director of Sustainable Communities

Contact Officer: Jane Moakes, Assistant Director Community Safety and Public Protection

Public/Exempt: Public

Wards Affected: All

Function of: Executive

Key Decision Yes

Reason for urgency/ exemption from call-in (if appropriate) N/A

CORPORATE IMPLICATIONS

Council Priorities:

The implementation of environmental legislation through prevention, education, intervention and enforcement activities can make a significant contribution to the physical environment and quality of life experienced by local residents and communities. It also contributes to the delivery of the Councils community safety priority of 'Creating Safer Communities' to reduce crime, fear of crime, anti social behaviour and increase public confidence.

Financial:

In implementing the agreed policy approach officers will have regard to the Councils financial position and make best use of existing resources to provide a more effective, efficient and harmonised service, that provides value for money. Income generated from fixed penalty notices will be ring fenced to the service and used to invest in service delivery(e.g publicity and information)

Legal:

The duties and responsibilities the Council has under this legislation are clearly laid out. Guidance from government departments and the 'Working Better Together' agreement between the Local Government Association and Environment Agency, support and provide more detail on the application and enforcement of these duties to address issues locally. These will be used as a framework for working procedures.

In taking a new approach as proposed, there is a potential for more offences to be identified, fixed penalty notices served and further legal action (including prosecutions) taken. This may have an impact on resources within the legal service.

Risk Management:

There is reputational risk should the Council not agree a new approach for the whole area, as potentially different action for similar environmental crimes and offences in the north and south of Central Bedfordshire could be taken.

There are potential environmental and financial implications if enforcement action is not undertaken as part of the overall approach as the Council would continue to bear the costs for removal and disposal of fly tips, fly posters and litter.

There are also potential risks and challenges to working in partnership with the Police, Environment Agency and others, due to their expectations, should the Council not agree a policy approach in respect of its duties and responsibilities.

Staffing (including Trades Unions):

Implementation of a new approach will have an impact on current ways of working. Staff involved in this work are in teams within the Sustainable Communities Directorate (Community Safety, Public Protection and Waste); staff in Private Sector Housing (Adult Social Care and Housing) also undertake an element of the activity. All staff concerned will be consulted on the proposed way forward and any organisational changes required as a result, in line with HR guidance and support. In the main this will form part of the organisational review within Sustainable Communities. Private sector housing colleagues and the trade unions will also be consulted.

Equalities/Human Rights:

An equalities impact assessment of the policy will be undertaken.

Community Safety:

The detrimental impact that illegal waste disposal, fly tipping and other environmental crime, litter, fly posting and anti social behaviour of this nature continue to be raised by local residents through surveys and other mechanisms. In agreeing a new approach to address these matters more effectively should help improve the quality of life for our communities, and help reduce crime, fear of crime and anti social behaviour.

The recently completed strategic assessment for the Community Safety Partnership recently completed for Community Safety shows no priority concerns around environmental issues although these are clearly linked to locality issues around anti-social behaviour. The issues outlined in the report clearly highlight areas for consideration in the next strategic assessment process.

Sustainability:

Enforcement of environmental legislation can make a significant contribution to effective waste management, quality of the physical environment, tackle those responsible for environmental crime and anti social behaviour and prevent further offences.

Summary of Overview and Scrutiny Comments:

- Sustainable Communities Overview & Scrutiny considered a report on 4th January 2010 and a summary of their comments is below:
- Full details are contained in Appendix A

RECOMMENDATION(S):

- 1. that the Executive agree the new policy approach for undertaking its duties and responsibilities under the Environmental Protection Act, Clean Neighbourhoods and Environment Act and associated legislation; in line with the 'Working Better Together' Memorandum of Understanding agreed between the Local Government Association and Environment Agency.**
- 2. In agreeing this approach that the Executive**
 - (a) Delegate authority to the Director of Sustainable Communities in consultation with the Portfolio Holder to negotiate a new local agreement, to suit local circumstances with the Environment Agency**

Reason for Recommendation(s): To ensure a harmonised approach is implemented in respect of the legislation, with consistent and proportionate action taken to deal with the range of environmental crime, anti social behaviour, nuisance etc in Central Bedfordshire.

Executive Summary

The report proposes to consider how the Council, through its Sustainable Communities Directorate implements the range of environmental duties (including environmental crime) for which it is responsible, under the Environmental Protection Act 1990, Clean Neighbourhoods and Environment Act 2005 and associated legislation.

It sets out the legislative background and rationale for powers and duties contained to more effectively tackle poor environmental quality, environmental crime and anti social behaviour.

The report proposes a new policy approach of prevention, intervention, enforcement applied under the fair regulation principles of proportionately, consistently, transparency and appropriate targeting in the context of local circumstance. It recommends that a

new local agreement with the Environment Agency is entered into to support this.

In undertaking this new approach it notes that organisational arrangements and working practice will need to be reviewed and reconfigured and this will be undertaken as part of the organisational review within the Sustainable Communities Directorate.

In conclusion a new policy approach will ensure consistent operational practice and positive outcomes to keep the area clean, support good waste handling practice and reduce lower level environmental crimes across the Central Bedfordshire area from April 2010.

Background

1. This report deals primarily with environmental legislation that provides Local Authorities and the Environment Agency powers to tackle waste, including illegal dumping of waste, fly tipping, waste transfer and licensing; poor environmental quality, anti social behaviour, nuisance, abandoned vehicles, litter, graffiti, noise and dogs.
2. It set out the key provisions, background and powers under the Environmental Protection Act 1990 (EPA) and the Clean Neighbourhoods and Environment Act (CNEA) 2005.

Environmental Protection Act 1990

3. Under the EPA, a number of provisions relating specifically to the deposit and disposal of waste came into force in June 2005. These provisions make it an offence to deposit, treat, keep or dispose of controlled waste other than under and in accordance with a waste management licence or to treat, keep or dispose of controlled waste in a manner likely to cause pollution of the environment or harm to human health.
4. Other amendments under the Act were also brought in at this time, notably: removing the defence of acting under employers instructions; penalties on conviction that increased the maximum available fine on conviction from £20,000 to £50,000 and raised the maximum term of imprisonment on conviction on indictment for non hazardous waste offences to 5 years. These changes were significant, identifying illegal waste activities as criminal offences. Other sections, relating to waste handling, came into force in October 2005 and are listed in Appendix B. A summary of the main provisions of a national picture is attached as Appendix C.
5. Local Authorities and the Environment Agency have powers and duties that largely complement each other in respect of waste, waste transfer and licensing that contribute towards the protection of the environment and enhancing the quality of life of local communities. The 'Working Better Together' Memorandum of Understanding, agreed in January 2005 by the Local Government Association and the Environment Agency contains a commitment to work together to deliver specific environmental outcomes, supported by a series of protocols.

6. The protocol on fly tipping and Illegal waste activities seeks to bring about the protection and improvement of local environmental quality through the eradication of fly tipping and other illegal waste activities, and increasing the level of compliance with the law relating to waste management. It was considered that over time this would reduce fly tipping and other waste crimes and reduce the costs of clearing up fly tipped materials, although it was also recognised that tightening of other waste management regulations could result in increases in incidence of fly tipping.
7. A copy of the protocol is attached as Appendix D. It is proposed that this is used as the basis for the Councils new policy approach. This sets out the role of local authorities in respect of keeping streets and public open spaces clear of litter and refuse, with local intelligence and local political accountability, taking the lead role in tackling most fly tipping .

Clean Neighbourhoods and Environment Act 2005

8. The Clean Neighbourhoods and Environment Act was also enacted in 2005; this Act is complementary to the EPA and deals with many of the problems affecting the local environment and quality of life of people living in our communities, forming part of the continuum with anti social behaviour, vandalism, disorder and levels of crime.
9. The CNEA provides local authorities and the Environment Agency with more effective powers and tools to tackle poor environmental quality and anti social behaviour and it introduced new offences for a range of environmental offences (often referred to as environmental crime).
 - Nuisance vehicles and abandoned vehicles
 - Litter and refuse – fixed penalty notices for littering, street control notices
 - Graffiti and fly posting
 - Waste – transportation, deposit and disposal of waste
 - Noise – alarm notification orders, noise abatement notices
 - Abandoned shopping and luggage trolleys
 - Statutory nuisance from insects and lights

A summary of the main provisions of the CNEA is attached as Appendix E.

10. The prime responsibility for implementation of environmental legislation falls to local authorities. The legacy authorities, adopted approaches based on local needs and priorities. Appendix F briefly sets out the current position, teams and services involved.
11. It is not the intention of this report to consider the detail in respect of organisational arrangements that will be responsible for the enforcement of the legislation; it is proposed that this is undertaken as part of the organisational review within Sustainable Communities. (Neither is it to consider the development of a uniformed or visible presence – currently planned as a separate report to be considered by the Sustainable Communities Overview and Scrutiny Committee and the Executive in the new year). This report is to consider and agree a new policy approach for Central Bedfordshire.

Next Steps and Policy Approach

12. With regard to the EPA duties in respect of illegal waste management and fly tipping, it is proposed that we adopt and work in line with the formally agreed 'Working Better Together' Memorandum of Understanding and relevant protocols. It is proposed that an approach of prevention, intervention and enforcement is adopted, underpinned by advice and information to local residents and the public.
13. An outline of the proposed policy is attached as Appendix F.
14. In addition it is proposed that we enter into a new local agreement with the Environment Agency that is relevant to local circumstances in Central Bedfordshire; and that this supports the delivery of the Council priority of 'Creating Safer Communities', those of the Community Safety Partnership and the emerging Sustainable Communities Strategy.
15. In respect of the CNEA, it is proposed that a similar approach is taken; one of prevention, intervention and enforcement and that we set our approach to each element in the context of protecting the environment; reducing littering, flyposting and lower level anti social behaviour and environmental crimes, all of which have a negative impact on quality of life of our communities. As above, it is proposed that this approach is underpinned by advice and information to local residents and the public.
16. The policy will also include reference to and be in compliance with the Council's approach to enforcement as detailed in the Enforcement Policy agreed by the Executive on 20th January 2009.
17. Once the Executive has agreed the new approach, it is proposed that the detailed implementation arrangements are developed, supported by a communications plan to be launched in April 2010.

Conclusion

18. It is important that Central Bedfordshire has an agreed policy that sets out how it will implement and enforce the provisions of the EPA and CNEA and associated legislation and that this is relevant to local circumstances and responsive to the needs of the area.
19. It is also important that our policy and approach is communicated to local residents, the wider public and businesses in the area, so they can support the Council and we can work together in keeping the area clean, protect the environment and support good practice in respect of waste handling, anti social behaviour and lower level environmental crime that has an impact on quality of life and is detrimental to the environment.
20. It is also important, that in this approach the Council operates in a fair, proportionate, transparent and consistent manner in undertaking any enforcement and that there is common understanding and clarity on this.

Appendices:

- Appendix A - Summary of comments from Sustainable Communities Overview & Scrutiny (to follow)
- Appendix B - Environmental Protection Act 1990 – additional items that came into force Oct 2005
- Appendix C - A summary of the main provisions of the EPA and national picture
- Appendix D - Protocol on fly tipping and illegal waste activities
- Appendix E - Main provisions of CNEA
- Appendix F - Current Position and Services involved
- Appendix G - Outline of Proposed Policy on Enforcement of the EPA, CNEA & Associated Legislation

Background Papers: (open to public inspection)

Environmental Protection Act 1990

Location of papers:

Dunstable Offices