

STREET SCENE DELIVERY UNIT ENFORCEMENT POLICY

December 2015

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1. INTRODUCTION

- 1.1 The Street Scene Delivery Unit carries out enforcement of waste and street scene legislation in the London Borough of Barnet. One of Barnet's Council's strategic objectives includes 'improving the local environment'. Enforcement legislation contributes to the achievement of this corporate objective. This enforcement policy contributes to a number of the key actions to improve the local environment and enhance the street scene by:
- (a) Conducting education and enforcement operations, targeting known 'Hotspots', transport hubs, town centers, etc. to reduce fly-tipping and improve cleanliness.
 - (b) Issuing FPNs and PCNs for waste-related offences and increasing the proportion paid or successfully prosecuted.
 - (c) Regularly reviewing 'Duty of Care' compliance with the boroughs high street business and ensuring that town center businesses comply with the 'Time Band' restrictions for the placing of commercial waste sacks on the highway for collection within the designated times.
 - (d) Working with different agencies to reduce the number of illegal waste carriers that operate in the borough.
 - (e) Using CCTV monitoring equipment (both overt and covert) to identify littering and fly-tipping offences.
- 1.2 This document describes the Street Scene Service's enforcement policies. The policies described may affect any individual or organisation suspected of having committed waste offences affecting the London Borough of Barnet.
- 1.3 This document takes into account *"The Principles of Good Enforcement: Policy and Procedures"* outlined in the national *"Enforcement Concordat"*. The policies described below are intended to incorporate all aspects of good enforcement practice.
- 1.4 The Policy incorporates the Regulators' Compliance Code which was issued by the Department for Business Enterprise and Regulatory Reform and became effective on 6th April 2008., which requires local authorities to have regard to when they take enforcement action in certain specified areas. This includes action under the legislation listed in section 2.1. In certain instances it may be concluded that a provision in the Code is either not appropriate or is outweighed by another provision. In these instances officers will ensure that any departure from the Code will be properly reasoned and based on material evidence.
- 1.5 The policies in this document only apply to the Street Scene Service. They describe how the Street Scene Delivery Unit carries out waste and street scene enforcement. Most enforcement actions will be taken on the public highway and/or public open spaces; however enforcement action can be taken anywhere where there is evidence of an offence.
- 1.6 The Council is committed to taking enforcement action against those perpetrators who breach the law and will seek authorisation to use all the powers available to it, including deploying surveillance and acquiring subscriber information under The Regulation of Investigatory Powers Act 2000.

- 1.7 The Council will seek full recompense for any financial losses suffered by it in order to protect the local taxpayers, and will publish the details of convictions in order to deter offenders.
- 1.8 This Enforcement Policy is specific to the Street Scene Delivery Unit and does not affect enforcement activities by other services within the Council.
- 1.9 This Policy only applies to the Street Scene Services.

2. LEGISLATION

- 2.1 All enforcement action taken by Street Scene Services will be undertaken with regard to the relevant statutory provisions which include:
 - a) Environmental Protection Act 1990
 - b) Control of Pollution (Amendment) Act 1989
 - c) London Local Authorities Acts 1990, 1994, 1995, 2004 and 2007
 - d) Controlled Waste Regulations 1992 and 2012
 - e) Clean Neighbourhoods and Environment Act 2005
 - f) Police and Criminal Evidence Act 1984
 - g) Criminal Procedure and Investigations Act 1996
 - h) Regulation of Investigatory Powers Act 2000
 - i) Anti-Social Behaviour, Crime and Policing Act 2014
 - j) Site Waste Management Plans Regulations 2008
 - k) Highways Act 1980
 - l) Refuse Disposal (Amenity) Act 1978 and 1987
 - m) Dogs (Fouling of Land) Act 1996
 - n) Town and Country Planning Act 1990
 - o) Public Health Act 1936
 - p) Criminal Damage Act 1971
 - q) Deregulation Act 2015
 - r) Refuse Disposal (Amenity) Act 1978
 - s) Vehicle Excise and Registration Act (1994)

Enforcement action taken by Street Scene Services may also be undertaken under local by-laws

3. THE COUNCIL'S STREET SCENE SERVICES

3.1 The main functions of the Street Scene Services are:

- (a) Keeping Barnet's public streets clean and free of litter and refuse;
- (b) Collecting household refuse and Recycling;
- (c) Managing the commercial waste collection service;
- (d) Increasing the amount of household and commercial waste recycled;
- d) Managing and maintaining Parks and Open spaces; and
- (e) Enforcing waste and litter legislation.

4. KEEPING THE STREETS CLEAN AND CLEAR OF LITTER AND REFUSE

4.1 Under section 89 of the Environmental Protection Act 1990 the Council has a statutory duty to keep public highways clean and clear of litter, refuse and other rubbish, so far as is practicable the Council fulfils this duty by:

- (a) Providing an efficient and effective street cleaning service; and
- (b) Endeavouring to reduce the amount of litter and refuse being dropped or abandoned.

4.2 The Council spends approximately £8.2 million a year on street cleansing and parks related functions. The cleansing specifications are output based and require that all public highways and public open spaces within the Borough be cleansed to a minimum standard with minimum rectification times if standards drop to an unacceptable level.

4.3 Reducing the amount of litter and refuse being dropped or abandoned involves:

- (a) Educating local residents and businesses about their 'Duty of Care' to manage their waste properly in compliance with the law;
- (b) Engagement with local residents and businesses raising awareness of the adverse effects of littering and flytipping; and
- (c) Where necessary taking enforcement action against offenders.

4.4. Keeping Barnet clean and tidy is a high priority for local residents. The reputation of the Council and local businesses are liable to suffer if the streets and public spaces are covered in litter and abandoned refuse. The Street Scene Services therefore takes a firm approach towards waste and litter enforcement.

5. MANAGED HOUSING ESTATES

- 5.1 Approximately 38,177 properties within the borough are flats. This number is predicted to increase to 63,437 by 2030. Communal bins are provided to residents for the storage of their refuse and recycling.
- 5.2 Under section 46 of the Environmental Protection Act 1990 the Council has the authority to require residents to place their waste for collection in receptacles of a kind and number specified in addition to the authority to require residents to separate their waste into the refuse and recycling bins provided.
- 5.3 Generally, managed estates have communal areas for storage of their refuse and recycling bins. There is no current standard definition of what is a bin storage area. Across the managed estates they range from specifically designed bin cupboard and compounds to outside areas.
- 5.4 Fly-tipped Waste: Section 59 Environmental Protection Act 1990 requires landowners to remove any waste that has been knowingly deposited on their land. The council can serve a notice requiring an owner / occupier to remove waste that has been knowingly deposited and failure to comply is subject to a fine of up to £5,000. The council is entitled to remove any waste which is causing pollution or harm to health, with the costs being recovered from the owner.
- 5.5 Waste not contained (side waste) within the designated bins will be categorised as a fly-tip. Officers will endeavour in the first instance to obtain evidence (name/ address) of who fly-tip waste by carrying out a search of the material. If evidence is obtained, officers will initiate the education and enforcement protocol set down in the policies and procedures document.
- 5.6 In the event that no evidence is obtained the waste will be left for the managing agent to clear or if requested to do so cleared separately by the Council and the cost incurred re-charged to the managing agent.
- 5.7 Larger fly-tipped items e.g. furniture, white goods etc. will be left for the managing agent to clear or if requested to do so cleared separately by the Council and the cost incurred re-charged to the managing agent.
- 5.8 Contaminated Bins: Contaminated recycling bins have a three-fold impact on the Council (1) good quality recyclables are lost (2) disposal costs are charged at the higher residual waste (3) additional resources are required to clear contaminated bins.
- 5.9 Collection crews are required to undertake a visual inspection of the recycling bin before it is emptied. Where contaminants are identified the crew will endeavour to clear them if it is reasonable to do so.
- 5.10 Bin too heavily contaminated will be reported back to head office who in will in turn notify the managing agent. In these instances the bin will be left for the managing agent to clear contaminants and/or empty or if requested to do so cleared separately by the Council; the costs incurred re-charged back to the managing agent.

6. SIDE WASTE/CONTAMINATED BINS – LOW RISE

- 6.1 Under section 46 of the Environmental Protection Act 1990 the Council has the authority to require residents to place their waste for collection in receptacles of a kind and number specified in addition to the authority to require residents to separate their waste into the refuse and recycling bins provided.
- 6.2 Waste not contained within the designated bins will not be cleared. The crew will notify the back office, who in turn will ensure customer services are notified.
- 6.3 Collection crews are required to undertake a visual inspection of the recycling bin before it is emptied. Where contaminants are identified the crew will endeavour to clear them if it is reasonable to do so.
- 6.4 Heavily contaminated bins will not be emptied; the crew will place a sticker and/or card stating the reason for the non-collection. The bin will remain unemptied until the resident clears the contaminants.
- 6.5 In the event that the Council has to make additional arrangements to empty a heavily contaminated bin the costs incurred will be charged back to the resident.

7. COMMERCIAL OPERATIONS

- 7.1 Section 34 of the Environmental Protection Act 1990 imposes a duty of care on all businesses to store their waste safely and securely and to only dispose of it through a licensed carrier. Where appropriate the council can serve a Section 34 notice on any business. This requires them to provide evidence of an official waste contract. Failure to comply with the requirements of a notice can lead to prosecution and a fine of up to £5,000.
- 7.2 All businesses must also provide appropriate bins or waste containers under environmental law. Section 47 of the Environmental Protection Act 1990 allows the council to serve notice on any business with inadequate waste storage facilities requiring the business to make acceptable provision, specifying the number and type of bins or waste containers required, along with the recommended number of waste collections. Failure to comply can lead to prosecution and a fine of up to £1,000.
- 7.3 The London Local Authority Act 1990 (amended 1994, 2004 and 2007) section 22 allows the Council to introduce 'time bands' and receptacle identification. These measures restrict the periods of the day during which commercial waste can be placed and dictate the storage of the waste on the highway for collection. Contravention of these regulations will lead to the issuance of a Penalty Charge Notice (PCN).

8. THE COUNCIL'S USE OF ITS ENFORCEMENT POWERS

- 8.1 Offences where the Council may deem it appropriate take enforcement action include (but are not limited to:
- (a) Fly-tipping on open land anywhere in the Borough;
 - (b) Dropping litter (including dog fouling) or chewing gum in a street or other open public place and not clearing it up;
 - (c) Leaving waste (including wheelie bins etc.) on the public highway, for collection, without authorisation. (Generally, if a premise has a front garden or forecourt, there will be no justifiable reason to ever leave waste or waste containers on the public highway); other than on day of collection.
 - (d) Failing to provide details of non-domestic (commercial) waste collection and disposal arrangements when requested to do so;
 - (e) Failing to store and or secure waste properly, thus resulting in waste spillage;
 - (f) Failing to comply with the boroughs waste regulations.

9. EDUCATION

- 9.1 The Street Scene Services aims to educate local residents, businesses and visitors to Barnet about how to manage their refuse and recycling properly. This includes advice to commercial and industrial waste producers about how to comply with their “*Duty of Care*” to manage their refuse responsibly under section 34 of the Environmental Protection Act 1990. It also involves encouraging them to use the guidance available from the Government and the Council. Where education has been provided, offenders claiming ignorance of the law should not expect to be given a second chance before enforcement action is taken. The Council will normally take enforcement action if it is supported by an assessment of the factors listed in section 7 below and there is no general requirement to have first provided education.
- 9.2 Where an offence has been committed, but it is not been possible to identify the perpetrator, the Council will organise a leaflet drop or write to premises within the vicinity to ensure that businesses and residents are aware of the problem and their duty of care responsibilities.
- 9.3 Publicity. The Council will publish details of successful prosecutions including the names of perpetrators, outcomes and amounts recovered in costs by the Council.

10. DECIDING WHAT TYPE OF ACTION TO TAKE - ENFORCEMENT

- 10.1 When evidence of an offence is found, Enforcement Officers must decide whether taking action is appropriate. The factors to be considered in coming to a decision include, but are not restricted to:
- (a) The quality of available evidence and probability of the enforcement action under consideration being successful;
 - (b) The seriousness and prevalence of the offence;

- (c) The past history of the offender and the probability of re-offending;
- (c) The likely effectiveness of a deterrent that successful enforcement action and publicity would achieve;
- (d) The availability of resources, and whether deploying them elsewhere would be more likely to have a greater impact on reducing the amount of litter and waste being deposited on the Borough's public highways or other open land.

11. TYPES OF ENFORCEMENT ACTION

- 11.1 The law allows for different types of enforcement action dependant on the nature and severity of the offence and the quality of the evidence available. Details of the various enforcement options are given below.
- 11.2 **Oral and written warnings:** Oral and written warnings, as alternative to more formal enforcement action, may be given. Records of warnings are retained and may be taken into account if the same person commits further offences.
- 11.3 **Simple caution:** Simple cautions, as an alternative to prosecution, may be given and will be administered in accordance with the statutory provisions and guidance that apply and involve the offender admitting guilt. They may be taken into account by the court should the offender be prosecuted for a further offence. These would only be offered where it is not in the public interest to initiate court proceedings.
- 11.4 **Fixed penalty notice (FPN):** FPN's, may be given, as an alternative to prosecution, in respect of specified offences. Officers will not issue a fixed penalty notice unless:
- (a) the offence justifies prosecution;
 - (b) there is believed to be sufficient evidence to enable follow up proceedings should the offender not pay the charge within the statutory payment period; and
 - (c) it will act as a sufficient deterrent against re-offending.
- 11.5 If a FPN remains unpaid after expiry of the payment period, the offender will be prosecuted.
- 11.6 FPN's are the most common form of enforcement against littering by private individuals, who are first-time offenders. They are also issued for waste related offences including to businesses that fail to produce valid waste collection/disposal records when required. Businesses have a "*Duty of Care*" to manage their waste responsibly and are likely to have received relevant advice and information in the past.
- 11.7 **Penalty Charge Notice (PCN)** Regulations under London Local Authority Act 2007 (Section 22) allows the Council to introduce 'Time Bands' and receptacle identification. These measures restrict the periods of the day during which commercial waste can be placed out and dictate the storage of the waste on the highway for collection. Contravention of these regulations will lead to the issue of a PCN.
- 11.8 **Prosecution:** Prosecution action will only be taken where the evidential and public interest tests contained within the Code for Crown Prosecutors have been satisfied. For the

avoidance of any doubt, there is no requirement for any alternative form of enforcement action to have first been taken before prosecution is considered to be appropriate.

- 11.9 **Vehicle seizure:** For fly-tipping offences involving a vehicle with no current registered keeper. In these instances the Council will generally seek a vehicle seizure warrant in addition to any other action.

12. THE “ENFORCEMENT CONCORDAT”

- 12.1 The “*Enforcement Concordat*” sets out what business and others being regulated can expect from enforcement officers. It is supplemented by “*Enforcement Concordat: A Good Practice Guide for England and Wales*”.
- 12.2 Street Scene Enforcement Officers aim to conform to the principles outlined in the Concordat and apply them in the following ways:
- 12.3. **Openness and helpfulness:** The Council will publicise this enforcement policy so people know what standards are expected. Street Scene Officers will help residents and or businesses to comply with the law and will explain what they are doing and why. They will inform people about their rights of appeal. They will make sure they know how to make a complaint. They will try to help those who cannot read or speak English by using the services of an interpreter (if available).
- 12.4 **Proportionality, consistency and priorities:** Street Scene Enforcement Officers will carry out their duties in a fair, reasonable and consistent manner. They will take appropriate enforcement action when required to do so. Any action taken will fit the seriousness and prevalence of the crime.
- 12.5 It should be noted that each case is unique; certain offences are worse than others, and as such the enforcement action taken will potentially differ. Notwithstanding staff will be trained to apply the law and this policy in a fair and consistent way. To ensure consistency Senior Management will regularly carry out random to checks for accuracy and consistency.
- 12.6 Guidance details as to how the section undertakes its enforcement actions are set out in the ‘Barnet Council Street Scene Operational Enforcement Procedures Policy’ document. This document is available as set out in section 11.

13 THE REGULATOR’S COMPLIANCE CODE

- 13.1 Whilst the Regulators' Compliance Code (the Code) only applies to certain designated legislation, most of the regulatory functions of the Street Scene Services are included within the designation. The main purpose of the Code is to ‘embed a risk-based, proportionate and targeted approach to regulatory inspection and enforcement’. The Government expects that the Code will lead to better value from the regulatory efforts made and benefits to low risk and compliant businesses through better focused inspection activity. The Code stresses the need for a positive and proactive approach by helping businesses to understand and meet regulatory requirements as well as responding proportionately to breaches.
- 13.2 The Code establishes specific obligations, which flow from the Hampton Review (a previous Government investigation into regulatory burdens). These are as follows:

- (a) Economic progress: Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.
- (b) Risk Assessment: Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources in the areas that need them most.
- (c) Advice and guidance: Regulators should provide authoritative, accessible advice easily and cheaply.
- (d) Inspections and other visits: No inspection should take place without a reason.
- (e) Information requirements: Businesses should not have to give unnecessary information or give the same piece of information twice.
- (f) Compliance and enforcement actions: The few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions.
- (g) Accountability: Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take.

14. FURTHER INFORMATION AND CONTACTS

- 14.1 A free copy of this policy, waste regulations and further information and advice on litter, refuse and enforcement is available from:

Address: London Borough of Barnet,
Building 9, Mill Hill Depot,
Bittacy Hill, Mill Hill.
London NW7 1BL

Telephone: (020) 8359 7481 (Street Scene Enforcement Officer)
Barnet Online: www.barnet.gov.uk

15. USEFUL READING

- 15.1 **Enforcement Concordat:**
<http://www.cabinetoffice.gov.uk/regulation/documents/pst/pdf/concord.pdf>
- 15.2 **Enforcement Concordat: A Good Practice Guide for England and Wales:**
<http://www.dti.gov.uk/ccp/topics1/pdf1/concordatguide.pdf>
- 15.3 **Statutory Code of Practice for Regulators, December 2007: Department of Business Enterprise and Regulatory Reform.**
<http://www.berr.gov.uk/files/file45019.pdf>

15.4 The Code for Crown Prosecutors

<http://www.cps.gov.uk/Publications/docs/code2004english.pdf>

15.5 EnCams Publications:

- (a) **Litter and the Law:** A guide to the public, including all aspects of litter and the law in England.
- (b) **Your Rubbish and the Law:** A guide for businesses, detailing their legal commitments to waste and litter.
- (c) **Dog Fouling and the Law:** A guide to the public on dog fouling and the law in the UK.
- (d) **Flytipping and the Law:** A guide for the public.
These items are available from
<http://www.encams.org/publications/index.asp>.
For hard copies, please call EnCams on 01942 612621.

15.6 Department of the Environment, Food and Rural Affairs (Defra) Publications

- (a) **Waste – Duty of Care**
<http://www.defra.gov.uk/environment/waste/management/doc/index.htm>

15.7 The Stationery Office Ltd

- (a) **Waste Management: The Duty of Care, A Code of Practice** Available from Stationery Office bookshops or by telephoning 0870 600 5522.