

# **Environmental Services Enforcement Strategy**

**February 2011**

# ENVIRONMENTAL SERVICES ENFORCEMENT STRATEGY

## CONTENTS

<b>1.0</b>	<b>Introduction</b> .....
<b>2.0</b>	<b>Aim</b> .....
<b>3.0</b>	<b>Scope</b> .....
<b>4.0</b>	<b>Focus Areas</b> .....
4.1.0	• Fly Tipping .....
4.2.0	• Litter.....
4.3.0	• Waste.....
4.4.0	• Graffiti.....
4.5.0	• Fly Posting.....
4.6.0	• Abandoned and Nuisance vehicles.....
4.7.0	• Highways Obstructions... ..
4.8.0	• Abandoned Trolleys ... ..
4.9.0	• Dog Fouling and Dog Control
4.10.0	• Parking Offences ... ..
4.11.0	• Other Enforcement.....
<b>5.0</b>	<b>Delivery</b> .....
5.1.0	• Enforcement Officers.....
5.2.0	• Awareness Raising and Education.....
5.3.0	• Partnership Working.....
5.4.0	• Enforcement Action.....
5.5.0	• Fixed Penalty Notices.....
5.6.0	• Notices.....
5.7.0	• Juveniles.....
5.8.0	• Prosecutions.....
5.9.0	• Delegations.....
5.10.0	• Appeals.....
<b>6.0</b>	<b>Complaints</b> .....
<b>7.0</b>	<b>Monitoring and Measurement</b> .....
<b>8.0</b>	<b>Evaluation and Review</b> .....
8.1.0	• Openness and Helpfulness.....
<b>9.0</b>	<b>Appendices</b> .....
	Table 1 - Fixed Penalty Notice Summary

## 1.0 Introduction

- 1.1 Test Valley Borough Council (TVBC) is committed to protecting and enhancing the environment for the benefit of everyone in the borough. This commitment recognises our responsibility to keep the streets and local environment clear of litter, obstructions and deal with other local environmental quality issues.
- 1.2 The presence of dumped waste, litter, dog fouling, graffiti and other environmental crime contribute to people's fear of crime and their perception of the possibility of being subject to crime.
- 1.3 Environmental Service has a responsibility to provide high quality street cleansing and waste collection services throughout the borough. The Service also provides an extensive recycling service, grounds maintenance, council fleet management, playground inspections and burials service among others.
- 1.4 The TVBC Corporate Plan 2007-2011 recognises the link between quality of life and the quality of the external environment and it includes our commitments to minimising harmful impacts on the environment and to creating a cleaner and safer place to live and work.
- 1.5 Whilst TVBC has responsibilities to maintain a clean environment for all, this strategy recognises the community's responsibility in this area. Enforcement plays a vital role in maintaining a clean and safe environment by providing information and advice to individuals regarding the law, regulations and duties. In the last resort, it is enforcement action that ensures that those individuals and/or businesses that spoil the environment are made accountable for their actions through legislative processes.
- 1.6 Along with all other local authorities in England, TVBC now has extended powers to enable enforcement of legislation intended to protect both the individual and the community as a whole.
- 1.7 Environmental Service is responsible for dealing with enviro-crime and related affects of anti social behaviour. If left unchecked these matters can have a negative impact on local environmental quality and can ultimately lead to a downward spiral of decline in the borough.
- 1.8 Environmental Service Officers in TVBC are therefore responsible for exercising some of the powers under the following legislation with regard to the general street environment:
  - Environmental Protection Act 1990 (as amended)
  - Clean Neighbourhoods and Environment Act 2005
  - Highways Act 1980
  - Refuse Disposal (Amenity) Act 1978
  - Town and Country Act Planning 1990
  - Anti Social Behaviour Act 2003
  - Regulation of Investigatory powers Act 2000
  - Licensing Act 2003
  - Criminal Justice and Public Order Act 1994

and any other miscellaneous legislation relating to the powers and duties of the council as a Litter Authority and Local Authority in relation to activities on and protection of the public highway.

- 1.9 The most recent legislation, the Anti-Social Behaviour Act 2003 and the Clean Neighbourhoods and Environment Act 2005 (CNEA 2005) saw the introduction of new powers for local authorities to specifically help to tackle local environmental quality issues. The Act introduced effective powers and tools to deal with poor environmental quality and anti-social behaviour, such as litter, graffiti, waste and dog control and enhanced previous powers to allow enforcement work to extend beyond public land onto adjacent, private land when necessary.
- 1.10 A useful tool is the fixed penalty notice (FPN), which is a financial penalty that officers can issue directly to offenders once their offence has been established. Payment of the FPN discharges the offender from any consequent legal action regarding the offence. However if the FPN is not paid then the offender may face legal proceedings for the original offence.
- 1.11 While the council has previously adopted many of the new powers in the CNEA 2005 this strategy sets out how we will use these and other existing powers in our enforcement work to ensure an effective, consistent and clearer approach to environmental enforcement.

## **2.0 Aim**

- 2.1 Each year, TVBC sets out its strategic aims and objectives in its Corporate Plan. Each department and service area then uses these strategic aims and objectives to produce their detailed Service Plans to ensure that those goals are met Environmental Service has set part of its Plan to:

“...deliver a range of high quality, good value, environment enhancing and protecting services that meet the needs of our customers and are among the best in the country.”

For Environmental Service this means ensuring a cleaner, safer and greener environment for residents, businesses and visitors to the Borough.

- 2.2 To meet this aim we will use this strategy to achieve the following objectives:
- Raise awareness of effective waste management, litter control, dog control, reduction of highway obstructions and other local environmental quality issues to everyone across the borough.
  - Educate residents, businesses and visitors about their relevant duties and responsibilities in terms of effective waste management, litter control, dog control, highway obstructions and other local environmental quality issues and what constitutes an offence.
  - Undertake any enforcement action as necessary in a reasonable, equitable and proportionate manner.
- 2.3 Along with the majority of other local authorities, TVBC has adopted the Enforcement Concordat, which is a set of enforcement principles produced by Central Government. The Concordat states that good enforcement practice should have clear standards, be carried out in an open, helpful manner, have a proportionate and consistent approach and deal effectively with complaints about service. This approach ensures that:
- We are fair and equitable in the way we carry out enforcement;

- We assist businesses and others in meeting their legal obligations;
- We focus on prevention rather than cure;
- We take firm action against those that flout the law;
- Our actions are comparable and similar to other local authorities.

### **3.0 Scope**

- 3.1 The scope of this strategy covers waste and local environmental quality issues experienced across the borough on both public and private land. These issues affect the environmental, social and economic wellbeing of the borough and add to people's fear of crime; hence they have a major impact on the quality of life of those who live in, work in and visit Test Valley.
- 3.2 All of the issues highlighted in this strategy are of great importance to maintaining a clean and safe Test Valley. We seek however, to prioritise work on certain issues in order to approach enforcement work in a structured way, targeting the most prevalent issues affecting Test Valley's environment.
- 3.3 This policy's priorities are driven by both quantitative (Local Environmental Quality Survey) and qualitative (community consultation and officer reports) information.

The current priority areas for the strategy driven by the elements described above are:

- Fly tipping and illegal dumping of waste on public and private land, and;
- the related transport and transfer of waste without the appropriate licence;
- Litter in high street areas, other highways and private land;
- Littering from vehicles;
- Domestic waste bags dumped on streets out of collection times;
- Abandoned trolleys
- Commercial waste bags left on streets or in the council's litter bins without proper arrangements or out of collection times;
- Irresponsible dog ownership;
- Hedges and trees overhanging the highway or footway and causing an obstruction
- Development site waste management

3.4 Here are some examples where people can break the law. Our staff can take enforcement action against the people we identify doing these things:

- Dropping litter or allowing litter to accumulate on land;
- Dumping waste on any land open to the air;
- Not making proper arrangements for the disposal of commercial waste;
- Letting a dog foul the pavement or park, and not clearing it up;
- Failing to comply with street litter control notices;
- Not using appropriate containers for waste.
- Transporting waste without an appropriate licence
- Fly posting advertisements and other publicity in public places
- Defacing surfaces with graffiti
- Abandoning a vehicle on the highway or other public land
- Keeping an untaxed vehicle on the highway

3.5 It is the responsibility of every business and individual to comply with the law and it is recognised that most want to do so. Environmental Service is responsible for providing help and assistance for this purpose and for taking action against those who do not meet their responsibilities. The purpose of this strategy is to explain how Environmental Service will fulfil this role.

3.6 We reserve the right to take enforcement action without education and advice on any occasion where offences such as those listed in section 3.4 are committed. All relevant factors will be taken into consideration. These factors are clarified in 5.4.0 of this strategy.

3.7 The scope of this strategy does not include matters pertaining to Environmental Health, Planning and Building Control regulation; however it does outline in places how we may compliment and support these aspects of regulation undertaken in other services.

## **4.0 Focus Areas**

### **4.1.0 FLYTIPPING**

4.1.1 The mismanagement of waste and fly tipping (dumping) degrades the amenity of an area and often attracts further environmental crimes. In line with this strategy we will educate and advise the community on how to properly manage their waste.

4.1.2 Waste dumped on Council land must be cleared and disposed of appropriately, at significant cost to the council; we have stringent targets for the removal of fly tipped waste so that existing dumps do not attract further activity.

4.1.3 Fly tips represents a health and safety risk to the general public and our staff and may pollute the environment. In cases where hazardous waste is fly tipped these risks increase significantly

4.1.4 Waste dumped on private land presents particular problems for the state of the local environment. Uncontrolled waste disposal like this can also present great health and safety risks and attract other anti-social behaviour. We will use the relevant legislation to ensure that those dumping waste on private land are prosecuted and any clear up

costs recovered from the offender. In some instances this may also apply to the owner of the land who may be liable for prosecution if they have allowed their land to be used for dumping.

- 4.1.5 Environmental Service investigates all incidents of dumping, and will pursue any case where there are reliable witnesses to the incident or evidence identifying the source of the waste or its carrier. The legislation does not allow the use of Fixed Penalty Notices for this offence; where evidence is available to support a prosecution TVBC will take a zero tolerance approach to this offence by seeking an outcome through the courts.
- 4.1.6 In the event that a flytipping investigation leads to evidence of a resident or business using an unregistered waste carrier and hence contravening their Duty of Care obligations, Environmental Services may consider issuing a Fixed Penalty Notice or seeking an outcome through the courts.
- 4.1.7 Environmental Services has a CCTV system that can be located at known fly tipping hot spots to record illegal dumping activity. We will deploy this system based on operational intelligence and publicise its use and any successes so that it may also act as a deterrent to potential offenders.
- 4.1.8 Environmental Services may share intelligence on known vehicles used by professional fly tippers via various networks such as Safety Net and Flycapture. Where appropriate, authorised officers will work with relevant partners from neighbouring local authorities, the Police and the Environment Agency to share information that may lead to successful prosecution of offenders working across authority boundaries.
- 4.1.9 Much of the flytipping in the borough is organised criminal activity; however residents and businesses sometimes dump wastes on land near to their properties expecting the council to remove it free of charge. Where such activity is identified Environmental Services will educate any individuals concerned regarding their obligations to manage their waste effectively. Where offenders persist we will consider taking enforcement action.
- 4.1.10 The depositing of such wastes may also be enforced under the Refuse Disposal (Amenity) Act 1978, where the penalties for any offender found guilty in court for fly tipping waste are less than in the EPA1990. Environmental Services may consider the use of this legislation where it is deemed proportional to the offenders' actions
- 4.1.11 In some cases such wastes may be small enough in volume to fall into the definitions for litter and we will consider the issuing of a Fixed Penalty Notice for littering (ref 4.2.5) where an authorised officer has reason to believe an individual is responsible for the offence.

#### **4.2.0 LITTER**

- 4.2.1 It is illegal to drop litter. The Environmental Protection Act 1990 - Section 87 states that an offence is committed if anything is dropped, thrown, left or deposited in any place open to the air. Litter found to have come from commercial or a household premise which has been left in a place open to the air without authority and not in accordance with proper waste collection arrangements may also be subject to an offence.
- 4.2.2 The Clean Neighbourhood and Environment Act 2005 (CNEA 2005) refines this offence to make the leaving of litter an offence wherever it is done, including passers by throwing their litter into a private front garden, open private land, station forecourts or into water, or thrown onto the road or pavement from a vehicle. Litter is comprised mainly of synthetic materials often associated with smoking, eating and drinking. The CNEA 2005 confirmed that cigarette butts and chewing gum are classified as litter.

- 4.2.3 TVBC provides litter bins in busy street areas and other busy locations across the borough where it is thought that the provision of a litter bin will make it easier for the public to dispose of their waste correctly. The Council is under no obligation to provide litter bins, and every one costs the council a minimum of £350 to purchase and position, and up to £550 a year to empty. Further, research evidence from pilot studies in other authorities shows that the provision of a litter bin may not alleviate littering, and in some cases may increase litter in an area. With these costs and research in mind, Environmental Services will carefully consider every application for a new litter bin.
- 4.2.4 Environmental Services works with schools, residents groups and other forums to reduce the level of littering by undertaking general litter education and raising awareness to highlight the consequences of littering
- 4.2.5 TVBC has a 'zero tolerance' approach to littering, and where appropriate, authorised officers, including Environmental Service Officers, Environmental Health Officers Neighbourhood Wardens, Planning Enforcement Officers and Countryside Officers may use FPN powers in a focused manner to highlight that littering is not tolerated in Test Valley. We undertake periodic enforcement patrols of high profile public areas and anywhere a littering problem is identified. It is felt that this approach is successful in reducing litter as fewer offences are being witnessed now than in previous years.
- 4.2.6 Where an individual persists in littering, and offends again after previous Fixed Penalty Notices, we reserve the right to seek an outcome in the courts without offering the individual a further FPN.
- 4.2.7 Litter can also be caused by uncontrolled distribution of free literature, which can have a great impact on an area if the printed material such as leaflets, flyers and free newspapers are dropped or allowed to become a nuisance. The distribution method itself can also lead to possible highway obstructions. Powers in the CNEA 2005 enable us to introduce a consent system to permit businesses and individuals to distribute free literature in a controlled way only in designated areas within the borough. Environmental Services will consider introducing such a scheme if the distribution of free printed material becomes a priority concern.
- 4.2.8 Whilst traders cannot have control over their customers, the items they sell to them may often end up as litter. We aim to work in partnership with businesses to minimise the impact of litter from their premises. The CNEA 2005 introduces the Street Litter Control Notice, which allows us to serve a legal notice on an establishment that contributes on an ongoing basis to a litter problem in an area. FPN powers may be used if the conditions of the notice are breached. Environmental Services will take such action where a persistent problem is identified.



4.2.9 The CNEA 2005 Section 20 also introduces Litter Clearing Notices. These allow local authorities to require occupiers/owners of land, including private land that has been degraded by litter to clear it up and keep it clear. Environmental will us these power to allow us to deal with neglected pieces of land that affect the quality of the environment.

#### **4.3.0 WASTE**

4.3.1 TVBC, as a Waste Collection Authority, has a duty under EPA 1990 Section 45 to provide a household waste collection service. TVBC requires that non-recyclable household waste is placed in wheeled containers and left for collection at the boundary of the house holder's property on their day of fortnightly collection or in communal containers on some housing estates. Recycled materials should be placed in wheeled containers provided which are collected on the same day as household waste, but on alternate weeks.

4.3.2 Sections 46 and 47 of the Environmental Protection Act 1990 (as amended) allow local authorities to specify what waste is placed in receptacles including recycling materials. Section 46 also allows us to prescribe the type of containers used, how many there are and when and where they are placed out for collection. Environmental Services will issue notices and may consider the use of FPNs where persistent breaches of our policies under this legislation are to the detriment of the local environment.

4.3.3 Businesses are under a duty to ensure that their waste is stored, presented and disposed of in accordance with the waste Duty of Care: This duty states that businesses must take all reasonable steps to keep waste secure prior to disposal. Businesses must be sure that their waste is transferred to a company licensed by the Environment Agency to collect it and transport, recycle or dispose of it safely.

4.3.4 This transfer of waste must be officially recorded on a Waste Transfer Note. Businesses will receive a Waste Transfer Note from their authorised waste company and this record must be kept and stored, by the business, for two years.

4.3.5 Environmental Services regularly publicises this responsibility through various business forums, directly with businesses and through media such as leaflets sent out with the annual business rates.

4.3.6 On occasion some businesses will seek to avoid the costs associated with legitimate waste disposal by abusing the council's household waste or street cleansing collection services, or by using unregistered waste carriers who may illegally flytip their waste.

4.3.7 Where it is suspected that a business is not disposing of its waste in an appropriate manner authorised council officers may request to inspect the business's Waste Transfer Notes. FPN powers will be used if a business fails to produce a legitimate Waste Transfer Note.

4.3.8 In any case of flytipping in which the investigation provides evidence that a business has failed in its Duty of Care by using an unregistered waste carrier, Environmental Services will consider issuing a Fixed Penalty Notice or seek an outcome through the courts.

4.3.9 Householders also have a Duty of Care to ensure that only a registered waste carrier removes household, garden or construction waste from their property and they should also be able to provide documentary evidence (waste transfer note) upon request by an authorised officer. In any case of flytipping in which the investigation provides evidence that a householder has failed in this Duty of Care, Environmental Services

may consider issuing a Fixed Penalty Notice or seek an outcome through the courts.

- 4.3.10 TVBC provides comprehensive waste collection services including recycling materials from residents, non-recyclable waste, bulky items and green waste. These services enable residents to dispose of their waste safely and legally. Further information is available through Customer Services on 01264 368000.
- 4.3.11 Anyone who transports waste as part of a business or otherwise for profit must register with the Environment Agency (EA) as a waste carrier, unless they are carrying their own waste and it is not construction or demolition waste. Charities or voluntary organisations who collect or transport waste on a professional basis must also register with the Environment Agency as a waste carrier.
- 4.3.12 Environmental Service will work in partnership with the EA, DVLA, VOSA and/or Police Service to arrange periodic vehicle stop and inspection operations in the Borough, and will request waste carrier licence information where appropriate. Failure to produce a waste carrier's licence can result in our issuing of an FPN, or prosecution and seizure of the unregistered organisation's vehicle.
- 4.3.13 Accumulations of wastes on a residential property may attract or provide harbourage for vermin and may constitute a nuisance or risk to human health. Where such an accumulation is identified Environmental Services will liaise with the Council's Environmental Health practitioners to use their regulatory powers to resolve the matter.

#### **4.4.0 GRAFFITI**

- 4.4.1 Graffiti is classed as criminal damage and defined as any informal or illegal marks, drawings or paintings that have been deliberately made by anyone on any physical element in the outdoor environment. Graffiti is illegal, anti social, degrades the local environment and is costly to remove.
- 4.4.2 Currently Environmental Service's Clean Team clean graffiti and fly posting from Test Valley's streets, public buildings and council owned street furniture on a regular basis. Street Scene will remove offensive graffiti within 24 hours of a report, and will pass information about such an incident to the Police.
- 4.4.3 We may clean graffiti from private property with the owner's consent; a reasonable charge may be made for this service to recover staff and material costs.
- 4.4.4 Environmental Services also report 'tag' graffiti information to the Police who record this evidence and use it in liaison with schools and community groups to identify their source.
- 4.4.5 A range of actions is available to the Council to deal with graffiti, from FPNs through to Criminal Prosecution and Anti-Social Behaviour Orders. When deciding which course of action to follow we will consider:
- The degree and extent of graffiti that has taken place;
  - The overall impact on the local environment;
  - The previous history and record of any/all individuals involved in the graffiti.
- 4.4.6 We will work closely with our community to ensure that Test Valley is graffiti-free and work in partnership with those affected by graffiti vandalism to remove it. Following this approach, if graffiti is not removed we reserve the right to serve a Graffiti Removal Notice on a property owner telling them to have the graffiti removed and when this should be done. Failure to comply with such a Notice may lead to the issuing of a Fixed Penalty Notice

#### **4.5.0 FLY POSTING**

- 4.5.1 Fly posting is an illegal form of advertising, which degrades the local environment and can contribute to the fear of crime in a community. Fly posting is defined as any printed material and associated material, which is left illegally fixed to any structure. It includes any size of material from small stickers up to large posters.
- 4.5.2 The powers detailed in 4.4.5 and 4.4.6, for dealing with graffiti offences are also available to deal with any persons or businesses found to be responsible for fly posting. Fly posting is not a significant problem in the borough, with typical activity being restricted to well managed, discreet signs advertising village fetes and local community events. On occasion, however, profitable organisations such as music venues or retailers do indiscriminately fly post an area, avoiding legitimate advertising costs.
- 4.5.3 Test Valley or the Highways Authority may give permission for advertisements and signs to be placed on their land. They can use a 48 hour Removal Notice under the Town & Country Planning Act 1990 to ask for illegitimate signs to be removed.
- 4.5.4 Environmental Service will consider any fly posting activity with sensitivity, tolerating small or discreet signs in the community interest that are removed in a timely manner. Where action is deemed appropriate an authorised officer will in the first instance liaise with other council services to confirm the status of the fly posting and may request those responsible to remove their fly posters immediately. FPN use or prosecution will be considered for persistent, offensive or widespread fly posting.

#### **4.6.0 NUISANCE AND ABANDONED VEHICLES**

- 4.6.1 Section 2 of the Refuse Disposal (Amenity) Act 1978 makes it a criminal offence to abandon a motor vehicle or anything that has formed part of a motor vehicle on any land in the open air or on any other land forming part of a highway.
- 4.6.2 Environmental Services investigates all reports of potentially abandoned vehicles within the borough to determine if they are indeed abandoned. There is no legal definition of an abandoned vehicle, however a number of characteristics are considered in making this assessment:
- Untaxed, with no current vehicle keeper on the Driver and Vehicle Licensing Agency's (DVLA) database
  - Stationary for a significant amount of time.
  - Significantly damaged, run down or un-roadworthy.
  - Burnt out
  - Lack of one or more registration plates
  - Containing volumes of waste
- 4.6.3 Where a vehicle is thought to be abandoned a letter is sent to the Registered Keeper asking them to confirm the vehicle's status. Where no Registered Keeper is identified or the vehicle is confirmed as abandoned by the owner, a warning notice is placed on it explaining the council is aware of the vehicle and will be arranging its removal. When the officer is satisfied the vehicle will not be claimed Environmental Services then arranges for its removal by Hampshire County Council who aim to act on any such instruction within 24 hours.
- 4.6.4 Prior to arranging the removal of an abandoned vehicle the authorised officer will also give notice to the Police, providing all relevant information about the vehicle, so that they may check that the vehicle is not wanted in connection with any crime.

- 4.6.5 The CNEA 2005 allows the council to remove abandoned vehicles without notice, and if an abandoned vehicle represents a significant risk to human health or the environment Environmental Services reserves the right to arrange its immediate removal
- 4.6.6 The CNEA 2005 also allows issuing of an FPN for the offence of abandoning a vehicle. It is a defence for an owner to show that the vehicle was stolen and subsequently abandoned. Where on any occasion it appears to an Environmental Service authorised officer that a person has committed such an offence the officer may issue a Fixed Penalty Notice. Persistent offenders, or offenders whose actions have significantly endangered others, may be considered for prosecution without being offered an FPN.
- 4.6.7 Test Valley Borough council offers a free vehicle take back scheme where registered keepers can hand their vehicle to the council for free disposal if the appropriate paperwork is provided. We will continue to promote this scheme through our website and other media to try and minimise the number of vehicles abandoned in the borough.
- 4.6.8 It is an offence to keep an untaxed vehicle (including one subject to a Statutory Off Road Notification) on the public highway, and where such a vehicle is identified Environmental Services will report the vehicle to the DVLA using their CLE2/6LA form. A notice is also placed on any such vehicle advising owners that it has been identified as untaxed and that the DVLA have been informed.
- 4.6.9 Selling two or more vehicles on a road or roads, within 500 metres of each other, is an offence. This offence is intended to target those people who run a business selling motor vehicles and use the road as a showroom. This behaviour can cause significant nuisance to local residents and can take up valuable car parking space. Environmental services may issue an FPN for this offence, or give consideration to prosecution.
- 4.6.10 Repairing vehicles on a road is an offence. Offenders are primarily those businesses and individuals attempting to use the road as a workshop, and not private vehicle owners making occasional repairs to their vehicle. This practice causes the same problems as selling vehicles on the highway. As well as looking unsightly they present danger to passers by and the possibility of damage to the local environment, through for example oil or fuel spills. Environmental services may issue an FPN for this offence, or give consideration to prosecution.

#### **4.7.0 HIGHWAYS OBSTRUCTIONS**

- 4.7.1 It is illegal to wilfully obstruct the public highway. Items left in the road, on pavements or overhanging pavements are a potential health and safety risk for road users and pedestrians. Examples of these obstructions are listed below:
- Foliage from gardens that overhang the public highway;
  - Putting an unlicensed or unlit skip in the road;
  - Leaving builders' materials in the road;
- 4.7.2 Footways should be kept clear of foliage at ground level and they should not get in the way of people using the footpath or obstruct street lighting or street furniture. The council is often called on by members of the public to cut back overhanging hedges and shrubs, and where these are our responsibility we do so.
- 4.7.3 Where privately owned hedges, shrubs or trees are encroaching on a footway Environmental Service will pass this to Hampshire County Council's Highways Service

for resolution.

- 4.7.4 Anyone wishing to place a skip, builders' materials or a hoarding on the public highway must first obtain a licence. Hampshire County Council issues licences for these purposes which are governed by a specific set of conditions depending upon the licence required.
- 4.7.5 Environmental Services will pass information regarding highway licensing contraventions and obstructions on to Hampshire County Council's Highways Service.
- 4.7.6 Where building material is left on the highway, Environmental Services may speak to the owner to ensure that the material is being properly managed, and is not waste, and will liaise with Hampshire County Council to ensure such materials are licenced. Where such material constitutes waste, in the opinion of an authorised officer, the matter will be dealt with as fly tipped waste in line with 4.1

#### **4.8.0 ABANDONED TROLLEYS**

- 4.8.1 In 1992 the council adopted powers under Section 99 and Schedule 4 of the EPA 1990 which allowed us to seize, remove, store and dispose of abandoned shopping and luggage trolleys found within the borough.
- 4.8.2 In 2005 the CNEA2005 amended Schedule 4 of the EPA, making provision for local authorities to reclaim reasonable costs from the owners of abandoned trolleys for seizing, removing, storing and disposing of any abandoned trolleys.
- 4.8.3 Prior to adopting this new provision, councils are encouraged to enter into consultation with the owners of trolleys, and in August 2010 Environmental Services held a public consultation and subsequently resolved to adopt the revised Schedule 4 of the EPA1990 from 01 June 2011.
- 4.8.4 Environmental Service will charge £75 for the seizure, removal and storage of a trolley, or £35 for the direct return of a trolley to any retailer that had entered into a local agreement to pay this discounted cost: This latter scheme reduces the burden on the council of storing and cataloguing individual trolleys.
- 4.8.5 On a fortnightly basis trolley owners will be informed of any trolleys in storage by the council. Trolleys that are unclaimed within six weeks of any notice will be disposed of appropriately.
- 4.8.6 Environmental Services will work together with retailers to encourage their own removal of abandoned trolleys and develop reporting mechanisms to ensure identified trolleys are dealt with in a reasonable time frame. Where a retailer has shown they can respond to abandoned trolleys within a reasonable short timescale we will call them directly in the event of one of our officers finding one of their trolleys abandoned.
- 4.8.7 A number of consultation responses, especially from retailers, suggested that the council introduce a dedicated hotline for residents to report abandoned trolleys, which we would pass on information to individual retailers for removal. Environmental Services supports the principal of a dedicated hotline and will liaise with retailers to influence them to create their own scheme.

#### **4.9.0 DOG CONTROL**

- 4.9.1 Dog related issues such as dog fouling and dogs that are intimidating to users of public places and are uncontrolled adversely affect the environment and the enjoyment of it.
- 4.9.2 The previous legislation relevant to dog control offences was the Dogs (Fouling) of Land Act 1996; this was repealed from 6 April 2005 when the Clean Neighbourhoods and Environment Act 2005 (CNEA 2005) became law.

- 4.9.3 The similarities between these two Acts are that areas of land where control is to be imposed has to be pre-designated and specified clearly so that responsible users of the land and potential offenders are aware of the 'controlled area'. The CNEA 2005 prescribes the designation of land process once this has been carried out, the land specified falls under a Dog Control Order (DCO).
- 4.9.4 In Autumn 2006 the Council designated the whole borough as a No Dog Fouling area
- 4.9.5 If further DCOs are introduced Environmental Services will consider training additional relevant staff, such as Team Leaders and Supervisors, in their enforcement through the use of FPNs; this would help the council to effectively police any new DCO.
- 4.9.6 Environmental Services authorised officers will issue an FPN for failure to clean up after a dog has fouled in contravention of TVBC's existing DCO. In reality such FPNs are rarely issued, as an authorised officer must normally witness the event and even irresponsible dog owners are likely to clean up after a dog if a uniformed officer is in sight:
- 4.9.7 Environmental Services is responsible for the installation and emptying of dog waste bins in the Borough. The Council is under no obligation to provide dog waste bins, and every one costs the council a minimum of £80 to purchase and position, and up to £247 a year to empty depending on frequency.
- 4.9.8 Our own experience also shows that installing a dog waste bin does not usually address the problem of irresponsible dog ownership: those that allow their dogs to foul typically continue to do so and responsible dog owners will remove the waste whether a bin is proximally available or not.
- 4.9.9 Dog fouling wastes may be collected for disposal commingled in small amounts with street cleansing waste. This means that dog fouling waste may be disposed of in litter bins. Environmental Service will consider promoting this fact to educate dog owners that they may dispose of their waste in other bins that may be sited nearby, and will usually decline installation of dog bins where suitable litter bin provision is already present.
- 4.9.10 With these costs, past experience and ability to dispose of fouling in litter bins in mind, Environmental Services will carefully consider every application for a new dog waste bin.

#### **4.10.0 DISABLED PARKING PLACE PARKING OFFENCES**

- 4.10.1 In Summer 2010 Environmental Service Officers began a partnership working project to support Planning Policy and Transport. Following comprehensive training authorised officers are now able to identify breaches in regulation relating to disabled parking bays and other parking offences. Where such offences are observed during other routine duties Environmental Services immediately pass these to the Parking Supervisor for action.
- 4.10.2 To date this project has been a success, and Environmental Services will continue to seek new ways to support internal services and other partner enforcement activity where appropriate.

#### **4.11.0 OTHER ENFORCEMENT**

- 4.11.1 Where Environmental Enforcement Officers are not directly responsible for carrying out enforcement, or it occurs on land that is enforced by other authorities, they will pass details to the relevant service area or authority for further action.

## **5.0 DELIVERY**

### **5.1 ENFORCEMENT OFFICERS**

- 5.1.0 Only competent officers who have appropriate qualifications or experience will be authorised to take enforcement action. Officers will also have sufficient training and understanding of our enforcement policy and their area of work to ensure a consistent approach to their duties. The Street Scene Manager continually monitors Environmental Service Officers through regular appraisals and reviews to ensure that our actions are always in accordance with our policies.
- 5.1.2 All officers carry identification picture cards at all times and an authorisation card to show what legislation they are able to enforce. This is endorsed by the Head of Environmental Service.
- 5.1.3 This strategy draws on a wide spectrum of personnel and resources to deliver its aim. The team of Environmental Service Officers will carry out the majority of enforcement action under the legislation listed in 4.0. Authorised officers from other departments from across the council and Police Community Safety Officers may also be authorised to take enforcement action.
- 5.1.4 Training and relevant updates in Environmental enforcement will be provided to ensure all authorised enforcement personnel have the skills and knowledge required to undertake their enforcement duties and to ensure all officers use a consistent approach.

### **5.2.0 AWARENESS RAISING AND EDUCATION**

- 5.2.1 Awareness raising and education are fundamental to the operation of any enforcement work. It is important that the community are listened to and provided with clear information on their responsibilities to enable them to comply with the law. We aim to carry out this element of enforcement by providing consistent advice and guidance about relevant duties and responsibilities through face-to-face contacts, leaflets, the TVBC website, local press and radio, specific campaigning and work alongside our partners and stakeholders.
- 5.2.2 Over and above the targeted awareness raising and education work carried out by officers and partners, specific focused campaigns will be developed to highlight certain local environmental quality problems to a certain group or within a certain area. Through the strategy we will support national local environmental quality campaigns run by the Keep Britain Tidy organisation and other bodies such as the Chewing Gum Action Group.

### **5.3.0 PARTNERSHIP WORKING**

- 5.3.1 The approach of this strategy relies on strong partnership working. Through partnership working the aim of the strategy can be met in a shared and efficient manner. In order to seek the most effective operation of this strategy we aim to work with, amongst others, the following:

- Leisure and Wellbeing
- Housing Health and Communities
- Hampshire County Council
- Hampshire Fire and Rescue Service
- Parking Enforcement
- Neighbouring boroughs
- Keep Britain Tidy Group
- Environment Agency
- My Test Valley forum
- Andover Vision
- Highways Agency
- Legal & Democratic Service
- Testway Housing
- Hampshire Constabulary
- Registered Social Landlords
- Town Councils
- Safer Neighbourhood Teams
- Hampshire PCSOs
- Parish Councils
- Neighbourhood Watch
- Andover & Romsey Town Centre Management

5.3.2 The partners involved in this strategy will help raise awareness through consistent information and advice, to assist in the education of the community regarding their responsibility to help keep Test Valley clean and safe.

#### **5.4.0 ENFORCEMENT ACTION**

5.4.1 The decision on whether to use enforcement action will depend on how serious the breach is. We will ask ourselves the following questions when we find that a law has been broken:

- Does the breach constitute an offence?
- Is the breach serious? Is it causing danger?
- Is the offence spoiling the local environment?
- Can we trace the offender easily?
- Has the offender done this before?
- Is there any reasonable excuse?
- Is it likely that the offence will happen again?
- Does the offender care about their responsibilities or not?
- Is the offender in a fit state to stand trial?
- Would enforcement action warn other people not to break the law?
- Will the case stand up in court?
- Is the offender a juvenile?
- Are there any language/cultural issues that affect understanding of the law?
- Is the offender's behaviour affected by any disability issues?

5.4.2 Where premises subject to enforcement action are owned or managed by the council, all activities will be undertaken in accordance with the same policies and procedures used for other premises.

5.4.3 Where an individual is subject to enforcement action and is also an employee of the Council, all activities will be undertaken in accordance with the same policies and procedures used for other premises.



## **5.5.0 FIXED PENALTY NOTICES (FPNs)**

- 5.5.1 Many offences listed in this strategy can be dealt with through the use of FPNs. These will be issued when an authorised officer observes or has evidence that an offence has been committed. The FPN gives the alleged offender an opportunity to avoid prosecution by payment of the penalty. FPNs are, therefore, only issued where there is adequate evidence to support a prosecution if a notice is not paid.
- 5.5.2 Test Valley Borough Council offers a discount for early payment of a FPN where this is allowed in the legislation. The discount period runs for 7 working days from the date the notice was issued. The FPN must be paid within 14 working days of it being served. If the FPN is not paid the case will be considered for prosecution in a Magistrates Court.
- 5.5.3 TVBC will retain any funds accrued from the serving of FPNs. The use of FPNs is not intended to increase the Council's income. Any payments collected will be used to help offset the costs of the enforcement function by helping fund for example, relevant educational, operational, and publicity initiatives. FPN income in 2009-10 was £2,225.
- 5.5.4 The efficient use of FPNs improves the effectiveness of the enforcement process, resulting in officers being able to focus more detailed attention on more complex and involved cases.
- 5.5.5 The CNEA 2005 makes it an offence to fail to give a proper name and address to the authorised officer when requested to do so for the purposes of issuing an FPN. Where we successfully identify someone who has previously given us false details we will consider prosecuting them for this offence as well as the original matter.
- 5.5.6 Any information given to officers for the purpose of issuing FPNs is held securely and will be used only for council purposes. Information that was collected for one purpose may be used for another council purpose, unless there are legal restrictions preventing this. TVBC may share this information where necessary with other organisations, including (but not limited to) where it is appropriate to protect public funds and/or prevent fraud in line with the National Fraud Initiative guidelines.

Visit <http://www.testvalley.gov.uk/default.aspx?page=4444> for more information.

## **5.6.0 NOTICES**

- 5.6.1 Some offences require the serving of a formal Notice on individuals, businesses or other organisations requiring them to carry out specific legal requirements. Offences of this type include street litter control, litter clearing notices, waste receptacle notices, fly posting and graffiti removal.
- 5.6.2 The Notice will be sent by the relevant delegated officer and it will clearly explain what is wrong, what is required to put things right, how long is required to rectify and what the consequences are if the notice is not complied with.
- 5.6.3 Where legislation allows us to recover costs resulting from any action we undertake to remedy a notice, which has not been complied with in the proscribed timescale, we will do so accordingly
- 5.6.4 Where legislation gives us the power to prosecute individuals or organisations who fail to comply with a notice, we will consider taking such further action accordingly, unless the issuing of an FPN is appropriate and permissible in law.

## **5.7.0 JUVENILES**

- 5.7.1 In law, an FPN can be issued to anyone over the age of 10. Test Valley Borough Council's duty under the Children Act 2004 requires that we discharge our functions with regard to the need to safeguard and uphold the welfare of children. With this in mind we will not issue FPNs to individuals under the age of 17.
- 5.7.2 Once an offence has been committed and the age of the offender has been ascertained officers are advised to use care and sensitivity when dealing with young people. For example with a dog fouling offence, where the person is young (16 years and under), the officer will give them a verbal warning and remind them of their responsibilities to control their dog and to pick up its fouling and ask will them to do so.

## **5.8.0 PROSECUTION**

- 5.8.1 Where a decision to prosecute is made, this decision will be taken in accordance with the Code for Crown Prosecutors. This document details the public interest and evidential considerations when bringing proceedings. TVBC's Legal Services will provide advice where necessary and will initiate proceedings on our behalf. A full copy of the code is available from the Crown Prosecution Service <http://www.cps.gov.uk/>.

If it is in the public interest and appropriate, information concerning non-compliance will be shared with other enforcement agencies. Where this takes place, we will ensure that the Data Protection Act 1998 and Human Rights Act 1998 are observed.

- 5.8.2 Enforcement actions have to be taken in line with the Regulators' Compliance Code lays out the principles of good enforcement.

A full version of the Code is available from Environmental Service or by accessing the Government's Department for Business, Innovation and Skills website at <http://www.berr.gov.uk/files/file45019.pdf>

- 5.8.3 Environmental Service's officers work to the service's Customer Care Standards, which state that officers should:

- Wear and show their official identification cards;
- Ask permission before entering any property, where applicable;
- Clearly explain the reason for the visit;
- Keep appointments when made or explain to the customer any reasons for being late or having to cancel meetings;
- Let the customer know what follow up action they can expect and by when;
- Confirm all relevant information in writing.

- 5.8.4 In line with our Equality Plan 2010-2013 all officers are to ensure that they treat everyone, no matter what their age, religion, sex, disability, sexuality or ethnic background fairly and with respect; undertake regular training on diversity and equality issues and use non discriminatory practices when providing services.

- 5.8.5 The European Convention on Human Rights is incorporated into domestic law by virtue of the Human Rights Act 1998. Environmental Service recognises that the Act requires public authorities to operate in a way that is compatible with those rights, subject to occasions when interference is justified.

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

and the public interest.

- 5.8.7 Investigations will be carried out in line with the Police and Criminal Evidence Act 1984 codes of practice and agreed procedures

## **5.9.0 DELEGATIONS**

- 5.9.1 Guidance for as to when the above actions are appropriate for Environmental Service Enforcement Officers will be documented in our Enforcement Procedure Guide. All actions taken by officers will be monitored by their Managers to ensure that they have acted in accordance with this strategy.
- 5.9.2 Only officers authorised by the Council in the Constitutional Scheme of Delegations may undertake the enforcement duties delegated to them.
- 5.9.3 For the purposes of the Criminal Procedure and Investigations Act 1996, the designated Waste & Recycling Manager shall perform the function of Disclosure Officer.
- 5.9.4 For the purposes of the Regulations of Investigatory Powers Act 2000, a Corporate Director has the delegated authority to authorise surveillance operations.

## **5.10 FPN APPEALS**

- 5.10.1 All appeals and supporting evidence must be provided in writing and will be acknowledged by Environmental Services in writing, providing a date by which the outcome is expected. If this date changes, the appellant will be informed in writing.
- 5.10.2 All appeals will be considered by a panel of three senior officers, one from Environmental Service and two from other council service areas with regulatory experience, such as Housing Health & Communities or Planning & Building Control. The officers from Environmental Service designated to act on the panel will be at business unit manager level or above. Usually the Street Scene Manager will act for the service, unless he has previously been involved with the enforcement case being considered
- 5.10.3 The panel members will review the case and propose their judgement. Where all three panel members agree the outcome there will be no need for them to meet. If the panel does not agree the outcome they will meet to discuss the case and will reach agreement. Where an outcome cannot be agreed the majority verdict will be accepted.
- 5.10.4 Appellants will be informed of the outcome of an appeal in writing as soon as a decision is reached and any remaining discount, at the time their appeal was received, will be honoured.
- 5.10.5 Every case will be considered on its own merits. The main area for consideration will be normally based on the individual's personal circumstances where a particular vulnerability has been identified. This would normally require a supporting statement from another agency. Economic hardship is not accepted as a defence in the relevant legislation, and the Council will not accept FPN payments in instalments.

## **6.0 COMPLAINTS**

- 6.1 Anyone who is dissatisfied with enforcement actions that an Environmental Service Officer has taken will have their concerns investigated by the Street Scene Manager, or colleague of at least the same level. Initial complaints should be sent in writing to:

Street Scene Manager  
Environmental Service  
Unit 37 Macadam Way  
West Portway  
Andover  
Hampshire

SP10 3XW

Or

E-mail [environmentalservice@testvalley.gov.uk](mailto:environmentalservice@testvalley.gov.uk)

- 6.2 Environmental Service will follow TVBC complaints procedures to deal with complaints and send a full written reply within ten working days.

## **7.0 MONITORING AND MEASUREMENT**

- 7.1 This strategy's effectiveness will be reported on using a number of evaluation tools. This evaluation will highlight the successes of the strategy and also illustrate any gaps in the performance of the environmental enforcement function. These evaluation tools are listed below;

- Improvements in National Indicator 195a, b, c and d scores
- Reduction in the level of fly tipping as reported to the DEFRA Flycapture database;
- Improvements in resident satisfaction relating to a clean Test Valley;
- Reduction in levels of abandoned vehicles;
- Review numbers of FPNs issued, cancelled and the subsequent payment rate
- Review of complaints statistics

## **8.0 EVALUATION AND REVIEW**

- 8.1 Environmental Service will undertake to regularly review progress and evaluate enforcement action against the above priority areas and their effectiveness in reducing the negative impacts on local environmental quality.

- 8.2 Our reviews will also seek to introduce where necessary any new powers granted to local authorities in managing local environmental quality. The outcomes for progress will be linked to Test Valley's local environmental quality survey results which tell us periodically how clean our street environment is and will help reset annual priority areas.

### **8.1.0 OPENESS AND HELPFULNESS**

- 8.1.1 We aim to be open about the work we do and are available to provide general advice, deal with specific cases and investigate complaints. We view formal enforcement as a last resort and prefer to work with our clients to achieve compliance. If enforcement is undertaken then Environmental Service Officers will act as case officers and be a consistent point of contact during any formal enforcement action. We will provide translation and interpretation if English is not spoken or written by someone we deal with.

- 8.1.2 This is a public document. Further copies of this and other documents listed above can be obtained from:

Environmental Service  
Unit 37 Macadam Way  
West Portway  
Andover  
Hampshire  
SP10 3XW

Many of the documents can also be found on our website - [www.testvalley.gov.uk](http://www.testvalley.gov.uk).

- 8.1.3 This document is reviewed periodically and we would be pleased to receive any comments you have on it. Please send your comments in writing to the address shown above.
- 8.1.4 This document was updated on the **28 January 2011** and this document supersedes any earlier dated previous versions.

## 9.0

## APPENDICES

Table 1

**Fixed Penalty Notices applicable to this Strategy**

Description of offence	Act	Section of Act	Full amount of penalty, payable within 14 days	Discounted amount if paid within 7 days
<b>OFFENCES WITH LOCAL LEVEL SETTING AND DISCOUNTING ALLOWED:</b>				
Depositing litter.	Environmental Protection Act 1990, as amended by section 19 of the Clean Neighbourhoods and Environment Act 2005.	87/88	£80	£50
Unauthorised distribution of free printed matter on designated land.	Environmental Protection Act 1990, as amended by section 23 of the Clean Neighbourhoods and Environment Act 2005.	Schedule 3A, para 7(2)	£80	£50
Failure to comply with a Dog Control Order.	Clean Neighbourhoods and Environment Act 2005.	59(2)/	£80	£50
Graffiti and flyposting.	Anti-Social Behaviour Act 2003, as amended by section 28 of the Clean Neighbourhoods and Environment Act 2005.	43	£80	£50
Failure to comply with a waste receptacle notice.	Environmental Protection Act 1990, as amended by section 48 of the Clean Neighbourhoods and Environment Act 2005.	46/47/47ZA/47ZB	£110	£60
Failure to comply with a street litter control notice and failure to comply with a litter clearing notice.	Environmental Protection Act 1990, as amended by section 22 of the Clean Neighbourhoods and Environment Act 2005.	92C/94/94A	£110	£60
<b>OFFENCES WITH NO LOCAL LEVEL SETTING BUT WITH DISCOUNTING ALLOWED:</b>				
Nuisance vehicles.	Clean Neighbourhoods and Environment Act 2005.	s. 6(1)	£100	£60
Abandoning a vehicle.	Refuse Disposal (Amenity) Act 1978, as amended by section 10 of the Clean Neighbourhoods and Environment Act 2005	s. 2A(1)	£200	£120
Failure to furnish documentation (waste carrier's licence)	Environmental Protection Act 1990, as amended by section 45 of the Clean Neighbourhoods and Environment Act 2005.	s. 34A(2)	£300	£180
Failure to produce authority (waste transfer notes).	Control of Pollution (Amendment) Act 1989, as amended by section 38 of the Clean Neighbourhoods and Environment Act 2005.	s. 5B(2)	£300	£180
<b>OFFENCES WITH NO LOCAL LEVEL AND NO DISCOUNTING ALLOWED:</b>				
Site Waste Management Plan contravention	Site Waste Management Plan Regulations 2008	S 16	£300	£300