

# Public Document Pack



## COMMUNITY OVERVIEW & SCRUTINY PANEL SUPPLEMENT AGENDA

**Date:** Monday, 11 July 2022

**Time:** 6.00 pm

**Venue:** Hybrid Meeting - Council Chamber, Moorlands House, Leek and via Microsoft Teams

Please find below an additional report which was unavailable when the agenda was published.

### PART 1

10. SMDC Refreshed Environment Enforcement Policy. (7:15pm)

**MARK TRILLO**  
**EXECUTIVE DIRECTOR & MONITORING OFFICER**

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## STAFFORDSHIRE MOORLANDS DISTRICT COUNCIL

### Community Overview & Scrutiny Panel

11 July 2022

<b>TITLE:</b>	<b>SMDC Refreshed Environment Enforcement Policy</b>
<b>PORTFOLIO HOLDER:</b>	<b>Councillor Sav Scalise - Portfolio Holder for Environment</b>
<b>CONTACT OFFICER:</b>	<b>David Smith - Head of Communities and Climate Change</b>
<b>WARDS INVOLVED:</b>	<b>(All Wards);</b>

**Appendices Attached - Appendix A – Revised Corporate Enforcement Policy;**  
**Appendix B - Revised Environmental Enforcement Policy**

#### 1. Reason for the Report

- 1.1 The report presents an updated Corporate Enforcement Policy which sets out the Council's general approach to enforcement. It also presents a revised policy on enforcing environmental crimes.

#### 2. Recommendation

- 2.1 That the Panel recommends that Cabinet approves the revised Corporate Enforcement Policy at Appendix A.
- 2.1 That the Panel recommends that Cabinet approves the revised Policy on Enforcement of Environmental Crimes provided at Appendix B.

#### 3. Executive Summary

- 3.1 The Council engages in regulatory enforcement when delivering certain functions including environmental health, environmental crime, licensing, development control, housing and finance.
- 3.2 The Council's Corporate Enforcement Policy is intended to be an over-arching document which can be supplemented by enforcement policies specific to each area of the Council's enforcement activity.
- 3.3 As a whole, the Council's enforcement policies are a guide for businesses and individuals who may be subject to regulation. The documents set out what

they can expect from the Council's regulatory services, as well as providing the public with a statement of the Council's intent on enforcement. To this end the policies, once approved, will be publicised on the Council's website and elsewhere as appropriate.

- 3.4 The Council has reviewed and updated its Corporate Enforcement Policy, to reflect revised regulatory guidance, and a copy can be found at Appendix A.
- 3.5 The Council's Environmental Enforcement Policy was adopted in 2017. The Corporate Plan 2019-2023 committed to reviewing the policy as a means of taking steps to further reduce dog fouling and littering.
- 3.6 The revised Alliance wide policy, which can be found at Appendix B, confirms the Council's triple-track approach to responding to environmental crimes that consists of Education, Enforcement and Cleansing. The policy recognises the Council's changed operating model following the creation of Alliance Environmental Services (AES) and the role of Council services in delivering the policy following internal restructuring.

#### **4. How this report links to Corporate Aims:**

4.1 This report supports the Corporate aims of:

- supporting communities to create a healthier, safer, cleaner Staffordshire Moorlands.
- a responsive, smart, financially resilient and forward-thinking Council.
- protect and create jobs by supporting economic growth.
- protect and improve the environment.

4.2 It also fulfils the commitment within the corporate plan to review the Council's Policy on Enforcement of Environmental Crimes to take steps to further reduce dog fouling and littering.

#### **5. Options and Analysis**

5.1 There are no options to consider in this report because to be an effective regulator the Council needs to have a robust enforcement policies in place.

## 6. Implications

### 6.1 Community Safety - (Crime and Disorder Act 1998)

Section 17 of The Crime and Disorder Act 1998 requires Local Authorities to exercise their functions with due regard to the likely effect of the exercise of those functions on, and the need to prevent, crime and disorder. The Enforcement Policy will support those statutory requirements.

### 6.2 Workforce

There are no significant impacts on the workforce.

### 6.3 Equality and Diversity/Equality Impact Assessment

An impact assessment has been completed.

### 6.4 Financial Considerations

None

### 6.5 Legal

The policies presented in this report are consistent with the Regulators' Code 2014, which was published pursuant to Section 23 of the Legislative and Regulatory Reform Act 2006. The policies will support consistent decision taking in enforcement action in the interests of certainty for those affected by such action.

### 6.6 Sustainability

The Council's enforcement policies will be used to protect from harm and preserve the environment in the District, supporting the Council's climate change ambitions.

### 6.7 Consultation

The service areas with regulatory functions have been consulted

ahead of drafting this report.

## 6.8 Risk Assessment

None

Mark Trillo

### **EXECUTIVE DIRECTOR (Governance & Commissioning)**

<b>Web Links and Background Papers</b>	<b>Location</b>	<b>Contact details</b>
The Regulators Code 2014	<a href="#">Weblink</a>	Paul Rushworth paul.rushworth@highpeak.gov.uk David Smith david.smith@highpeak.gov.uk

## **7 Detail**

7.1 The principle legislative Act regarding enforcement by the Council is the Regulatory Enforcement and Sanctions Act 2008 which endeavours to ensure that local authority regulatory enforcement is carried out in a way which is transparent, proportionate, consistent and targeted only at cases in which action is needed. The Council's policies are periodically reviewed to take into account legislative changes and to ensure the policies are aligned with the Council's corporate objectives and evolving service delivery models.

7.2 The revised policy on enforcing environmental crimes confirms the Council's triple-track approach to responding to such crimes that consists of Education, Enforcement and Cleansing. It emphasises the importance of targeted action by Council Officers, and the importance of targeting activity in those areas that are experiencing the greatest problems. The revised policy recognises the Council's changed operating model following the creation of Alliance Environmental Services (AES) and the role of Council services in delivering the policy following internal restructuring across both Alliance Councils.

7.3 The Council's other service areas with enforcement activity will revise their service specific policies to ensure they are consistent with the overarching themes in the policies attached to this report.

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# Staffordshire Moorlands District Council

## Corporate Enforcement Policy

### 1 Introduction

The Council carries out a range of different enforcement activity with the aim of making sure that:

- compliance with those laws that fall within the Authority's remit is promoted and encouraged;
- law abiding businesses, individuals and others are not disadvantaged.
- the risks and harm to the community are reduced by dealing effectively with breaches of the law; and
- offenders are held to account where appropriate.

This policy sets out the Council's general approach to enforcement. It is not intended to provide procedures for any particular action that may be contemplated or taking place. The Council may produce more specific policies on certain areas or aspects of enforcement and this policy should be read in conjunction with any such guidance.

The protocol has been drawn up with regard to the Regulators' Code (published by the Department for Business Innovation & Skills) that came into statutory effect on 6 April 2014; the earlier Regulators' Compliance Code (2008) and Enforcement Concordat (1998), the Code for Crown Prosecutors and other enabling legislation and guidance.

The enforcement policy reflects the principles of the Council's Corporate Aims:

- supporting communities to create a healthier, safer, cleaner Staffordshire Moorlands.
- a responsive, smart, financially resilient and forward-thinking Council.
- protect and create jobs by supporting economic growth.

- protect and improve the environment.

## 2 The Principles of Enforcement

The Council believes in firm but fair enforcement of the law. It will apply the following principles when engaging in enforcement activity:

- **Openness.** We will be open about how we work and about the rules that we apply. We will discuss compliance failures or problems with anyone experiencing difficulties. We will seek to establish mechanisms to engage with those that we regulate, residents and others and allow them to contribute to the development of our policies and service standards. Before changing policies, practices or service standards, we will consider the impact on any affected groups and engage with those groups where possible and appropriate.
- **Avoid unnecessary regulatory burdens.** We will seek to carry out our activities in a way that supports those that we regulate to comply and grow. We will take steps to understand and minimise negative economic impacts of enforcement activity, minimise the costs of compliance, and encourage and promote compliance.
- **Consistency.** Whilst officers are expected to exercise judgement in individual cases, we will strive to carry out our duties in a fair, equitable and consistent manner.
- **Helpfulness.** We believe that prevention is better than cure and our role involves working with businesses, individuals and others to advise on, and assist with, compliance where possible. We will seek to provide advice and guidance to help people understand and meet their responsibilities. We will consider providing an opportunity for discussion before taking formal enforcement action; although there may be times when immediate enforcement action is required to prevent or

respond to a serious breach or where providing such an opportunity would be likely to defeat the purpose of the proposed enforcement action.

- **Clarity.** We will clearly explain what the non-compliant activity, item, behaviour, etc is; the advice being given; actions required, or decisions taken; and the reasons for these. Where appropriate, we will clearly explain the potential consequences of failing to comply with the law. We will distinguish wherever necessary between legal requirements (“*must do*”) and good practice advice (“*should do*”).
- **Targeted activity based on risk.** The Council will take an evidence based approach to determining the priority risks and allocate resources where they would be most effective in addressing those priority risks. The Council will prioritise those persons or activities that give rise to the most serious risks or where hazards are least well controlled. It will focus on those who are responsible for the breach of legislation and those who are best placed to control or prevent it. Poorly managed businesses or other areas of high risk are likely to receive more frequent inspections so that the Council can give public assurance that such risks are properly controlled.
- **Proportionality.** Any enforcement action will be proportionate to the risks to health, safety and wellbeing, or to the seriousness of any breach, which includes any actual or potential harm arising from the breach. We will take account of how far an offender has fallen short of what the law requires and any steps that have been taken to prevent or remedy the breach.
- **Partnership approach.** The Council will seek to provide a joined-up approach to enforcement by taking account of the complaints received, and actions taken, by our partners and other Council services. Where the law allows, we will share information with others to help target resources and minimise duplication.

### **3 Relevant Factors**

Decisions on enforcement action are largely discretionary, involving judgements by the officer in charge of the case. Officers will consider a range of factors when considering action including:

*Factors relating to the offence committed:*

- Seriousness of the offence, especially involving risk to the public.
- The age of the offence and, particularly, whether it falls outside any limits on taking legal action.
- Whether the offence is likely to be continued or repeated.
- Whether the offence has come to light as the result of a complaint or information from an outside body.
- Whether there has been a blatant disregard of legislation.
- Whether previous action has been unable to resolve the problem.
- Whether the offence undermines the Council's Corporate aims and objectives including the protection and improvement of the environment (for example fly tipping and dog fouling).

*Factors relating to the victim:*

- The impact on the safety, quality of life, etc of the people affected.
- Whether the victim was a staff member (the Authority will not tolerate abuse, violence, etc directed at staff members and will normally prosecute in such circumstances).
- The views of the aggrieved person/people.
- Impact on the wider community.

*Factors relating to the offender:*

- The circumstances, state of mind and attitude of the offender.
- Whether the offender has taken any action to resolve the problem.
- Whether there has been an element of fraud, negligence or recklessness in the commission of the offence.
- Past conduct and previous history of the offender including previous similar convictions or cautions.

*Legal considerations:*

- Alternative remedies.
- The likely penalty as opposed to the cost of investigation.
- The effect of likely defences and mitigation.
- Whether a prosecution could test an important legal point or set a precedent.
- Whether it would be in the public interest, having regard to all the circumstances of the case, to institute legal proceedings.

Officers should be mindful of the principles set out in this protocol when taking any action and the relevant factors outlined above. Any deviation from this approach should only take place where an officer believes that a specific provision is not applicable or is outweighed by another relevant consideration. Such decisions should be made on the basis of material evidence and officers should clearly record the reasons for the decision.

#### **4 Enforcement Options**

Where there has been an alleged breach of legislation, there are several alternatives for action depending on the nature, seriousness and public interest of the alleged infringement. The possible courses of action include (not all actions are available to all areas of enforcement):

- providing oral and written information and advice (which may include warnings that in the opinion of the Council there is a failure to comply with the law and setting out the potential consequences of such activity/behaviour);
- seeking improvements or cessation of activity;
- taking immediate or subsequent direct action to remedy the breach;
- prohibiting activities or withdrawing approval of their continuance;
- varying conditions or exemptions in licences;
- issuing fixed penalty notices;
- formal cautions. A caution will only be issued if there is sufficient evidence of guilt, the offender is over eighteen years old, the offender admits the offence, and consents to the caution.
- immediate or direct action.
- prosecution through the courts if there is sufficient evidence to provide a realistic prospect of conviction and the Authority decides that prosecution would be in the public interest; and
- injunctions and other civil sanctions.

Council employees carry out important functions on behalf of local communities and often in difficult circumstances. The Council recognises that it has a duty to protect its staff members and therefore wants to send a clear message that any physical or verbal assaults on Council officers whilst carrying out their duties will not be tolerated. The Council will generally seek to prosecute anyone assaulting or otherwise abusing its workforce by either liaising with the local police or by taking a private prosecution.

## **5 Appointment, Training and Development of Officers**

All officers will undergo a rigorous recruitment and selection process prior to appointment to make sure that they are able to meet the Council's expectations in terms of professionalism, discretion, impartiality, balanced decision-making, etc.

Appropriate training will be provided to officers to ensure that they have the skills and knowledge to perform their role competently.

The performance of officers will be monitored and steps will be taken to address any deviation from expected standards.

## **6 Shared Regulatory Roles**

The Council recognises that problems experienced by members of the community may be complex and require the input of several sections of the Council to resolve. The Council will seek to provide a joined-up response wherever possible. This means that the local authority will:

- Identify a single point of contact, so that members of the public do not have to speak to multiple Council officers about their problem;
- Check with other Council services to see if they have had any involvement with the reported issue;
- Seek to use the full range of powers available to the Authority to resolve problems.

## **7 Role of Councillors**

Councillors play an important role in supporting enforcement activity by the local authority, such as by:

- Developing the Authority's enforcement policies and reviewing their implementation;
- Serving on regulatory committees, such as those covering planning and licensing functions;
- Responding to constituents' concerns about enforcement action including cases where the Authority decides not to take action; and
- Encouraging members of the public to report breaches of the law where appropriate.

## **8 Reporting problems**

The trigger for enforcement action will often be the receipt of a complaint from a member of the public about a problem that is affecting them. We encourage people to report problems and they can do so by completing one of the “Do it online” forms on the Council’s website, by calling 0345 605 3010 or 01538 395400, or by writing Moorlands House, Leek, ST13 6HQ

Complainants will be asked to give their full contact details and to describe in detail the nature of the problem. Where the Council can lawfully refuse to disclose information, details will not be made known to anyone other than those professional officers dealing with the case. Complainant’s details are confidential and, as personal information under the General Data Protection Regulation and the Data Protection Act 2018, are exempt from release under Section 40 of the Freedom of Information Act 2000.

We will acknowledge your enquiry within 5 working days of receiving the complaint. Our officers will then carry out an initial investigation of the problem. We will keep you aware of the progress of our investigations and, where applicable, any subsequent enforcement action.

## **9 Complaints process**

Many of the pieces of legislation under which the Council enforces contain procedures for appeal against enforcement decisions to independent bodies such as the Planning Inspectorate and Magistrates’ Court. Any such appeal mechanisms will be communicated at the time of enforcement action.

Anyone wishing to complain about the Council’s services or officers can do so by contacting the Council’s Complaints Officer. This can be done by completing our on-line

complaints form at [www.staffsmoorlands.gov.uk](http://www.staffsmoorlands.gov.uk) or by writing to the Complaints Officer at Moorlands House, Leek, ST13 6HQ.

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## Policy on Enforcement of Environmental Crimes

### 1 Introduction

This policy has been produced to support the Councils' commitment to protect and improve the environment. The Councils believe that:

- Tackling environmental crimes is a priority for local communities in both local authority area.
- Environmental crimes are unsightly and make our towns, villages and other areas less attractive for residents and visitors alike.
- Environmental crimes can result in negative perceptions of an area and make it feel unsafe and uncared for.
- Maintaining clean neighbourhoods benefits the local economy by improving the image of the area and thereby attracting more visitors and customers, encouraging investment in local businesses, increasing house prices and assisting businesses to retain employees.
- The cost to residents of clearing up after environmental crime is considerable.
- Waste can take years to degrade and can be costly to remove. It can be harmful to health and, for example, lead to cuts, puncture wounds and subsequent infections for children and others that come into contact with it. Waste can harm wildlife and habitats, and can attract pigeons and vermin such as rats.

The Councils operate a triple-track approach to responding to environmental crimes involving:

- **Education** - educating the public, such as through signage, use of warnings, action days and publicity campaigns;
- **Enforcement** – environmental crimes are illegal, which means that enforcement action will be pursued where necessary and appropriate; and
- **Cleansing** – Alliance Environmental Services (AES) carry out a routine programme of cleansing adopted highways and other public spaces, such as parks and play areas on behalf. This is supplemented by responsive action to

reported problems and extra sweeping when needed (for instance in busy visitor areas or after major events).

The purpose of the policy is to set out the Councils' approaches to enforcement of environmental crime. It is intended to ensure that the Councils follow a standard approach that is consistent, balanced, fair, transparent, and proportional.

The policy recognises that each incident of environmental crime is unique and must be considered on its own merits but sets out the general principles that will be applied by the Councils' officers.

This document should be read in conjunction with the Councils' General Policy Statements on Enforcement and any relevant policies relating to individual environmental crimes.

## **2 What is Environmental Crime?**

Environmental crime is generally used to describe any illegal activity that harms the environment<sup>1</sup> but there is no universally agreed definition. In the broadest sense, it includes waste crime and activities such as wildlife crime, illegal resource extraction, and fraud around sustainability and carbon trading permits. In addition to environmental impacts, it can also have serious human health and social impacts.

High Peak Borough Council and Staffordshire Moorlands District Council have adopted a pragmatic approach to defining environmental crime based upon their remit and concerns of residents. The Councils define environmental crime as encompassing:

- Abandoning vehicles
- Accumulations of waste
- Dog fouling
- Fly-posting
- Fly-tipping/depositing waste
- Graffiti; and
- Littering

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<sup>1</sup> Parliamentary Office of Science and Technology (2017)

### **3 The Councils' Approach to Enforcement**

Experience has shown that enforcement action is most effective where it is targeted in the right places at the right times, and carried out by suitably equipped officers with the capacity and appropriate training to undertake enforcement activity. The Councils recognise that the safety of officers is paramount.

Environmental Crime Enforcement Officers are allocated with a body-worn video camera for use when carrying out patrols and enforcement activity. This will be switched on, where possible, as soon as the officers suspect an offence has been committed, or is about to be committed, and will be kept on until the interaction has ended. For the avoidance of doubt, the lack of a body worn video camera, or failure to record on a particular occasion, would not preclude the council from pursuing enforcement action if there is sufficient evidence and it is in the public interest to do so. The cameras are intended to both assist with evidence gathering but also to protect the officer from physical or verbal abuse and can be used in the event of complaints against an officer.

Other Council and AES officers, particularly operational officers working in the community, are expected to provide intelligence to enable enforcement activity to be effectively targeted. This could include providing evidence of people discarding litter from vehicles or notifying the Environmental Enforcement Officers if a suspected abandoned vehicle remains in a reported location.

AES Officers provide the initial response to complaints about waste being deposited on relevant land, i.e. land in the open air that is under direct control of the Councils and to which the public are entitled or permitted to have access with or without payment (this includes highways in agreement with the relevant County Council). AES Officers examine the waste for any evidence and, where such evidence exists, record the information and pass it on to the relevant Council service.

Where the complaint does not relate to relevant land and where the Council has a statutory duty to investigate, or it is in the public interest and appropriate to do so, the deposit of waste will be investigated by the appropriate Council service.

Where the Council receives a complaint that:

- material accumulated or deposited is prejudicial to health or a nuisance, then the Council is required to take reasonable steps to investigate whether the complaint amounts to a statutory nuisance and, if satisfied that a statutory nuisance exists (or is likely to occur or recur) issue a notice under Section 80 of the Environmental Protection Act 1990; or
- significant harm (or possibility of such harm) is being caused to land or pollution of controlled waters, then the Council must consider whether it amounts to contamination of land under Part IIA of the Environmental Protection Act 1990.

Where the above does not apply, the deposit, treatment or disposal of waste will be investigated under the appropriate legislation such as:

- a potential “fly-tip” under Sections 33 and 34 of the Environmental Protection Act 1990;
- littering under Section 87 of the Environmental Protection Act 1990;
- “unreasonable conduct” under Section 42 of the Anti-Social Behaviour, Crime and Policing Act 2014 (Community Protection Notices), where the conduct of an individual body that is having a detrimental effect on the quality of life of those in the locality; or
- as an “untidy site” under Section 215 of the Town and Country Planning Act 1990, where the condition of land in the Councils’ area adversely affects the amenity of part of the Council’s area, or of an adjoining area.

### *Targeting Activity*

It is important that enforcement activity is targeted in those areas where environmental crimes are occurring. The Council keeps records of problems reported by members of the public and these can be analysed to produce maps of problem areas. Information about ‘hot spot’ areas can also be provided by councillors and frontline council workers.

### *Response*

Officers will normally issue a fixed penalty notice where an offence of abandoning a vehicle, littering, fly-tipping, fly-posting or dog fouling has occurred. The Council may also seek to recover the cost of removal. This reflects the zero-tolerance approach being taken by each Council to tackle environmental crimes. The FPN is issued as

an alternative to prosecution. If an FPN is issued then the offender has 14 days to discharge their full liability for the offence by paying the FPN. The Council will normally seek to prosecute if someone fails to pay the FPN within the specified timescale.

Where the defacement of an area by waste is detrimental to the amenity of the locality, but not a statutory nuisance, then this would normally be dealt with through a Community Protection Notice, or under Section 215 of the Town and Country Planning Act 1990 as appropriate. This includes areas where there is recurrent defacement by litter of open land in the vicinity of commercial or retail premises. A breach of a Community Protection Notice may result in either a fixed penalty notice being issued or prosecution. Failure to comply with a Section 215 Notice is an offence and would be dealt with by means of a prosecution.

If a person fails to comply with a Community Protection Notice then the authority also has the power to apply to court for seizure or forfeiture of items used in commission of the offence.

There are several situations when the Council would consider that the issuing of a fixed penalty notice may not be appropriate and instead would seek to prosecute under the relevant legislation. This includes:

- Large-scale depositing of waste items, which will normally be dealt with by means of prosecution for littering (Section 87 Environmental Protection Act 1990), fly-tipping (Section 33 Environmental Protection Act) or failure to keep proper control of controlled waste (Section 34);
- Statutory nuisances- where the condition or activity is prejudicial to health or a nuisance (Section 79 of the Environmental Health Act 1990);
- When the offence is committed by someone that has previously received a fixed penalty notice for the same offence; and
- Where the offender is aggressive to the Enforcement Officer (or other staff member) and/or refuses to provide their name and address.

*Payment by instalments*

The option to pay in instalments will be offered if requested by the alleged offender and provided that they can adequately demonstrate to the authority that one or more of the following criteria applies:

- A fixed penalty notice has been issued to a young person (aged under 18);
- The alleged offender is on benefits; and
- There is a proven case of financial hardship.

The Councils must commence prosecution for a summary offence within six months from the date of occurrence. Instalment payments will thus be spread over a maximum of three months to retain the option of prosecuting for the offence if the alleged offender fails to pay all instalments.

If the offender pays the initial instalment but then fails to pay one or more of the subsequent instalments, then the local authority would normally seek to prosecute the individual for the original offence.

### *Young People*

The Councils recognise that all sections of society can be responsible for littering and that the age of criminal responsibility in England is 10. The Councils also recognise that littering can be a particular problem around schools and along routes to school premises.

If the Councils intend to carry out targeted enforcement activity close to a school in response to reported problems, then they will endeavour to undertake an education initiative at the school prior to enforcement patrols taking place. The Councils, however, recognise that there may be occasions where an enforcement officer observes a young person aged 17 or under littering during their normal duties and not as part of targeted action.

The Councils think that it is important that officers respond to littering by young people and send out the message that littering is unacceptable and will not be tolerated. If the Council does not take action in such circumstances, then it may be seen to be: i) giving out the wrong message and suggesting that the law does not apply to young people, and ii) not adequately responding to public concern about littering. Officers will, therefore, issue fixed penalty fines to anyone aged 11 or over

(corresponding to secondary school age) who is found to commit an offence or prosecute as described above.

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