



OVERVIEW AND SCRUTINY BOARD

3 JUNE 2008

FINAL REPORT OF THE ENVIRONMENT SCRUTINY PANEL: ENVIRONMENTAL ENFORCEMENT

PURPOSE OF THE REPORT

1. To present the findings of the Environment Scrutiny Panel following its investigation of Middlesbrough Council's environmental enforcement services.

BACKGROUND AND AIMS OF THE SCRUTINY INVESTIGATION

2. Environmental enforcement is an important Council function which protects the environment through the effective enforcement of relevant regulations.
3. The aims of the scrutiny exercise were to investigate the responsibilities of the Council in this area, to examine its effectiveness and to identify any issues surrounding service provision.
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TERMS OF REFERENCE OF THE SCRUTINY INVESTIGATION

5. The terms of reference of the scrutiny investigation were as follows:
 - To examine the Council's environmental enforcement activities, including legislative background and statutory powers.
 - To investigate the range of enforcement options available to the Council and to assess their effectiveness in ensuring compliance with the law.
 - To assess the impact of any relevant national guidance or directives.
 - To examine the impact of any relevant performance indicators or performance measures.
 - To examine resource arrangements, including staffing, budgets, income and expenditure and also how services are prioritised.

METHODS OF INVESTIGATION

6. The Scrutiny Panel investigated this topic over the course of four meetings between 25 January and 7 April 2008. A Scrutiny Support Officer from Performance and Policy arranged witnesses for the review and co-ordinated the submission of written and oral evidence. Meetings administration, including preparation of agenda and minutes, was undertaken by a Governance Officer from Legal and Democratic Services.
7. A detailed record of the topics discussed at Panel meetings, including agenda, minutes and reports, is available from the Council's Committee Management System (COMMIS). This can be accessed via the Council's website at www.middlesbrough.gov.uk.
8. Evidence and information was obtained from officers in the Council's Environment Department.
9. The report has been compiled on the basis of evidence gathered at the scrutiny panel meetings outlined above. Background information was also obtained from the documents listed at the end of the report.

MEMBERSHIP OF THE PANEL

10. The membership of the Scrutiny Panel was as follows:

Councillor J Cole (Chair); Councillor G Clark (Vice-Chair); and Councillors D Davison, B Hubbard, JA Jones, E Lancaster, J McTigue, G Rogers and J Walker.

THE PANEL'S FINDINGS

11. The panel's findings in respect of each of the remaining terms of reference are as follows:

TERM OF REFERENCE: “*To examine the Council's environmental enforcement activities, including legislative background and statutory powers.*”

AND:

“To assess the impact of any relevant national guidance or directives.”

12. As the above terms of reference were found to contain areas of overlap, they are dealt with together in the following sections of the report. In examining these terms of reference, the scrutiny panel considered:
 - the legal background which forms the basis of environmental enforcement.
 - the functions which are undertaken in this area of work.

Legal Background:

13. The principal pieces of legislation relating to environmental enforcement are the Environmental Protection Act 1990 and the Clean Neighbourhoods and Environment Act 2005.

14. The main aims of the Environmental Protection Act are the prevention of the pollution of air, land or water. The act relates to the transfer, treatment and disposal of controlled wastes ie household, industrial and commercial wastes. A duty of care applies to a number of activities - such as ensuring that waste is kept, treated, disposed of or transferred in accordance with relevant regulations or licences and is not allowed to escape or pollute. As well as extending the Clean Air Acts (by including new measures to control nuisances) the Act also introduced regulations regarding litter control; the import and export of waste; the supply, storage and use of polluting substances; and the setting up of contaminated land registers by the local authority.
15. Part 3 of the Environmental Protection Act 1990 requires the Council to take reasonable steps to investigate and, if appropriate, take formal action in the event of complaints of statutory nuisance. This can include emissions of smoke, fumes or gases, dust, steam and smell. For the purposes of the scrutiny panel's investigation, "environmental enforcement" was defined as the areas of work covered by the Respect Team based in the Council's Community Protection Service. In accordance with the list of activities shown in paragraph 16, dealing with the emissions outlined above lies outside the panel's investigation. Enforcement in respect of these areas is undertaken by other teams in Community Protection.
16. The Clean Neighbourhoods and Environment Act deals with many of the problems affecting the quality of the local environment. Poor local environmental conditions can be linked to anti-social behaviour, vandalism, disorder and levels of crime. The Act provides local authorities and the Environment Agency with more effective powers and tools to tackle poor environmental quality and anti-social behaviour. In particular the Act includes sections on nuisance and abandoned vehicles, litter, graffiti, waste, noise and dogs. Further information on the use of these powers is contained in the following paragraphs insofar as they relate to the work of the Council's Respect Team.

Environmental Enforcement Functions:

17. The areas of environmental enforcement work covered by the Respect Team are as follows:
 - Littering
 - Domestic refuse
 - Trade waste (storage, transport and disposal)
 - Fly tipping
 - Fly posting
 - Graffiti
 - Nuisance Parking
 - Dog Fouling
 - Distribution of free literature
 - Responsible dog ownership
 - Abandoned shopping trolleys
18. Any complaints received in respect of the above are investigated and dealt with appropriately, using a range of measures in accordance with the Council's enforcement policy. Detailed information on the enforcement policy is contained later in this report (see paragraph 29).

19. Examination of this term of reference highlighted the wide range of enforcement work which is undertaken by the Council's Respect Team and the legal basis for undertaking enforcement action.

TERM OF REFERENCE: "To examine the impact of any relevant performance indicators or performance measures."

20. In examining this term of reference the panel considered relevant national performance indicators (PIs) together with targets which are set for each area of enforcement activity. Details were submitted of key targets and outputs for 2007/08 as follows:

Area of Enforcement	Target - 2007/08	Actual - 2007/08
Stop and search of vehicles disposing of waste (ie to check that they are licensed to do so)	40	40
Duty of care inspections	150	250
Micro-chipping of dogs	250	900
Neutering of dogs	150	175
Supply of free poop scoops	30 000	30 000
Investigations following reports of abandoned waste	2 000	2 500
Issue of fixed penalty notices	20	100+
Enforcement Actions (ie investigations, warning letters, legal notices, stop and search events, duty of care, surveillance, fixed penalties, prosecutions, cautions, injunctions)	1 625	1 743

21. Up to 2007/08 there was one national best value performance indicator (BVPI 199) to measure the level of land classified as unclean. With effect from 2008/09 this has been replaced by two new indicators, as follows:

- NI 195a - The percentage of land classified as unclean due to litter.
- NI 195b - The percentage of land classified as unclean due to detritus.

22. The panel was advised that use of BVPI 199 has shown that the streets of Middlesbrough are at their cleanest ever levels.
23. In addition, BVPI 199D has been used to measure the number of enforcement actions undertaken (see table above). The number undertaken in 2007/08 shows an increase of at least 5% over the 2006/07 level.
24. The service aims to respond to all complaints within one day in 90% of cases. Public demand for services and the level of complaints is generally increasing as people become more concerned at maintaining their local environment to a high standard.
25. Environmental enforcement work has also assisted in achievements during 2007/08 which have contributed towards priorities identified in the Council's Community Strategy. Under the theme of "Transforming Our Local Environment" and the priority of "Improving the standard of cleanliness throughout the town with a focus on key areas," the following achievements have been made:
 - Reducing the proportion of relevant land classified as unclean due to litter
 - Maintaining the level of relevant land classified as unclean due to flyposting.
 - Continuing to develop a comprehensive approach to the Clean Neighbourhoods and Environment Act and implement appropriate legal powers.
 - Commencing enforcement of Schedule 3A of the Environmental Protection Act with respect to the distribution of free printed matter in the town centre.
 - Using an innovative mix of education, embarrassment and enforcement to tackle litter, flyposting, graffiti and under-age sales of spray paint as a central element of the anti social behaviour action zone initiative.
 - Maintaining the level of relevant land classified as unclean due to graffiti.
26. In further considering performance, the panel considered information on areas where good progress has resulted from continued work by the enforcement team, as follows:
 - Fly posting problems have been resolved.
 - Litter has been significantly reduced in the town centre through regulating/reducing the distribution of printed leaflets, flyers etc.
 - Streets are at their cleanest ever levels.
 - Back alley cleanliness has been improved significantly.
 - The problem of stray dogs in Middlesbrough has been significantly reduced without any strays being destroyed. Stray dog numbers have been halved in recent years. A major contributory factor to this has been work undertaken in conjunction with the Dogs Trust. Strays have been neutered in partnership with with the trust, with that organisation paying two-thirds of the costs involved. In addition, the enforcement team has also microchipped dogs free of charge, with the chips provided by the Dogs Trust. The microchips enable stray dogs to be identified and returned to their owners. The Dogs Trust has advised, however, that it will cease to provide microchips from 2008/09 and is also to review provision of its neutering scheme. Should the Council continue to offer the chipping service it will need to purchase the chips at a cost of £3-£4 each.
27. Reference was also made to areas of enforcement-related work where further action is needed or where officers consider that improvements can be made:

- Dog fouling was highlighted as an area in which the enforcement team has not yet achieved 100% public satisfaction. The team responds to all complaints in this area and prosecutions are made wherever possible - though there can be difficulties as offences need to be witnessed. 50,000 free poop scoops have been made available in 2007/08.
- Littering through discarded cigarette butts outside pubs, offices, public buildings etc is an area of concern following the introduction of the smoking ban at the beginning of 2008. Street Litter Control Regulations have recently been amended so that all food and drink premises can be made responsible for cleaning outside their premises. This does not include offices. Officers regularly attend meetings with licensees to encourage licensed premises to clean up cigarette (and other) litter.
- Improving the local culture - although there is a sense that people are taking a greater pride in caring for their local area, the Environmental Protection Manager indicated that there is still a need for further encouragement and improvement in this area.
- With effect from April 2008 the police are no longer responsible for collecting and holding stray dogs "out of hours". Local authorities are now charged with this responsibility, which - if existing arrangements are continued - will involve the transport of strays to a kennels in Guisborough. The financial implications and effect on service provision will need to be determined.

28. Examination of this term of reference highlighted the high volume of work which is undertaken by the respect enforcement team, the good progress which has been made in a number of areas, together with areas where further work is needed.

TERM OF REFERENCE: "To investigate the range of enforcement options available to the Council and to assess their effectiveness in ensuring compliance with the law."

29. The scrutiny panel heard that the Council's overall approach to enforcement work is based on a "4 Es" approach, namely:

- **Enforcement** - via effective implementation of the environmental enforcement policy.
- **Education** - ie raising the profile of environmental issues and improving general awareness through effective publicity and educational initiatives eg publicising the use of "poop scoops" via poster competitions in schools.
- **Embarrassment** of perpetrators - eg a town centre campaign where people dropping litter were addressed by "Megaphone Man." 'Embarrassment' is also linked to education initiatives and is aimed at improving people's behaviour.
- **Empowerment** - where local people are assisted in addressing environmental problems in their neighbourhood eg organising groups of local children in litter picking schemes.

30. Consideration was given to the Council's Environmental Enforcement Policy and to how this is applied, together with its effectiveness. The policy is used as the set of rules that determine an appropriate course of action when someone has broken the law. Each case is judged on its merits, with a judgement being made on the degree of enforcement action that is needed. The system is used flexibly by using the toughest sanctions to deal with serious or serial offenders, while using lesser measures to deal proportionately with more minor incidents. In the most serious cases (eg flytipping) prosecution of offenders may be pursued as a matter of course. In general, an assessment is made of the benefits of any enforcement action versus costs and use of resources.
31. The main purposes of the enforcement policy (which also applies across trading standards and food health and safety) are to ensure fairness, consistency, proportionality and transparency. The policy also complies with relevant legislation relating to evidence gathering - namely The Human Rights Act, Police and Criminal Evidence Act (PACE), The Regulation of Investigatory Powers Act (RIPA) and The Criminal Procedure and Investigations Act (CPIA).
32. The course of action taken in each case is determined through a case conference involving the investigating officer, team manager and legal case file manager. This examines the requirements of the law, the nature and impact of the offence, seriousness of the case, history of the case and the Council's priorities before determining appropriate action. In each case, there are three possible courses of action, as follows:
- **No Action** - This applies if (following investigation) there is no evidence of a breach in the law. For example, an individual could be reported for fly tipping when, in fact, they had requested a junk job collection from the Council and had been advised to place the items outside on a particular day. Also, no action will be taken if there is no prospect of the action being effective - for example a fixed penalty fine being issued to a homeless person with no means of payment.
 - **Informal Action** - This includes verbal or written advice or warnings and action in relation to non-serious issues (ie with no harm to health and safety or environment) where informal action can remedy a problem. This might include ensuring that a business operation has a proper contract in place for the disposal of trade waste and is not using the domestic refuse system. Any verbal/written advice/warnings in the case of informal action must be clear, accurate and precise and distinguish between any recommendations made by the Enforcement Team and an individual's legal obligations.
 - **Formal Action** - This includes legal notices, fixed penalty notices, simple cautions, prosecutions and injunctions. These are used in serious cases where there is harm to the environment or to health and safety (for example fly tipping), or where is a history of non-compliance or previous problems. In the case of prosecutions, it is necessary to ensure that there is enough evidence to provide a realistic prospect of conviction against each defendant on each charge.
33. The Enforcement Policy is periodically monitored and is reviewed at least every 12 months. Consultation is undertaken with appropriate stakeholders for each review. Minor changes to the Policy are agreed by officers in community protection with major changes submitted to the Executive for approval.

34. The policy does not just cover enforcement work undertaken by the Council's respect team but covers other areas of enforcement such as food safety and trading standards. In addition, the team does not work in isolation but can also be closely involved in work such as joint trading standards operations or enforcement work with external agencies such as the police, VOSA (Vehicle and Operator Services Agency) or Erimus Housing. Officers work closely with other Council enforcement functions.
35. The panel queried how levels of fines are set for fixed penalty offences such as littering. It was explained that when the Clean Neighbourhoods and Environment Act had come into effect, authorities had the option of using the default penalty amounts set by the Government or setting a local scheme. The Council had decided to set its fine amounts using a local scheme. There is currently a £50 fine for littering if the fine is paid within 10 days. This rises to £80 after 10 days.
36. Examination of this term of reference showed the range of enforcement action that can be used to address varying degrees and levels of offences.

TERM OF REFERENCE: “To examine resource arrangements, including staffing, budgets, income and expenditure and also how services are prioritised.”

37. Information was submitted on the staffing structure of the Respect Enforcement Team, as follows:
- Principal Officer - funded by the Council.
 - Supervisor - funded by the Council.
 - Legal Case File Manager - funded by grant funding.
 - Environmental Improvement Officers x 4 - funded on a temporary basis by the Council from April 2007 to March 2008.
 - Environmental Improvement Officers x 6 - funded by grant funding.
38. It was highlighted that the major issue relating to staffing is that, for the past six years, the majority of the team's posts have been funded by grant funding from the Neighbourhood Renewal Fund (NRF). This funding ended on 31 March 2008. A further associated issue is that the temporary nature of the grant-funded posts has meant that the ten environmental improvement officer posts have never all been filled at the same time and that staff recruitment and retention is difficult. The specialised nature of the work means that it is not generally not possible to recruit from the pool of staff on the Council's temporary register. The overall effect of unfilled posts and staff moving to take up permanent employment has been to place pressure on service provision and budgets - for example in meeting the numbers of inspections identified by targets and to pay overtime to staff. Out of hours work is undertaken (eg targeting areas of open space for dog fouling) although service and budget constraints do not permit weekend working.
39. The total 'Respect' Budget for 2007/08 was £196,200. A budget was provided of how the budget is spent - staff salaries account for £176,000 and the remaining £20,000 is spent on vehicle costs, uniforms, essential equipment, printing, training and neutering stray dogs. The Team achieves an income of approximately £4,000 from fines.

40. Although the enforcement team has operated without a dedicated budget, £100,000 has been made available to fund four posts. As approximately £25,000 - £30,000 has been spent from this budget on short-term posts, the budget is currently in credit. The Panel was advised that there has been no budget growth for four years despite an additional Legal Case File Manager post being created, inflation pay rises and salary increases as a result of job evaluation. It was suggested that a realistic budget would be in the region of £210,000 - £215,000 per year.
41. The need to secure funding to replace the former NRF funded posts (ie six Environmental Improvement Officer posts and the Legal Case File Manager) has been recognised and the respect team initially secured six months bridge funding for these posts until October 2008. At the panel's last evidence gathering meeting on 7 April 2008 it was indicated that mainstream funding is to be identified for the service, arising from savings made as a result of the ongoing review of waste services. This development is welcomed by the scrutiny panel as it will help in resolving the staffing problems which have been identified.
42. Examination of this term of reference highlighted the problems associated with funding posts on a temporary basis through grant funding and the need mainstream budget provision for environmental enforcement.

CONCLUSIONS

43. Based on the evidence gathered throughout the scrutiny investigation the panel concluded that:
 1. Poor local environmental conditions can be linked to anti-social behaviour, vandalism, disorder and levels of crime. Effective environmental enforcement can assist in making improvements in these areas.
 2. Environmental enforcement is an important, high profile service which is at the forefront of public expectations. In terms of outputs and results, the Community Services Respect Team performs very well, especially given the increasing level of demand for the service and the staffing problems which have been associated with the grant funding of posts.
 3. Historically, the service has had no budget and has had to rely on grant funding to fill temporary posts. This has led to problems in staff recruitment and retention. The panel welcomes the fact that the Environment Department is now looking to mainstream funding for staffing in this area.
 4. Work undertaken with The Dogs Trust to neuter and microchip dogs has significantly reduced stray dog problems in Middlesbrough. However, Dogs Trust funding for microchipping has now ceased and its funding for the neutering scheme is under review.
 5. There will be financial implications for the Council following changes from April 2008 which mean that the authority will take on increased responsibilities for stray dogs from the police.

6. The 2007 ban on smoking in enclosed public places and workplaces has resulted in a significant increase in cigarette litter outside buildings. This has placed a new pressure on enforcement resources.
7. The Environmental Enforcement policy is subject to regular review. Any significant amendments are considered by The Executive.

RECOMMENDATIONS

44. Following the submitted evidence, and based on the conclusions above, the scrutiny panel's recommendations for consideration by the Overview and Scrutiny board and the Executive are as follows:
 1. Mainstream budget funding should continue to be provided in the future for the Community Service's Respect team.
 2. The future position regarding joint work undertaken with the Dogs Trust to neuter dogs should be clarified. If the Trust discontinues the scheme, the Council should identify funding to ensure its continuation.
 3. All options should be explored to ensure that the scheme of microchipping dogs, to assist in identifying and re-homing strays, is also continued.
 4. The implications of the Council's recent increased responsibilities for providing an out of hours stray dogs service (taken on from the police) should be closely monitored to determine the financial implications and steps taken to ensure that the service operates cost effectively. An update on the operation of the service, and any financial implications, should be reported to the scrutiny panel after approximately six months.
 5. The position concerning increased cigarette litter outside business premises, offices, pubs and social clubs etc should continue to be monitored. Discussions should be continued with premises owners and appropriate trade and licensing bodies to ensure that they are aware of their responsibilities and to consider how this problem can be reduced. The issue should also be publicised and enforcement action taken where appropriate.
 6. The Environment Scrutiny panel should be consulted, prior to the Executive, on any significant changes to the Environmental Enforcement Policy.

ACKNOWLEDGEMENTS

45. The scrutiny panel is grateful to those who have presented evidence during the course of this investigation and who have assisted in its work. Panel members would like to place on record their thanks for the willingness and co-operation of the following:
 - Ian Parker - Executive Director of Environment.
 - Paul Robertson - Environmental Protection Manager, Environment.
46. Particular thanks are extended to Paul Robertson who provided most of the evidence and information submitted to the panel.

BACKGROUND PAPERS

47. The following background papers were consulted or referred to in preparing this report:
- (a) Minutes of Environment Scrutiny Panel Meetings: 25 January, 3 March and 7 April 2008.
 - (b) Middlesbrough Council's Environmental Enforcement Policy.

**COUNCILLOR JOHN COLE
CHAIR OF THE ENVIRONMENT SCRUTINY PANEL**

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