

# SCRUTINY

## REPORT OF THE ENFORCEMENT TASK AND FINISH GROUP

DATE: January 2011

## Acknowledgements

### Working Group

Councillor Sandiford  
Councillor Stansfield  
Councillor Cheetham  
Councillor Robertson  
Councillor Neal

### Scrutiny Support Officer

Pat Couch, Scrutiny Support Officer

### Officer Support

The Task and Finish Group would like to thank the following Officers for their contributions:

Tracy Brzozowski, Licensing and Planning Enforcement Manager  
Stephen Stray, Planning Manager  
Brian Taylor, Principal Enforcement Officer  
Mika Malengo, Planning Enforcement Officer  
Neil Birtles, Principal Planning Officer  
Rebecca Lawlor, Health and Regeneration Manager  
Catherine Price, Area Manager, Communities Team

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## LIST OF THE TASK AND FINISH GROUP RECOMMENDATIONS

The Task and Finish Group made a number of recommendations which they feel could improve the enforcement service given by the Council and will endeavour to assist Officers to develop their Service Areas.

### Recommendation 1 (Planning)

That a realistic Policy be produced which informs businesses on the type of shutters which should be used, and where, together with a guidance note explaining the process of the planning permission for the erection of shutters. The Policy to go to Overview and Scrutiny early in the next Municipal year.

### Recommendation 2 (Planning)

There needs to be a set of guidelines on realistic targets for when each stage of the open planning enforcement file is complete i.e. acknowledged within 3 days etc., and measures in place to ensure that should the target not be met, then Members should be kept informed via quarterly reports to Development Control Committee.

### Recommendation 3 (Planning)

That the Council needs to be proactive in their work to ensure that they continue to submit quarterly reports to Development Control to allow Members to keep a review of the number of open investigations being followed up by the Team.

### Recommendation 4 (Environmental)

There should be a joint protocol between the Police and the Council to determine the process for dealing with noise and nuisance complaints that contribute to Anti Social Behaviour and when they are purely noise and nuisance complaints that the Council can investigate. This should determine legislation to be used for ASB and nuisance and the Lead Partners for complaints.

### Recommendation 5 (Environmental)

The Council and Police should consider the use of Mediation through organisations such as SMILE to support such things as neighbour disputes about issues such as noise, and ASB where this is possible.

### Recommendation 6 (General)

That the Council has further debate on how the 'recycling of Work by Default money' could be justified and if there is an opportunity to establish a corporate ring-fenced Works In Default budget to support enforcement work.

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### **Recommendation 7 (Communities)**

That should a licence be required for mobile food vans, then this should not be given until the Council were sure that plans were in place for the removal of their waste.

### **Recommendation 8 (Communities)**

That the Communities Team work towards a press release to raise the profile of the Hyndburn Used Furniture Service and other similar organisations who provide bulky waste collection. The Press Release and/or webpage should also provide details around other alternatives such as Freecycle and EBAY as residents may be discouraged from dumping bulky waste where there is a charge, such as the Hyndburn Used Furniture Service.

### **Recommendation 9**

That Cabinet consider this report and its recommendations and respond to the Overview and Scrutiny Management Committee, indicating what action is proposed within two months

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## 1. Purpose of the Report

The Task and Finish Group was set up following concerns raised through various Overview and Scrutiny reports and queries from Members. Following discussion with the Overview and Scrutiny Management Sub Committee it was agreed that this was a potential topic for a light-touch scrutiny review.

During the review members expanded the scope to include all regulatory enforcement services.

## 2. Background Information

As of February 2009, responsibility for planning enforcement came under the Licensing and Planning Enforcement Manager. Planning Enforcement is currently made up of one full time Principal Planning Enforcement Officer, one full time Planning Enforcement Officer and a part time Planning Enforcement Officer who works 7 hours a week. This has resulted in improvements to the way that enforcement action was dealt with and further changes were being investigated in order to implement additional improvements. They are currently based at the One Stop Shop in Rawtenstall.

Legal Services devised an enforcement instruction pack which all enforcement officers use and this enables enforcement notices to be issued and served in a timely manner.

## 3. The Service – Planning Enforcement

The Council has a statutory duty to enforce planning contraventions. The Enforcement Team receive around 150-180 planning enforcement complaints per year.

There were a number of open investigations from previous months and years relating to contravention of planning control.

The Task Group were provided with an update on the current enforcement action and the number of open planning enforcement files.

Throughout 2009/10 and the first quarter of 2010/11, the number of backlog open investigations reduced significantly, as the table below shows:

<b>Quarter 1 - 2009</b>	<b>260 open investigations</b>
<b>Quarter 2 - 2009</b>	<b>200 open investigations</b>
<b>Quarter 3 – 2009</b>	<b>190 open investigations</b>
<b>Quarter 4 – 2009</b>	<b>168 open investigations</b>
<b>Quarter 1 – 2010</b>	<b>134 open investigations</b>

The above indicates almost 50% reduction in the last 18 months.

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The current number of ongoing complaints at 3<sup>rd</sup> November 2010 was 145. During Quarter 2, 65 complaints had been received and 41 have been closed. This included 31 'roller shutter' investigations that the planning inspectorate recommended should be investigated in Haslingden town centre.

There was also a number of enforcement notices currently in from previous months, with a further 2 notices issued during quarter 2 period.

Officers gave a brief overview of two long standing investigations and described the difficulties/obstacles which can occur during investigations.

Appeals can take up to 6 months and if there is involvement from the Planning Inspectorate this could possibly increase a further 12 months.

### **3.1 Roller Shutters**

As indicated above 'roller shutters' appear to be a problem mainly to the Haslingden area. These kind of shutters can downspoil the appearance of an area and encourage anti-social behaviour.

It was suggested that businesses should be provided with specifications on what type of roller shutters can or cannot be used and relay this information to the manufacturer.

The Group heard from the Planning Manager that they cannot put conditions for internal shutters as they do not need planning permission.

A suggestion was made that written into the conditions section should be that shutters should be raised during social hours (9am-5pm), but Officers confirmed that this could not be enforced, although it was agreed that Councillors could encourage traders to do this to improve appearances to an area during the day.

### **3.2 Retrospective Applications**

If a retrospective planning application is refused it is important to do an enforcement notice as soon as refusal is given.

Once refusal is issued the applicant has a right of appeal and you cannot do an enforcement notice until after the appeal is heard.

If the notice is given immediately after refusal then the Inspectorate can look at this along with the appeal.

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### 3.3 Administration/Feedback

Officers indicated that whenever someone makes a complaint, these are acknowledged and once the complaint had been dealt with, a follow-up letter is sent indicating what follow-action has been taken.

If a complaint is received by telephone, Officers always ask the person to write in formally. This is because sometimes the Officer goes out to investigate an issue and it transpires that the person has not complained to the Council, even though their details have been passed on. Often this causes unnecessary Officer time.

Members were pleased to note the acknowledgement process used by the Council to ensure that the public received feedback.

## 4. The Service – Environmental Enforcement

Rebecca Lawlor, Health and Regeneration Manager gave an overview of the services which were now within her remit, indicating that the Environmental Health function had now merged with Regeneration and Housing.

### 4.1 Food Safety and Health Safety – Commercial

Responsibility for this service was with David Pierce, Principal Environmental Health Officer.

New Private Water Regulations had been published and the Council was therefore producing a Private Water Supplies 2009 Regulation Policy and Fees which was presented to Policy Scrutiny in January and subsequently Cabinet in February.

The Council has a duty to inspect and undertake a risk assessment on all private water supplies in the Borough over the next 5 years on a rolling basis. Information from these inspections would be reported back to the Drinking Water Inspectorate. A survey was undertaken to find out whether people had single or shared private water supplies. This produced a 50% response rate. Charges for inspection and undertaking investigations would be split between those households which shared the private water supply. Those single households on individual supplies were exempt from the Regulations.

The Commercial Team of the Environmental Service also undertake Food Safety - anything to do with food in restaurants, takeaways, care homes, children's homes, childminders and anyone who handles food. This was through inspection, training sessions and the provision of advice.

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The Food Standards Agency introduced a national 'Scores on the Doors' scheme . This would keep members of the public more informed about the food establishments they use. Rossendale Borough Council was successful in securing a £5,000 grant to implement this scheme. This would allow the Council to grade all food premises (based on inspections) in the Borough. These gradings would be publicly available from June 2011.

As part of a 'data cleansing check' the Council wrote to all agencies who handled food or had connection with food. The next stage is for the Council to go through the inspection files over the last 12 months and give a score between 1-5 (5 being compliant), this score would not take into account how good the food was, but more the management, staff competency, hygiene etc.

All businesses will be written to in April to inform them of their scores before the public launch of the Website in June.

#### 4.2 Residential

Responsibility of this service was with Grant Cropper, Acting Principal Environmental Health Officer. The service covers housing standards, immigration checks, park homes, all aspects of pollution including smoke emissions, contamination land/water, air quality as well as nuisance, including noise.

The Health and Regeneration Manager gave examples of when the Council investigated 'noise' complaints, indicating there was a cross-over with the work with the Police and Community Safety Officer. Issues arose when complaints of noise were found to be symptoms of ASB and which partner, the Council or the Police, should take responsibility for investigating and enforcing the issue.

The Council also investigates approximately 30-35 landlord complaints per month, mainly relating to the state of the property.

The review looked at numerous notices that the Council can issue to deal with housing standards such as:-

- Section 11 Notice (Service improvement notice), to ask landlords to do improvements. If they do not do the 'work in default', the Council can do the work and charge the landlord.
- Section 16 Notice of the Local Government Act (notice served to owner of empty property/land). The Council give 21 days for the owner to respond to the Notice, otherwise the legal department set their charges.

The Health and Housing Manager indicated that the Council could have identified money for a Corporate Works in Default Budget, which would allow Officers to follow enforcement action through where owners were unwilling to

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act. This money could be recycled following recovery of debts on property and owners.

## 5. The Service – Communities

Catherine Price, Area Manager provided information to Members on the different types of enforcement undertaken by the Communities Team.

### Minimum Response Times for Enforcement

**Platinum** – Abandoned vehicles and racist/Offensive Graffiti – 24 hours (during a working week)

**Gold** – Flytipping and Statutory Nuisance (food waste/dog fouling accumulation) – 3 working days

**Silver** - Accumulations of waste (non food), dog fouling and litter – 5 working days

**Bronze** – Flyposting, bin issues, ASB and non racist/offensive graffiti – 10 working days

### Service Requests

During 2010 the Communities Team received 1799 service requests, which broken down was as follows:-

454 - Flytipping – this had reduced by 50% since the formation of the NEAT

198 – Accumulation of waste /bulky waste issues

116 - Dog Fouling reports

88 - Litter issues and sweeping requests

87 - Nuisance vehicles

55 - Untidy properties/land

18 – Graffiti cases (7 racist)

0 – Flyposting cases

The average number of days for Officer to respond to service requests was 13 - mainly as a result of lengthy investigations.

In terms of responses to service requests, as well as engaging with residents in person and by letters to secure compliance, Officers have taken formal enforcement action issuing 48 Statutory Notes including the following:

27 - 7 day abandoned vehicle notices

3 - 24 hour abandoned vehicle notices

11 – Statutory Nuisance (section 80)

4 - Section 71 questionnaires re flytipping investigations

1 – litter clearing notice

Other formal enforcement action:-

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- 9 duty of care inspections for businesses
- 1 prosecution
- 1 caution
- 1 formal warning

The Council work to the Crown Prosecution Code of Conduct, which looks at whether there is enough evidence to bring a prosecution and whether it is in the public interest to bring a prosecution. A Prosecutor should be satisfied that there is sufficient evidence to provide a realistic prospect of conviction. Factors to consider are; a) is the evidence reliable? Or b) can it be used in court?

## 5.1 Flytipping

Flytipping represents the biggest issues the team deal with. Officers within the team are mentored through flytipping cases by their Area Manager through regular catch up and briefing sessions. The cost of taking action could be £1,000 upwards.

Flytipping has reduced since 2005 when there were over 800 incidents – tracing of defendants is very difficult. The Council would need to establish evidence of how the waste got there and Officers have to physically go through the waste to ascertain whose waste it was, or from witnesses. Unfortunately, many of the cases the team deal with do not provide either form of evidence.

Some evidence can be made by Officers looking through the waste to find a name/address or other means of correspondence to help identify potential offender such as an invoice with a customer number, at which time the Officer can follow-up any leads to try to find the offender.

When Officers think that someone may have helpful information to identify an offender, they would send out a Section 71 questionnaire, which asks questions in the form of a Notice which has to be responded to within 10 days, failing which the recipient could be prosecuted. The Council has secured a conviction for failure to respond to a S71 questionnaire where they had circumstantial evidence against the offender and was therefore able to serve a questionnaire on them.

There was some discussion about the importance of preventative measures, with the use of press releases, promoting flytipping court cases, and whether skips or waste collection points as part of an ‘amnesty’ campaign were appropriate. It was agreed that the Communities Team would work towards a press release highlighting some positives about Hyndburn Used Furniture who provide bulky waste collection service to raise the profile of this service. It was also agreed that removing charges for bulky waste collections or providing skips or waste collection points were not cost effective and presented their own problems.

### Witness Evidence

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Where there is witness evidence, the Officers will attempt to take a statement from the witness as soon as possible after the offence, making sure the witness is aware that the statement may be used in court. Occasionally, a witness does not want their statement to be used in court, which means the action Officers can take is limited.

If evidence is obtained against the offender, Officers will take the following steps:

- Go out to the incident to photograph evidence, document this and then store the evidence – working copies are taken
- Undertake follow-up action – land register searches/council tax searches, police national computer checks etc
- Invite offender for interview – this would have to be recorded with 2 Officers present
- If offenders doesn't respond then the Council would issue a Section 71 questionnaire, which asks the same questions as would be asked at interview

After an interview or questionnaire had been completed, there would be a case-review with the Manager to discuss any follow-up action needed. Once all action was complete they would consider what action to take in the Code for Crown Prosecutors.

All information must be considered on its own facts and merits. There were a number of factors which would tend to favour prosecutions some of which are:

- That a conviction is likely to result in a significant sentence
- The victim of the offence was in a vulnerable situation and was taken advantage of (eg elderly persons waste being flytipped)
- There were grounds to believe the offence was likely to be continued or repeated
- A prosecution would have significant positive impact on maintaining community confidence

Some of the factors which would tend against prosecution relevant to environmental enforcement include:

- The court is likely to impose a nominal penalty
- The seriousness and consequences of the offence can be appropriately dealt with by an out of court disposal
- The offence was committed as a result of a genuine mistake or misunderstanding
- The suspect is or was suffering from significant mental or physical ill health – the Council establish if the person had a 'key worker' and if so, would work with them.

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Members discussed mobile food vans and the fact that they produce a great deal of waste and leave nearby bins overflowing with rubbish. They asked if these vans needed a licence to serve food and if so could there be something written into the licence indicating that they should remove their own waste. It was agreed that if a licence was required, then one should not be issued until plans were in place for the removal of their rubbish.

## 5.2 Dog Fouling & Litter

With recent bad weather, a huge problem with litter and dog fouling has been highlighted as street cleansing has been difficult.

Dog fouling is in the first instance dealt with by Animal Wardens, who are required to respond to complaints within 2 days. Hot spot areas are highlighted during regular meetings with Animal Wardens and through monitoring of their database of complaints. Officers then assist with signage, patrols, and letter drops.

From November 2010, the Animal Warden Service was being provided on a different basis for a 12 month trial period. They provide a response service from 7am to 1am, 7 days a week and also deal with strays, dangerous and lost dogs. This has presented a saving of £3,600 to the Council.

There have been 2 fixed penalty notices handed out in relation to dog fouling. These fixed penalty notices can be given on-the-spot or sent through the post.

Litter is dealt with proactively through NI195 surveys, carried out quarterly. Any transects which fall below a B have to be swept within a short period of time. Overall results are monitored and if falling below target this is addressed with sweeping routes.

It is also dealt with reactively and where a litter complaint is received officers will visit the area to assess the cause of the problem and take action e.g. tackling fast food premises, bin provision, signage/posters.

Officers also carry out patrols of littered areas with a view to issuing fixed penalty notices where appropriate.

There was discussion about ways members would like to see litter and dog fouling dealt with as part of a targeted programme of enforcement. Members would like to see proactive work in relation to takeaways, reminding them of their responsibilities re bins, sweeping, reducing packaging etc...

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### 5.3 Other Forms of Enforcement

There was a brief discussion on the process of enforcement for the following:

- Bins – common problems are bins left out on highway or in back alleyways, side waste and contaminated bins
- Bulky waste – settees or white goods – which can be difficult to establish who left them and therefore would have to write to a number of households in the area where the waste had been left, threatening further action and advising of legal ways to dispose of it.

Members asked about advertising hoardings on the sides of the road e.g. Asda railings in Rawtenstall and Carrs Industrial Estate, Haslingden, and requested clarification on ownership/authority to allow these advertising hoardings to be displayed.

Presented to the Overview and Scrutiny Committee for approval in February 2011

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