

TAMWORTH BOROUGH COUNCIL

ENVIRONMENTAL CRIME ENFORCEMENT POLICY

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# Environmental Crime Enforcement Policy

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## **Environmental Crime Enforcement Policy**

### **1. Introduction**

This policy sets out the general principles that the Council intends to follow in relation to the enforcement and prosecution of environmental crimes in conjunction with the Enforcement Strategy adopted in September 2009.

In the first instance, the Council's preferred action is to secure compliance through education and information (Sect 1.2 Enforcement Strategy). Enforcement action will require authorised officers to follow set procedures and protocols in order to ensure consistency in the collection of evidence and the enforcement actions applied. These actions represent a zero tolerance to environmental crime, but will not always require prosecution action.

Publicity for the policies and procedures in place will be ongoing with appropriate leaflets, posters, articles in Talkback Tamworth and other Council magazines, web pages and school education. Enforcement action should only be taken if there is evidence of an offence having taken place and in those circumstances where individuals or businesses commit serious breaches, flout the law, where it would otherwise have an adverse effect upon community confidence, where the offence although not serious in of itself is widespread in the area, or where the offender refuses to work with us to seek compliance

The Council has the power to take appropriate enforcement action against persons that commit a variety of environmental crimes. The following are considered to be the core offences upon which action will be taken, although not exclusive:

- ≡ Littering (including littering from vehicles)
- ≡ Abandoned and nuisance vehicles
- ≡ Dog Fouling
- ≡ Fly tipping
- ≡ Graffiti/Flyposting
- ≡ Duty of care offences
- ≡ Litter and refuse control offences

This list is not exhaustive and represents most the most common offences and may be added to as legislation is updated or amended. In addition there are additional powers which can assist the Council control accumulations of litter and refuse and will seek to take the appropriate action for these offences using a wide range of enforcement actions as prescribed by legislation.

### **2. Enforcement Options**

#### **2.1 No Action**

In some cases that no action will be taken in cases where there is little or no evidence or where the offender has fully co-operated with information given in accordance with the Enforcement Strategy. In all cases the offender will be advised in writing of the decision.

### 2.2 Informal Action

Informal action includes verbal or written warnings and requests for remedial action. It may involve offering advice, information and assistance to ensure compliance with legislation.

Informal action will be taken when one or more of the following apply:

- ≡ The act or omission is not serious enough to warrant formal action
- ≡ The consequence of non-compliance will not pose a significant risk to public health
- ≡ Confidence in the individual/business management is high
- ≡ Past history indicates that informal action is likely to achieve compliance
- ≡ Other mitigating circumstances apply

When an informal approach is used, any written warning or notice of remedial action should contain the following information: date, time and location of the alleged offence, personal details of the alleged offender, the nature of the offence and relevant legislation. It should also contain all information to understand what work is required and the reasons. The warning should be signed and dated upon issuing by an authorised officer.

### 2.3 Fixed Penalty Notices

A Fixed Penalty Notice (FPN) will be issued to persons who have committed a relevant offence; full payment of the FPN will discharge the original offence for which the individual cannot then be prosecuted, provided that full payment is received within the specified time period.

FPNs provide enforcement agencies with an effective and visible way of responding to low level environmental crime. Experience has shown that the public generally welcomes the use of FPNs provided they are issued sensibly, enforced even-handedly and are seen as a response to a genuine problem.

FPNs will not normally be issued to juveniles (see Section 8) or to persons who are registered blind.

It is essential for the issuing of a Fixed Penalty Notice that the authorised officer collects adequate evidence to support any legal proceedings if the notice is returned unpaid.

The Council's standard approach will be to set the level of FPN's payable to the maximum set by statute (currently £80).

The Fixed Penalty Notice must contain the following information; date, time and location of the offence, personal details of the offender, the nature of the offence

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and relevant legislation, and be signed and dated upon issuing by an authorised officer.

The notice will clearly state that by opting to pay the fixed penalty the Council will take no legal action for the prescribed offence, providing that the payment is received within 14 days of the issuing of the notice.

### **2.4 Statutory Notices**

The Council has the option for some offences to issue statutory notices in lieu of prosecution, by serving notice and permitting works to be done in default thus enabling costs to be recovered by civil means.

Statutory notices will be issued as statute allows where one or more of the following apply:

- ≡ There is a significant contravention of the legislation
- ≡ The consequence of non-compliance could be potentially serious to public health
- ≡ There is a history of non-compliance with informal action
- ≡ There is evidence giving rise to lack of confidence in the individual or business to respond to an informal approach
- ≡ Although it is intended to prosecute, effective action also needs to be taken as quickly as possible to remedy conditions that are serious and deteriorating

Statutory notices will normally be served for the more serious issues or repeated contraventions and may also be issued in conjunction with prosecutions and FPNs.

Realistic time limits will be given for the compliance with statutory notices, where possible agreed with the individual/proprietor as attainable and appropriate.

Failure to comply with a statutory notice will normally result in the institution of legal proceedings. Officers must, therefore, have sufficient evidence available to justify their issue or work in default.

### **2.5 Formal/Simple Cautions**

The Council may consider the offer a formal or simple caution as an alternative to prosecution. The purpose of a formal caution is to;

- ≡ Deal quickly and simply with less serious offences
- ≡ Divert less serious offences away from the courts
- ≡ Reduce the chance of repeat offences

As with all types of enforcement action, the alleged offender will be required to supply the officer with their personal details. These details cannot be used to issue any other type of enforcement action for that offence; however they can be used in conjunction with future enforcement action.

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The decision whether to offer a formal caution or higher level enforcement action will relate to the nature of the offence and the attitude of the alleged offender.

The following conditions must be fulfilled before a caution is administered:

- ≡ There must be evidence of the alleged offenders guilt sufficient to give realistic prospect of conviction
- ≡ The alleged offender must admit the offence
- ≡ The alleged offender must understand the significance of a formal caution and give informed consent to be cautioned

If there is insufficient evidence to consider prosecution then a formal caution will not be considered.

There is no legal obligation for a person to accept the offer of a formal caution and not pressure should be applied to the person to accept one, however full information will be disclosed to offender as to the consequences of the refusal. If an offender refuses to accept formal caution, a prosecution will normally be pursued.

Formal cautions must contain the following information; date, time and location of the alleged offence, personal details of the alleged offender, the nature of the offence and relevant legislation. It must be signed and dated by an authorised officer and must be issued using a formal notice which also includes the signature of the offender agreeing to accept a caution.

The Deputy Director (Assets & Environment) or nominated deputy will be authorised to issue formal cautions.

### **2.6 Prosecution**

In certain cases prosecution through the courts may be the most appropriate course of action, or where other enforcement actions have had no effect. This will only be with due regard to the Enforcement Strategy principles.

Prosecution will likely follow when:

- ≡ A Fixed Penalty Notice is issued to an alleged offender is returned unpaid after the 14 day payment period
- ≡ An offence is of a size or nature where other enforcement actions are considered to be insufficient.
- ≡ Previous actions have failed and there is no option for other enforcement action
- ≡ The nature of the offence is deemed to be in the interest of the public
- ≡ The offence has a serious or significant impact on the environment

The Deputy Director (Assets & Environment) or nominated deputy is authorised to instigate legal proceedings after consideration by the Council's legal representatives.

### **3. Environmental Crime Incident Tickets**

Patrolling officers will be issued with environmental crime incident tickets to issue to offenders to inform them of an action being taken by the Council.

The tickets will be two page carbonated paper and allow the officer to note the offender's details, time, date and location and brief details of the offence committed and the action being taken. These tickets will not in themselves be a Fixed Penalty or other notice, but will be used to record and check information and allow the offender to understand the actions to be taken.

A copy of the incident ticket will be given to the offender and the top copy returned to the office with witness statement. The original ticket will be retained as evidence.

### **4. Issuing Fixed Penalty Notices and other enforcement actions**

Enforcement action will be retrospective to the alleged offence being committed.

**The Council's standard procedure will be to issue Fixed Penalty Notices Statutory Notices and Formal Cautions through the post. Delivery will be by recorded delivery or hand delivered.**

Informal actions, advice and records of visits and/or details of remedial actions will be placed for posting in accordance with existing policies or a record made of visit on site and handed to the individual/business owner.

It is therefore essential that the evidence and information collected by the authorised officer must be of an adequate standard to support any resultant legal action. (Section 5 applies)

### **5. Request for personal details by an Authorised Officer:**

Authorised officers have the power to require the name and address of a person who they believe has committed an offence. These personal details can then be used to pursue enforcement action against the alleged offender.

To avoid serving enforcement action using false details, the authorised officer will use all reasonable methods to confirm the details supplied by an alleged offender.

Failing to supply personal details, or giving a false name and address to an authorised officer is an offence, and carries level 3 fine (currently £1000) upon conviction. If a person fails to provide an authorised officer with personal details, the officer will take all reasonable steps to obtain information on that person.

Patrolling officers may ask for verification of ID in the form of driving licence, bank cards etc on site.

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Confirmation of identity can also be through the Electoral Register where personal details can be checked against the electoral roll (but this will not include juveniles), company records and school visits (juveniles). Where appropriate, assistance from partners may be required via use of CCTV or PNC checks. Upon confirmation of the alleged offender's personal details, the appropriate enforcement action can be taken.

Authorised officers, for the purposes of environmental crimes detailed will be all nominated staff of the Council.

### **6. Evidence**

Evidence is the key to the enforcement procedure. The recording and storage of this evidence must be carried out in a concise and consistent manner and in accordance with the Police and Criminal Evidence Act to ensure its admissibility in Court. Evidence collected by authorised officers will come in various forms, from various sources and, dependant on its quality, could be used in a variety of enforcement actions.

A locked evidence cupboard will be established with nominated key holders. All evidence will be clearly logged and recorded and held in accordance with provisions of the Data Protection Act 1998.

Evidence that is obtained by an authorised officer 'in the field' will be recorded contemporaneously in ink in a PACE notebook. All entries must be clear and precise.

Evidence obtained by use of Headcams or CCTV will be in accordance with existing policy and procedure.

Evidence may also be in the form of:

- ≡ **Addressed documents**  
Evidence gathered in relation to an offence, can come in the form of an addressed document, which may relate to the person believed to have committed the offence (eg when household waste is found to be fly tipped, an authorised officer will search the waste for any documentation which may relate to the person responsible).
- ≡ **Witness statement from an authorised officer**  
When enforcement action is taken against an alleged offender, where an authorised officer has witnessed the offence occurring, that officer will have to produce a witness statement.
- ≡ **Witness statement from other persons**  
Evidence received from members of the public can be used to issue formal cautions, Fixed Penalty Notices or other enforcement action. In order for the evidence to be of value the witness must be willing to attend court to give evidence, if that becomes necessary. Any statement made by a witness must be signed and dated by the witness and witnessed by the authorised officer at

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the time of taking of the statement. Statements will be recorded on forms prepared to comply with evidential procedures.

### ≡ Interview of alleged offenders

The Police and Criminal Evidence (PACE) Codes of Practice require any person interviewed regarding his involvement or suspected involvement in a criminal offence must be under caution, otherwise the evidence will be inadmissible in court. This caution must be carried out before any questions are put to the person suspected of the offence in regard to the offence. **PACE interviews will only be undertaken by trained persons and included in staff training plans.**

No juvenile (a person aged under 17) or mentally impaired person (as defined by Section 1A of the Mental Health Act 1983) should be interviewed without an appropriate adult being present. This could include parent, social worker or carer.

### ≡ Interviewing by letter

As a last resort it may be necessary to try to interview the suspect by way of correspondence. In this way it will be possible to write to the suspect under caution asking them relevant questions and giving them a time by which to reply.

## 7. Persistent Offenders

To ensure that the enforcement procedure is fair and consistent, persistent offenders will be dealt with as follows;

Where an informal action has been recorded on a previous occasion, and a further offence is committed on a separate occasion, no further warnings will be issued.

Where a formal caution has been issued on a previous occasion, and a further offence is committed on a separate occasion, no further cautions will be issued.

On acceptance of the caution, the alleged offender understands that any future infringement of the law will result in further enforcement action. In these cases the next likely course of action would be to institute legal proceedings.

A person may be issued with up to two Fixed Penalty Notices in total. If found to have infringed the law on a third separate occasion no further penalty notices will be served upon that person and court proceeding will be instigated.

## 8. Juveniles (person aged under 17)

When a juvenile is alleged to have committed an offence the name, address, age and date of birth of the suspected offender should be obtained, together with the name and address of his or her parent or legal guardian. Once the age of the offender has been ascertained, the correct course of action can then be followed.

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For offenders between 10 and 15 years old, DEFRA guidelines state that a fixed penalty should **not** normally be issued in the first instance.

The Council in conjunction with the Police and Project Turnaround, will continue a policy of education on environmental issues with school children, including targeted school warning and enforcement weeks. Young people regrettably commit environmental crime offences and therefore need to be considered in terms of what enforcement approach is appropriate to protect Tamworth's local environment without unduly and inappropriately jeopardising the interests and needs of local people.

Legally fixed penalty notice can be issued to anyone over the age of 10 and authorities are recommended to adopt special procedures for issuing notices to young offenders. This ensures that they are acting in accordance with their duty under the Children Act 2004; which requires that authorities have regard to the need to safeguard and uphold the welfare of children and to seek the introduction of a none financial, none criminal, restorative justice scheme as an alternative to FPN payment.

There is no existing enforcement policy designed specifically to address the issues associated with issuing fixed penalty notices to young people and ensure that we make every effort to deal with matters in the same way so that our approach is consistent and in line with the Enforcement Strategy.

To tackle the issue of environmental crime by young people we will introduce a restorative justice intervention scheme for 10-17 year olds, where there is an alternative option to the fixed penalty notice financial and/or Court action. A young person who is witnessed offending during specific school enforcement campaigns or during regular officer patrols and their parent, can now choose to join in a litter-pick facilitated by the Council, Staffordshire Young People's Service and Staffordshire Police as an alternative to the fixed penalty notice.

Young people who fail to respond to either the litter pick option or to payment of Fixed penalty payment following the prescribed process, will receive one final visit and letter from the Council reminding them of the consequences of the offence and offering a final chance of litter pick or payment . Following this, failure to respond to best efforts will result in prosecution.

We see this scheme as a positive way to reduce environmental crime without criminalising juveniles, whilst still ensuring the community can see that justice is being done.

For offenders aged 16 or 17 years old, a Fixed Penalty Notice can be issued using the same procedure as for adults.

### **9. Payment of Fixed Penalties**

When a Fixed Penalty Notice has been issued, the alleged offender has 14 days within which to make the full payment amount, or pay the discounted amount within 7 days.

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Payment of the fixed penalty notice will normally be made in one of three ways:

- ≡ by debit or credit card over the 'phone to the Council Offices
- ≡ by cheque through the post
- ≡ Via the PAY IT option on [www.tamworth.gov.uk](http://www.tamworth.gov.uk)

Payment of FPN by instalments will **not** normally be accepted. Instalments will only be allowed at the discretion of the Deputy Director (Finance, Exchequer and Revenues) where demonstrable hardship is proven.

### **10. Non-payment of Fixed Penalties**

When, after 5 working days after the 14 day period a Fixed Penalty Notice has not been paid, the alleged offender will be sent a reminder letter. This letter will state the terms of the penalty payment, and the fact that the deadline has now passed.

If a Fixed Penalty Notice remains unpaid for a period of 14 days after the payment deadline has passed, a file will be put together to enable legal proceedings be instigated. All unpaid penalties will be followed up by legal proceedings.

### **11. Authorisation**

The statutes enforced by the Council require that the enforcement officers are duly authorised.

Authorised officers will be either:

- i) an employee of the Council who is authorised in writing by the Council for the purpose of giving notices under the relevant legislation;
- ii) any person who, in pursuance of arrangements made with the Council, has the function of giving such notices and is authorised in writing by the Council to perform that function; or
- iii) any employee of such a person who is authorised in writing by the authority for the purpose of giving such notices.

It is essential that officers are correctly authorised, so as not to be challenged in court.

Authorised officers will be trained on how to gather evidence that will be in accordance with judicial requirements and on conflict avoidance techniques when dealing with alleged offenders.

The authorisation will identify the officer by name and position, will describe the legislation that the officer is authorised to enforce and will be signed by a delegated senior officer on behalf of the Council.

### **12. External Partners**

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The Council will seek support from Staffordshire Police, Tamworth Community Safety Partnership, Environment Agency, Keep Britain Tidy, DEFRA, Staffordshire County Council, other registered social landlords, local businesses for support in the deliver of this policy.

## 13. CORE OFFENCES

### 13.1 Pedestrian Litter

There is no formal definition of litter, however Section 87 of the Environmental Protection Act 1990 (as amended by the Clean Neighbourhoods and Environment Act (CNEA 2005) defines the offence of littering as the throwing down, dropping or depositing of litter on any land, including land covered by water, and leaving it. The land must be within the area of a principal litter authority and 'open to the air' (if the land is covered, but open to the air on at least one side, the offence only applies if the public has access to that land). Littering is an offence in public places as well as on private land unless the owner of that land has given permission for the dropping of the litter or a legal authorisation exists to do so. A litter offence can be prosecuted through a magistrates' court and carries with it a maximum fine of level four on the standard scale (currently £2,500).

The CNEA 2005 also makes it clear that litter includes smoking-related litter and discarded chewing gum.

Paragraph 2.1.5 of the Enforcement Strategy refers to the problem of littering. Enforcement action will therefore be taken on the first occasion an offence is witnessed being committed.

In every case where the action of littering has been witnessed or there is other firm evidence, the presumption will be to issue the FPN in lieu of prosecution.

The policy applies to dropped/thrown litter in ANY open place in Tamworth.

Offences observed on overt CCTV or via wardens headcams will be pursued where identity can be obtained.

On a case by case basis, authorised officers may, in accordance with the principles of the Enforcement Strategy choose to consider the placing of bags of rubbish (where evidence can be found) as littering. Public urination may also be regarded as a littering offence.

**In lieu of prosecution for a litter offence the alleged offender will be given the opportunity to discharge any liability to conviction for the offence by the payment of a fixed penalty to the maximum allowed by statute (currently £80) with a reduction to £50 if paid within 7 days**

### 13.2 Litter from Vehicles

Littering from vehicles and the subsequent problems on verges, highways and danger to animals is of major concern to the public.

There is no offence of littering from vehicles, only the offence of littering (see Section 2.1).

Officers witnessing litter thrown from vehicles must first establish the identity of the offender before issuing a FPN or taking other enforcement action.

Generally, offences may be seen by officers on overt patrol or in vehicles whilst following other road users during the course of their normal duties. The Council will also accept witness statements from members of the public or officers for investigation. Offences observed on overt CCTV or via wardens headcams in accordance with existing policies.

The Council is registered with the DVLA for access to registered vehicle details and will apply to all company and leased vehicles for investigatory purposes where an offence is believed to have taken place.

### **13.3 Abandoning a vehicle**

Under the Refuse Disposal (Amenity) Act 1978, a person commits an offence if they, without lawful authority, abandon on any land in the open air, or on any land forming part of a highway, a motor vehicle or anything that has formed part of a motor vehicle.

The CNEA 2005 allows local authorities to issue Fixed Penalty Notices to persons alleged to have committed such an offence.

There is no legal definition of an abandoned vehicle. Council authorised officers will check the following when forming decisions on abandonment using guidance issued by the Dept of Environment, Food and Rural Affairs (DEFRA)

- ≡ Valid road tax
- ≡ If there is a registered owner
- ≡ The roadworthiness of the vehicle
- ≡ Parked in a place likely to be a danger to other road users (Police immediate removal power)

Notice of immediate, 7 or 14 day removal will be issued after due consideration by authorised officers as to the location and state of a vehicle.

Vehicles can be removed immediately, but some must be stored for a certain length of time and notice served before disposal.

For vehicles that the local authority considers to have some value, the written notice period to the last registered keeper before a vehicle can be destroyed is seven days. The Council have the appropriate authority from the DVLA for this purpose.

Vehicles that the local authority considers to have no value can be destroyed immediately if it is thought that they have been abandoned. A local authority no longer has to wait for the expiry of a valid license and may destroy immediately any vehicle that it regards as only fit for destruction. In cases where it is not

evident that the vehicle has been abandoned, the vehicle can then be disposed of if the owner cannot be traced or fails to respond to a Notice.

Vehicles with some value that have been abandoned on the highway may be removed immediately by the local authority who then send a 21 day notice to the address of the last registered keeper (a subsequent notice of 14 days may be issued to enable the local authority to make further enquiries).

The Council reserves the right to recover costs of removal, storage and disposal from the person responsible for abandoning the vehicle.

Normally authorised officers will only be able to arrange for the removal of a vehicle from a highway or public land.

The Council may also issue a 15 day notice to the owner or occupier of the intention to remove abandoned vehicles on private land. The landowner or the occupier must agree with this removal. The Council reserve the right to recharge the cost of doing so to the occupier or registered keeper (if one has been identified). A notice is not required to be issued where a vehicle is abandoned on a road (within the meaning of the Road Traffic Regulation Act 1984) – that is, any length of highway or of any other road to which the public has access. In this case the vehicle can be removed immediately.

If found guilty of abandoning a vehicle on a highway or on land in the open air, a person can be fined up to £2,500 or a term of not exceeding three months imprisonment, or both.

**In lieu of prosecution for an abandoned vehicle offence, the Council will give an alleged offender the opportunity to discharge any liability to conviction for the offence by the payment of a fixed penalty of £200, reduced to £150 if paid within the first 7 days.**

#### **13.4 Nuisance vehicles**

The CNEA 2005 make it a new offence to leave **two or more** motor vehicles parked within 500 metres of each other on a road or roads where they are exposed or advertised for sale, **or to cause two or more motor vehicles** to be so left. This only applies to persons who are carrying out a business of selling motor vehicles.

The CNEA 2005 also makes it an offence to carry out restricted works (repair, maintenance, servicing, improvement or dismantling) on a motor vehicle on a road. This only applies to persons who are in the course of a business of carrying out restricted works or for gain or reward.

Authorised officers will only be able to take enforcement action, including the removal of a vehicle, for nuisance vehicles on a road. A person found guilty of a nuisance vehicle offence can be fined up to £2,500, or a term of not exceeding three months imprisonment, or both.

**There are very few instances of this offence in Tamworth, however, the right is reserved and where action is in accordance with the Enforcement Strategy that in lieu of prosecution for a nuisance vehicle offence, to give an alleged offender the opportunity to discharge any liability to conviction for the offence by the payment of a fixed penalty of £100, reduced to £75 if paid within the first 7 days.**

### **13.5 Dogs**

Regulation for offences relating to dog related offences is now dealt with under four Dog Control Orders as prescribed by the Clean Neighbourhoods and Environment Act 2005 effective from 1 August 2012.

#### **DOG FOULING AND DOGS ON LEAD BY DIRECTION ORDERS**

These Orders will apply to **all** land open to the air to which the public are entitled or permitted to have access (with or without payment) in the administrative area of Tamworth Borough Council including but not limited to parks, public open spaces and roads\*. Forestry Commission Land is exempt.

**Dog Fouling** - If a dog defecates at any time on land to which the Order applies and a person who is in charge of the dog at that time fails to remove the faeces from the land forthwith, that person will be guilty of an offence unless

- a) he has reasonable excuse for failing to do so; or
- b) the owner, occupier or other person or authority having control of the land has consented to his failing to do so.

**Dogs on Lead By Direction** - If a person fails to comply with a direction given him by an authorised officer of the Authority on any land to which this Order applies to put and keep a dog on a lead he shall be guilty of an offence if unless

- a) he has a reasonable excuse for failing to do so; or
- b) the owner, occupier or other person or authority having control of the land has consented (generally or specifically) to his failing to do so.

#### **DOGS ON LEADS AT ALL TIMES ORDER**

This Order will apply to all roads (including adjacent footpaths and verges)\* in the administrative area of Tamworth Borough Council. Forestry Commission Land is exempt.

The Order will also to apply to specified areas to include:

- ≡ Tamworth Borough Council cemetery land at Glascote, Wigginton, Willnecote and Amington,
- ≡ the pedestrianised areas of the town centre,
- ≡ St Edithas Church graveyard,
- ≡ the Top and Lower Lawn areas of the Castle Grounds
- ≡ Anker Valley Sports Pitches

The proposed Order will require persons in control of dogs to:

Keep a dog on a lead at all times on land to which the Order applies and a person who is in charge of the dog at that time who fails to do so will be guilty of an offence unless -

- a) he has reasonable excuse for failing to do so; or
- b) the owner, occupier or other person or authority having control of the land has consented to his failing to do so.

## **DOG EXCLUSION ORDER**

This Order will apply to land **SPECIFIED** as play areas and multi use games areas only in the administrative area of Tamworth Borough Council.

A person in charge of a dog shall be guilty of an offence if, at any time, he takes the dog onto, or permits the dog to enter or to remain on, any specified land to which this Order applies unless –

- a) he has a reasonable excuse for doing so: or
- b) the owner, occupier or other person or authority having control of the land has consented (generally or specifically) to his doing so.

## **EXEMPTIONS**

Dogs Fouling/Dogs Exclusion Orders will provide exemptions for a person who:

- a) is registered as a blind person in a register compiled under section 29 of the National Assistance Act 1948; or
- b) has a disability which affects his mobility, manual dexterity, physical coordination or ability to lift, carry or otherwise move everyday objects, in respect of a dog trained by a prescribed charity and upon which he relies for assistance.

Dog Exclusion Order will also provide exemption for a person who -

- a) is deaf, in respect of a dog trained by the Hearing Dogs for Deaf People (registered charity number 293358) and upon which he relies for assistance

## **CLARIFICATIONS**

For the purpose of these orders –

- a) a person who habitually has a dog in his possession shall be taken to be in charge of the dog at any time unless at that time some other person is in charge of the dog;
- b) an authorised officer of the Authority may only give a direction under the Dogs on Lead by Direction Order to put and keep a dog on a lead if such restraint is reasonably necessary to prevent a nuisance or behaviour by the dog likely to cause annoyance or disturbance to any other person on any land to which this Order applies or the worrying or disturbance of any animal or bird.

- c) each of the following is a “prescribed charity” (Dog Exclusion)
- (i) Dogs for the Disabled (registered charity number 700454);
  - (ii) Support Dogs (registered charity number 1088281);
  - (iii) Canine Partners for Independence (registered charity number 803680).

**In lieu of prosecution for the offence of failure to comply with any of the Dog Control Orders, when witnessed, the Council will give an offender the opportunity to discharge any liability for conviction for the offence by the payment of a fixed penalty of £80 reduced to £50 if paid within the first 7 days**

### **13.6 Fly Posting**

There is no formal definition of fly posting, although it is generally taken to be the display of advertising material on buildings and street furniture without the consent of the owner and contrary to the provisions of the appropriate legislation’. In simple terms they are illegal advertisements which can saturate an area within a matter of hours.

It is appropriate for a distinction to be drawn between, for example, a poster advertising a local community or charitable event and a poster advertising a commercial activity.

3(D) of the Town and Country Planning (Control of Advertisements) regulations allows the display of temporary notices or signs which are intended to advertise any local event being held for charitable purposes.

Advertisements within this category must not exceed 0.6 square metre in area (roughly 3 feet by 2 feet). In addition the advertisement must not be displayed more than 28 days before the event and must be removed within 14 days after it ends

1. The signs must be kept clean and tidy
2. The signs must be kept in a safe condition
3. The signs should have the permission of the asset owner
4. The signs should not obscure road signs.

Applications from charities or local organisations will be accepted on this basis, providing permission has been granted from the asset owner or landowner.

Staffordshire County Council do not normally allow the affixing of any kind of signage to their property, with the exception of some AA and RAC directional/event signage and house developers who must apply for the appropriate consent. We will endeavour to check permissions for these types of posters prior to any action being taken.

There are various legislative powers available to the Council for tackling fly posting problems. Each case will be considered with due regard to the principles of the Enforcement Strategy.

The Council will take appropriate action against those responsible for fly posting. In the first instance we will endeavour to make informal contact with offenders and request removal of items within 24 hours. Offenders will also be given advice on processes for application of legal advertising and signage and be made aware of the enforcement actions which can be taken. Failure to respond advice will result in further appropriate action.

Under Section 225, Town and Country Planning Act 1990, it is possible to remove any placard or poster displayed in contravention of the Town and Country Planning (Control of Advertisements) Regulations 1992. Notice is not required where the fly post does not identify the person who displayed it and where the person cannot be identified after enquiry. Where a person can be identified, two days notice must be given for the removal of illegal posters and placards. Failure to comply with a notice will result in removal of the signage with these costs being charged to the offender. The Council will seek to charge £25 per poster for removal of offending items.

Persistent offences and/or where an offender has had two notices of removal, the Council will seek to prosecute, with offenders upon conviction, subject to a fine of up to £2500.

The Anti-social Behaviour Act 2003 (ASBA 2003) allows the Council to serve Fixed Penalty Notices on persons who commit 'minor' graffiti or fly posting offences as an alternative to prosecution (except where the offence is racially or religiously motivated). The offences must be witnessed or substantial proof obtained as to the identity of the offender. The Council may also seek to serve FPNs on company directors who may have vicarious liability the fly posting advertising their products, company or event or beneficiary of any event advertised illegally. A FPN will be issued for every item occurrence of fly posting.

Failure to pay a FPN will result in prosecution, which can be considered on any of the following legislation:-

- ≡ Section 1 (1) Criminal Damage Act 1971  
A person who without lawful excuse destroys or damages any property belonging to another intending to destroy or damage any such property or being reckless as to whether any such property would be destroyed or damaged shall be guilty of an offence
- ≡ Section 131 (2) Highways Act 1980 \*  
If a person without lawful authority or excuse pulls down or obliterates a traffic sign placed on or over a highway or a milestone or direction post (not being a traffic sign) so placed is guilty of an offence
- ≡ Section 132 (1) Highways Act 1980 \*

A person who, without either the consent of the highway authority or an authorisation given by or under enactment or a reasonable excuse, paints or otherwise inscribes or affixes any picture, letter, sign or other mark upon the surface of a highway or tree, structure or works on or near a highway is guilty of an offence

*\* Staffordshire County Council is the Highways Authority and the Council have sought delegation of these powers as required*

- ≡ Section 222, Town & Country Planning Act 1990  
If any person displays and advertisement in contravention of the regulations he shall be guilty of an offence

**In lieu of prosecution for a fly posting or graffiti offence, the Council reserve the right with witness statement to give an alleged offender the opportunity to discharge any liability to conviction for the offence by the payment of a fixed penalty to the maximum allowed by statute (currently £80) reduced to £50 if paid within the first 7 days.**

The Anti-social Behaviour Act 2003 (ASBA 2003), as amended by the CNEA 2005, also allows the Council to serve a Defacement Removal Notice on owners, occupiers and operators of street surfaces of buildings and street furniture whose property is defaced with detrimental fly posting or offensive or detrimental graffiti, however this will be monitored on a case by case basis.

Defacement Removal Notices are not intended to be used as a “first response” to new cases of fly-posting – these should rather be dealt with using powers under the Town and Country Planning Act 1990 in order to hold the perpetrators/beneficiaries of illegal advertising responsible. Removal notices are an effective tool to use where surfaces are defaced by a build-up of flyers and stickers over time.

Relatively low levels of fly posting exist in Tamworth, and any landowner charged with a fly posting offence must prove that the advertisement was displayed without his knowledge or that he took all reasonable steps to prevent the display or to secure its removal.

At all times, the Council will agree a notice of removal for offending fly posting or graffiti within reasonable time frame agreed with the advertiser and/or land owner prior to taking action and will pursue this option on a case by case basis.

### **13.7 Graffiti**

The tackling of graffiti will continue to be monitored using ongoing processes in partnership with all Council services, Police and other partners. Offensive or racial graffiti will be removed from Council assets within 24 hours where practicable.

Tags are recorded and identified with the restorative justice approach being preferred by use of prosecution under the Criminal Damage Act. Wardens will

continue to identify offenders and each case will be assessed on a case by case basis.

The policy for the issue of FPNs will be as per fly posting in Section 13.6 under Anti-social Behaviour Act 2003 (ASBA 2003) and Defacement Removal Notices.

**In lieu of prosecution for a fly posting or graffiti offence, the Council reserve the right with witness statement to give an alleged offender the opportunity to discharge any liability to conviction for the offence by the payment of a fixed penalty to the maximum allowed by statute (currently £80), reduced to £50 if paid within the first 7 days.**

### **13.8 Fly Tipping**

There is no specific definition of fly-tipping other than that set out in section 33 of the Environmental Protection Act 1990, which says it is an offence in general terms, to treat, keep or dispose of controlled waste other than in accordance with an environmental permit or in a manner likely to cause pollution of the environment or harm to human health.

The offence may only be committed in relation to controlled waste, although nearly all wastes now qualify as controlled waste (household, commercial, industrial or clinical).

Illegal dumps of waste can vary in scale and the type of waste involved. Tipping a mattress, electrical items or a bin bag full of rubbish in the street causes a local nuisance, and tipping household items and small-scale building or garden waste in open spaces reduces their amenity value to the community.

The powers to deal with fly tipping incidents are shared between local authorities and the Environment Agency. The national Fly Tipping Protocol (agreed between the Environment Agency and LGA) gives guidance on which authority should take the lead in dealing with fly tips dependant on their size, composition and location.

Fly tipping education and awareness campaigns will be included in the education programme. Evidence found in fly tipped rubbish will be used to identify the owner. In the first instance (especially where household waste is identified and where practicable, the offender will be visited and an attempt made to return the rubbish (doorstepping) or asked to clear away the items supported by appropriate informal action.

Both the Council and the Environment Agency may serve a notice under the EPA1990 requiring the occupier of land to remove material fly tipped and/or reduce the consequences of the deposit of the fly tipped material. Occupiers of land can establish a statutory defence such as he did not knowingly permit the

material to be fly tipped on his land and the CNEA 2005 removes the defence of an offender acting under his employer's instructions.

The Council or the Environment Agency can also remove fly tipped material and recover their investigation and clean up costs of doing so from convicted fly tippers.

All incidents of fly tipping will be recorded and investigated (where practicable) within 3 working days. In the first instance evidence will be sought by officers and retained according to procedure.

The CNEA 2005 increased the penalty for a person found guilty of a fly tipping offence to up to £50,000, or a term not exceeding 5 years imprisonment for both hazardous and non-hazardous waste offences.

**Due to the serious crime that fly tipping represents, there is not an option to offer a fixed penalty payment in lieu of prosecution and other enforcement actions will be pursued in accordance with the principles of the Enforcement Strategy.**

Consideration will be made on a case by case basis, in accordance with available legislation, as to the appropriate action taken.

## **14 Duty of Care Offences**

Section 34 of the Environmental Protection Act 1990 sets out the waste duty of care that applies to anyone who imports, produces, carries, keeps, treats or disposes of controlled waste or, as a broker has control of such waste

Section 53 of the CNEA 2005 extends the powers to investigate illegal waste disposal or duty of care offences to authorised council officers.

### **14.1 Industrial and Commercial Waste**

It is an offence to place trade (industrial) or commercial waste into street or domestic litter bins and all businesses\* must have a trade refuse collection agreement with a contractor authorised to carry waste.

*\* exemptions apply for a business operating from a domestic address and for some residential care homes*

Private landlords who may manage residential houses in multi occupation and whose residents are not registered for Council Tax purposes will be required to register for trade waste agreements and control accumulations of 'commercial' rubbish arising from their premises.

The preferred approach with businesses will be to make formal visits and work with Economic Development to educate and inform in order to seek compliance. This will include encouraging businesses to sign up to the Tidy Business Pledge and achieve Keep Britain Tidy Business awards.

Businesses will receive advisory visits on a planned basis or as reports are received of waste and associated litter issues.

Businesses are legally obliged to keep **any** waste resulting from their activities safe whilst in their possession. The Council will seek to take action on the following duty of care offences:-

- **34 1 (b) Failing to take reasonable steps to prevent escape of controlled waste**

All businesses must ensure their waste is stored in appropriate containers so that it cannot fall out, blow away or escape. The waste should also be secured against unauthorised removal and secure from animals, vandals, thieves, accident or weather.

A record will be made of advisory visit with written warning and 14 days given to rectify the issue. Failure to act on the advice of authorised officers will, on a case by case basis and in accordance with the principle of the Enforcement Strategy result in further enforcement action.

- **34 1c Failing to take reasonable steps to ensure that a transfer of the waste is to an authorised person and accompanied by a waste transfer note**

Waste can only be passed on to an authorised person and the producer must retain a waste transfer note that sets out certain details of the waste.

Where offenders are identified, amendments to Section 34, by the CNEA 2005, make it an offence when a person has failed to carry out their duty to provide the necessary authority for transporting waste.

As part of the education process, businesses will be asked to provide the relevant waste transportation documents at the time of visit and the Council will allow that person 14 days within which to produce the documentation or provide proof that the a waste contract has been signed.

**If the documentation is not produced within 14 days and in lieu of prosecution for failing to produce the necessary authorisation for transporting waste, the Council will give an alleged offender the opportunity to discharge any liability to conviction for the offence by the payment of a fixed penalty of £300, reduced to £200 if paid within the first 7 days.**

A business or waste carrier found guilty of failing to provide the necessary authority for transporting waste can be fined up to £5,000 on prosecution.

## **14. 2 Householders**

Duty of care offences do not apply to householders domestic rubbish collection and other household waste arising from the operation of a business from a

domestic address when refuse is presented in accordance with Council waste and recycling policies. However duty of care does apply when disposing of excess waste over and above the normal permitted amount on domestic collections, eg the old washing machine, tv, sofa etc

Householders employing a contractor to remove waste from their property (such as garden or building waste) do, however, have a duty to take reasonable measures to ensure that their waste is passed on to an authorised person. The duty emphasises the responsibility that residents must not support illegal waste transfer and fly tipping, whether knowingly or unknowingly.

A process of education and awareness will be implemented as a preferred course of action.

Evidence found in fly tipped rubbish will be used to identify the owner. In the first instance, where practicable, the householder will be visited and an attempt made to return the rubbish (doorstepping) or asked to clear away the items.

## **15. Control of litter and refuse**

Some offences may occur that do not form part of the Core Offence list, but are still of a nature that could lead to the issuing of a Fixed Penalty Notice or a caution. The Council will seek to use these powers on a case by case basis to deal with waste and litter accumulations on private or public land or the street.

### **15.1 Waste Receptacles**

**Household** - Under the Section 46 of the EPA 1990 (as amended by interim legislation in May 2012), the Council can specify what materials can and cannot be placed in certain kinds of domestic waste receptacles (such as only residual waste in black sacks and only glass and cans in green boxes) and the location where residents must put their waste receptacles to facilitate waste collection. If the location is outside of the boundary of a property, the Council reserve the right to specify between what times the receptacles must be put out and taken back in.

The Council will adopt a policy that each kind of waste receptacle specified by the Council can only be used for the materials described in the Council's published waste sorting guides, in accordance with the Waste Management Strategy.

All waste receptacles must be left for collection at the edge of a property or agreed location and, where waste containers have to be left on the highway, containers should not be put out before 7am on day of collection and removed as soon as practicable on the day of collection.

**In lieu of prosecution for failure to comply with a Waste Receptacles Notice, the Council reserve the right to give an alleged offender the opportunity to discharge any liability to conviction for the offence by the**

**payment of a fixed penalty of £60, reduced to £40 if paid within the first 7 days.**

**Business** – Under Section 47 of the EPA the Council has the power to specify the type and number of waste receptacles needed to contain waste in accordance with Section 34 (duty of care) and where they should be placed to facilitate emptying, the substances or articles which should not be placed in them as well as the precautions that should be taken where particular substances or articles are placed in them.

Advice on the type and size of receptacles will form part of the advisory visits to businesses or as intelligence is received as to problems occurring.

The Council reserve the right to issue a Waste Receptacles Notice to a person who fails to comply with these specified requirements and a person found guilty of failing to comply with a notice can be fined up to £1,000. The CNEA 2005 introduces the use of fixed penalties for failure to comply with a Waste Receptacles Notice.

**In lieu of prosecution for failure to comply with a Waste Receptacles Notice, the Council reserve the right to give an alleged offender the opportunity to discharge any liability to conviction for the offence by the payment of a fixed penalty of £100, reduced to £75 if paid within the first 7 days.**

## **15.2 Powers to prevent littering**

In order to promote a proportional response and to work with local businesses, the approach of Tamworth Borough Council will be to promote the use of Tamworth Business Pledge and encouragement to obtain Keep Britain Tidy Business Awards in areas where street litter problems may occur largely due to the nature of the businesses eg fast food outlets.

Where possible, businesses will be educated and visited on an on going basis to encourage participation in preventative schemes, provision of bins etc. This process will be encouraged in close partnership with Environmental Protection to deter and prevent issues arising which may affect public health and the surrounding area including pest infestation.

On occasion, where an approach of informal agreement does not work, the Council will reserve the right to take action as required under a wide range of enforcement powers on a case by case basis.

### **15.2.1 Street Litter outside premises**

The EPA 1990 allows the Council to tackle street litter generated through the activities on adjacent premises, by serving Street Litter Control Notices on businesses. These notices are specifically designed to help deal with food and drink packaging and other litter from 'fast food' outlets or litter from cash machines.

The CNEA 2005 extends the use of these notices to include mobile operations, such as burger vans, and introduces the use of fixed penalties for failure to comply with a notice.

The Council reserve the right to serve a notice on a business who fail to comply with informal agreement, which requires them to clear up the litter and implement measures to prevent the land from becoming defaced again. A person found guilty of failing to comply with a Street Litter Control Notice can be fined up to £2,500.

**In lieu of prosecution for failing to comply with a Street Litter Control Notice, the Council will give an alleged offender the opportunity to discharge any liability to conviction for the offence by the payment of a fixed penalty of £100, reduced to £75 if paid within the first 7 days.**

### **15.2.2 Controlling the Distribution of free literature**

The CNEA 2005 gives local authorities the power to control the distribution of free literature by designating areas of their own land or highways where free literature is only permitted with their consent. These powers have yet to be adopted by the Council.

The process of street designation will require work with Staffs County Council who are the highways authority. At that time anyone distributing free material in a designated area without consent (except charities or for political purposes) is committing an offence and, if found guilty, could be fined up to £2,500.

**The Council will consider complaints received about the distribution of free literature and assess whether it is appropriate to make an order to restrict the distribution of free literature. If such an order were to be made, in lieu of prosecution for a distribution of free literature offence, the Council will give an alleged offender the opportunity to discharge any liability to conviction for the offence by the payment of a fixed penalty of £75, reduced to £50 if paid within the first 7 days.**

The Council will continue to advise any persons/businesses who distribute free literature in the town that excess litter caused as a result may result in the issue of a Fixed Penalty Notice (Section 2.1 Litter refers)

### **15.3 Clearing of Litter and Refuse on Private Land**

There are a range of measures that the Council may employ to require the clearance of land and the actions required must be reviewed on merit and in accordance with the Enforcement Strategy.

Litter Clearing Notices can be considered by the Council if an informal advisory approach fails where land has become defaced by litter and refuse and this is seen as detrimental to the amenity of the area. These Notices have been introduced by the CNEA 2005 and replace the Litter Control Areas created by the EPA 1990 (Sections 92A-C including 94A).

Litter Clearing Notices are used where local authorities do not have a duty to clear litter and refuse, most commonly private land. The Council is able to specify the areas and the standard to which the land must be cleared. If the land is not cleared satisfactorily, the Council can enter the land, clear it itself and recover the costs of doing so. A person found guilty of failing to comply with a Litter Clearing Notice can be fined up to £2,500 upon conviction.

**Cases will be considered on their own basis and in lieu of prosecution for failing to comply with a Litter Clearing Notice, the Council can give an alleged offender the opportunity to discharge any liability to conviction for the offence by the payment of a fixed penalty of £100, reduced to £75 if paid within the first 7 days and seek to charge the offender for the clear up.**

#### **15.4 Other appropriate powers**

The Council may also seek to take action to tackle litter and refuse on private land by use of the following statutes on a case by case basis for which action will be in accordance with the Enforcement Strategy.

Section 59 Environmental Protection Act 1990  
Part III (Statutory Nuisance) Environmental Protection Act 1990  
Section 215 Town and Country Planning Act (in partnership with the Planning Dept)  
Section 22 (3) Control of Pollution Act 1974  
Section 78 Public Health Act 1936  
Section 34 Public Health Act 1961  
Section 6 Refuse Disposal (Amenity) Act 1978  
Section 4 Prevention of Damage by Pests Act 1949

#### **16. Abandoned Shopping and Luggage Trolleys**

Abandonment of shopping trolleys is not a major issue in Tamworth and informal arrangements with retailers exist for their recovery.

The Council can choose to adopt powers under Section 99 of the EPA 1990 to seize, store and dispose of shopping and luggage trolleys found in its area should there be a requirement for this. There are prescribed consultation procedures that must be followed before the powers can be adopted.

If the powers were adopted, the Council would be required to notify the trolley owner within 14 days of it being seized and keep the trolley for at least 6 weeks.

At the end of that period the Council could sell or dispose of the trolley and charge the person who appears to be the owner an amount to cover the removal, storage, administration and disposal costs. There are no provisions for issuing FPNs for abandoned trolleys.

The level of the occurrence will be monitored with a view to adoption of these powers if necessary.