

ENVIRONMENT AND WASTE POLICY DEVELOPMENT GROUP

MEETING, 6TH NOVEMBER, 2017

Present – Councillors Irving (Chairman), Chadwick, Critchley, Peel, Sherrington, Whitehead and P. Wild.

Officers

Mr P. Green	Assistant Director, Economic Development and Regeneration
Ms K. Hopkins	Interim Assistant Director, Environmental Services
Mr P. Watson	Principal Environmental Health Officer
Ms G. Harrison	Special Projects Officer
Mr A. Bolan	Environmental Education and Enforcement Manager
Mrs. S. Bailey	Principal Democratic Services Officer

An apology for absence was received from Councillor Richardson

Councillor Irving in the Chair

3. MINUTES

The minutes of the proceedings of the meeting of the Policy Development Group held on 25th July, 2017 were submitted and signed as a correct record.

4. CIVIL PENALTIES UNDER THE HOUSING AND PLANNING ACT 2016

The Director of Place submitted a report which sought the views of members on proposals to introduce the use of civil penalties under the Housing and Planning Act 2016.

By way of background information, members were advised that the Housing and Planning Act 2016 had introduced a range of measures which would allow local authorities to impose a civil penalty as an alternative to prosecution for certain housing offences. These included:

- failure to comply with an Improvement Notice;
- offences in relation to the licensing of Houses in Multiple Occupation;
- offences in relation to the licensing of houses under Part 3 of the Act;
- offences of contravention of an overcrowding notice; and
- failure to comply with management regulation in respect of Houses in Multiple Occupation.

The powers came into force on 6th April, 2017 and would not be applicable to offences committed before that date.

Members were advised that a civil penalty could be issued as an alternative for each separate breach of the Houses in Multiple Occupation management regulations but only one civil penalty could be issued for failing to comply with an Improvement Notice. It could not be used for the breach of Prohibition Order as this was considered a more serious offence and likely to be dealt with by means of a criminal prosecution.

The report went on to explain the enforcement process for imposing a civil penalty as set in Schedule 13A of the Housing Act 2004. The Authority would be required to give a notice of intent to impose a financial penalty which must be done no later than 6 months after the Authority had sufficient evidence of the conduct to which the penalty related. The person would then have 28 days to make any written representations. After this period, the Authority would need to decide whether or not to impose the penalty and must decide on the amount. This must be done in the form of a final notice with a requirement for the penalty to be paid within 28 days.

The report went on to outline the factors that must be taken into account when setting the civil penalty level. These included severity, culpability and track record of offender, harm caused to tenant, punishment of offender, deterrent value to prevent offender from repeating the offence and others from committing similar offences and removal of any financial benefit obtained from committing the offence. Further details of how these would be assessed and banded were outlined in the report.

The maximum penalty was set at £30,000 with no minimum penalty specified. It was proposed to follow the DCLG guidance matrix for penalty levels which had been discussed and agreed at the Greater Manchester Private Sector Housing Group, as follows:

- Band 1 - £0 – £4999
- Band 2 - £5,000 – £9,999
- Band 3 - £10,000 – £14,999
- Band 4 - £15,000 – £19,999
- Band 5 - £20,000 – £24,999
- Band 6 - £25,000 - £30,000

The report also outlined the review and appeals process open to a person who received a final notice. Income received from the civil penalty could be retained by the Local Authority provided that it was used for further statutory functions in relation to enforcement activities covering the private rented sector. Debt accrued through non-payment of the penalty could be secured against the

property via a land charge. This increased the risk of having to write off the debt if it could not be recovered.

Mr P. Watson and Ms G. Harrison gave a presentation to supplement the report.

Following consideration of the report and presentation, members made various comments/observations:

- concerns that tenants would be afraid to report issues even though they had the right to do so;
- the need to provide education to members of the public on their rights under the Act;
- the process would enable higher levels of fines to be imposed than the current prosecution process and would provide a greater deterrent to offenders; and
- the Council would still have the option to pursue prosecution for serious cases.

It was agreed that the Executive Cabinet Member for Environmental Services be recommended to adopt the use of civil penalties under the Housing and Planning Act 2016, on the basis now detailed, and to approve the associated fee structure, as proposed in the report now submitted.

5. COMPULSORY REQUIREMENT TO CARRY THE MEANS TO CLEAN UP AFTER YOUR DOG – PUBLIC SPACE PROTECTION ORDER

Mr A. Bolan gave a presentation on options available to the Local Authority to adopt new compulsory measures to ensure dog walkers were equipped with the means to clean up after their pets.

Members were advised whilst the majority of dog owners were responsible and cleaned up after their pets, there were still a minority of owners who continued to cause a problem.

It was currently against the law to allow a dog to foul in a public place and make no attempt to clean up. It was the responsibility of the dog owner or the person in charge at the time to clean up any dog fouling left by their dog. Being unaware that the dog had fouled or that they did not have suitable means of removing the faeces available at the time, were not reasonable excuses for failing to clean up.

Current measures to address the problem by the Council had included the introduction of the Fouling of Land by Dogs Control Order 20017 which incurred an £80 fixed penalty and covered:

- all highways in the Borough;
- footpaths, bridleways and carriageways (both adopted and unadopted);
- land owned or managed by Bolton Council within the geographical boundary of Bolton;
- country parks;
- sports playing fields;
- amenity areas;
- open spaces;
- parks;
- children's play areas; and
- recreation areas.

Other measures included a zero tolerance policy against dog fouling with lamppost signage and leaflets. Work was also ongoing with partners to educate and promote responsible dog ownership in Bolton with free microchipping events, dog ownership packs, veterinary health checks and free neutering of at risk dogs.

The presentation then went on to outline new options available to the Council using the Anti-Social Behaviour Crime and Policing Act 2014 to create a Public Spaces Protection Order to deal with a particular nuisance in a particular area that was having a detrimental effect on the quality of life for those in the local community. Failure to comply with a Public Spaces Protection Order was an offence which could result in a Fixed Penalty Notice or up to £1000 on prosecution.

An Order must not be effective for more than three years and the Authority must consult with the chief officer of the Police and the Local Policing Body as well as undertaking public consultation. Members were informed of other authorities that had adopted the powers and had faced criticism from members of the public and some dog related organisations.

If such an Order was to be agreed, there would be a need for education, publicity and awareness of the rules, responsibilities and consequences.

The presentation outlined the advantages and disadvantages of adopting such an Order and sought members' views in this regard.

Following the presentation, members made a number of comments/observations:

- the difficulties involved in enforcing such an Order;
- the wrong people may be targeted and otherwise responsible owners may be penalised on technicalities;
- the need for increased use of public intelligence and reporting of offenders;

- all enforcement officers were trained to prosecute various offences, including incidents of dog fouling;
- increased publicity on existing legislation and penalties for dog fouling offences;
- the difficulties in weighing up the negative impact of an Order against the positive effects of the deterrent;
- the major safety risks that dog fouling posed to children and the need to protect them; and
- the Order could target the wrong people and may be heavy handed.

It was agreed that the views of the PDG be submitted to the Executive Cabinet Member for Environmental Services for consideration.

(The meeting started at 5.00pm and finished at 6.00pm)