

EXECUTIVE - 22 MARCH 2018

THE CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT 2005

Executive Summary

The purpose of this report is to seek officer delegation in respect of Part 2 of the Clean Neighbourhoods and Environment Act 2005 and to agree the level of penalty to be fixed respectively to enable authorised officers to issue fixed penalty notices for nuisance parking offences relating to a business selling motor vehicles from the public highway.

It is likely that these provisions would be used by exception and at this time the remaining provisions of the Clean Neighbourhoods and Environment Act 2005 have been superseded with appropriate authority already delegated to officers for normal enforcement regimes.

Reasons for Decision

The introduction of a fixed penalty notice scheme for businesses selling motor vehicles from the public highway offences is considered a necessary and proportionate response to the current environmental issues facing the Council.

Recommendations

The Executive is requested to:

RECOMMEND to Council That

- i) **the Council issue fixed penalty notices for offences under Part 2 of Section 3 of the Clean Neighbourhoods and Environment Act 2005;**
- ii) **the level of fixed penalty notices shall be set at £100 per penalty notice where it is considered that a person has committed an offence under Part 2 of Section 3 of the Clean Neighbourhoods and Environment Act 2005;**
- iii) **authority be delegated to the Assistant Director (Place), in consultation with the Portfolio Holder for Environmental and Well Being Services, to vary all environmental fixed penalty notice charges in accordance with the legislation; and**
- iv) **authority be delegated to the Assistant Director (Place) to authorise any persons to issue fixed penalty notices for an offence under Part 2 of Section 3 of the Clean Neighbourhoods and Environment Act 2005.**

This item will need to be dealt with by way of a recommendation to the Council.

Background Papers:

Sustainability Impact Assessment
Equalities Impact Assessment

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1.0 Introduction

- 1.1 The Clean Neighbourhoods and Environment Act 2005 received Royal Assent on 7 April 2005. Secondary legislation was required for many of the measures contained within it and a full consultation process was undertaken. Secondary legislation and guidance came into effect on 6 April 2006.
- 1.2 With the exception of the authority sought within this report there is no further authority required under the provisions of the Clean Neighbourhoods and Environment Act 2005.
- 1.3 A fixed penalty notice offers the offender the opportunity to discharge their liability by accepting a fixed penalty notice instead of prosecution.
- 1.4 It is intended that fixed penalty notices will typically be used by officers to address ongoing problems of a business (and individuals e.g. directors) using the road as a showroom for the sale of vehicles.

2.0 Background and Proposal

- 2.1 The sale of vehicles by a business on highway road is not common but where this practice is observed this can be a considerable inconvenience to local residents and officers would always seek to communicate directly with such individuals in the first instance.
- 2.2 Where it is confirmed that an offence is being committed under Part 2, Section 3 of the Clean Neighbourhoods and Environment Act 2005 to park motor vehicles on a road or roads where such vehicles are parked merely for the purposes of a business of selling motor vehicles.
- 2.3 The requirement is that there are two or more motor vehicles parked within 500m of each other on a road where they are exposed or advertised for sale for the purposes of a business of selling motor vehicles if the offence is to be committed.
- 2.4 The offence is not intended to apply to an individual seeking to secure private sale so Part 2 Section 3 of the Act is critical in referring to actions otherwise than acting for the purpose of a business of selling motor vehicles.
- 2.5 A person guilty of an offence under Part 2 Section 3 of the Act, is liable on summary conviction to a fine up to level 4 on the standard scale, currently £2500.
- 2.6 'Road' is defined in the Act to have the same meaning as in the Road Traffic Regulation Act 1984 namely:-

"any length of highway or of any other road to which the public has access, and includes bridges over which a road passes".
- 2.7 'Motor vehicle' is defined in the Act to have the same meaning as in the Refuse Disposal (Amenity) Act 1978 namely:-

"a mechanically propelled vehicle intended or adapted for use on roads, whether or not it is in a fit state for such use, and includes any trailer intended or adapted for use as an attachment to such a vehicle, any chassis or body, with or without wheels, appearing to have formed part of such a vehicle or trailer and anything attached to such a vehicle or trailer".

The Clean Neighbourhoods and Environment Act 2005

- 2.8 The Act allows any person authorised by a Local Authority who has reason to believe that a person has committed an offence under Section 3 (exposing vehicles for sale on the road) in the area of that authority to give that person a fixed penalty notice instead of prosecution. If the person served with the fixed penalty notice fails to pay it within 14 days, the only sanction is for the Local Authority to consider prosecution for the original offence. No prosecution may be instigated if the fixed penalty notice is paid.
- 2.9 Part 2, Section 7 of the Act also makes provision for an additional power available to Local Authority officers to demand names and addresses when issuing fixed penalty notices. This further offence under Section 7 attracts a fine of up to £1000 on summary conviction if a person refuses to give the information or gives false information.
- 2.10 £100 is the proposed amount of the penalty under Part 2 Section 6(8) of the Clean Neighbourhoods and Environment Act 2005 although Section 6(9) allows an amendment of that amount by order.
- 2.11 There is nothing specifically in the Act referring to a continuing or daily offence. However, where officers observe an offence on a daily basis we do not consider it unreasonable of the Council to issue a further fixed penalty notice. An offence is committed whether it be two or twenty vehicles. We would therefore only issue one fixed penalty notice for each offence, not per vehicle.
- 2.12 The fixed penalty notice should be served on the person/director of the business selling the motor vehicles.
- 2.13 As the offence is taking place in the Borough we would expect the fixed penalty notice to be personally served to avoid any potential difficulties in the event of non-payment and the person saying they did not receive it.
- 2.14 Each potential offence need to be investigated thoroughly to be certain that an offence has been committed before we issue the fixed penalty notice. It shall be a defence if the person can prove to the satisfaction of the court that he was not acting for the purposes of a business of selling motor vehicles.
- 2.15 'Local Authority' is defined at Part 2 Section 9 to mean a district or county council in England. Authorised officer is also defined at Section 9 to mean an employee of a local authority who has been authorised in writing by the authority for the purposes of giving notices under Section 6 of the Clean Neighbourhoods and Environment Act 2005.

3.0 Proposal

3.1 It is proposed that Council:

- Endorses the issuance of fixed penalty notices for offences under Part 2 of Section 3 of the Clean Neighbourhoods and Environment Act 2005;
- Sets a fixed penalty amount of £100 per penalty notice where it is considered that a person has committed an offence under Part 2 of Section 3 of the Clean Neighbourhoods and Environment Act 2005;
- Delegates to the Assistant Director (Place), in consultation with the Portfolio Holder for Environmental and Well Being Services, the ability to vary all environmental Fixed Penalty Notice charges in accordance with legislation; and

The Clean Neighbourhoods and Environment Act 2005

- Delegates to the Assistant Director (Place) the ability to authorise any persons to issue fixed penalty notices for an offence under Part 2 of Section 3 of the Clean Neighbourhoods and Environment Act 2005.

4.0 Implications

Financial

- 4.1 The use of fixed penalty notices has the potential of yielding a modest income. In accordance with the Regulations, fixed penalty notice receipts will be used for the purpose of exercising functions to improve street cleanliness and enforcement of offences; it is not being regarded as an 'income generator'.
- 4.2 It is not envisaged that the revenue generated from the fines will be significant, but it will reduce the need to pursue costly prosecution in some cases and enable a more flexible approach in dealing with specific offences under the Clean Neighbourhoods and Environment Act 2005.

Human Resource/Training and Development

- 4.3 The implementation of one additional fixed penalty option will have no significant impact on current departmental resources.

Community Safety

- 4.4 There are no adverse community safety implications. Improvements to personal accessibility and the wider public realm are likely to have a positive effect upon access and public safety.

Risk Management

- 4.5 All Authorised Officers are fully trained and competent in serving fixed penalty notices. Any new staff will be assessed to ensure that relevant training is provided in relation to enforcement and the serving of fixed penalty notices.

Sustainability

- 4.6 Implementation of the proposal will aim to reduce nuisance to local residents by inappropriate use of the public highway.

Equalities

- 4.7 The proposals set out in the report have been the subject of an Equality Impact Assessment and no adverse implications have been identified.

5.0 Consultations

- 5.1 The Portfolio Holder for Environmental and Well Being Services has been consulted in the drafting of this report.

6.0 Conclusions

- 6.1 The introduction of a fixed penalty notice for the sale of vehicles by a business on the road is considered a necessary and a proportionate response to the issues experienced by local residents and will equally save the time and expense of instigating prosecutions through the courts.

6.2 The recommended level of fine at £100 is a proportionate response in this case and appropriate use of powers available to the Council.

REPORT ENDS

EXE18-003

APPENDICES

Equality Impact Assessment

The purpose of this assessment is to improve the work of the Council by making sure that it does not discriminate against any individual or group and that, where possible, it promotes equality. The Council has a legal duty to comply with equalities legislation and this template enables you to consider the impact (positive or negative) a strategy, policy, project or service may have upon the protected groups.

		Positive impact?			Negative impact?	No specific impact	What will the impact be? If the impact is negative how can it be mitigated? (action) THIS SECTION NEEDS TO BE COMPLETED AS EVIDENCE OF WHAT THE POSITIVE IMPACT IS OR WHAT ACTIONS ARE BEING TAKEN TO MITIGATE ANY NEGATIVE IMPACTS
		Eliminate discrimination	Advance equality	Good relations			
Gender	Men					X	
	Women					X	
Gender Reassignment						X	
Race	White					X	
	Mixed/Multiple ethnic groups					X	
	Asian/Asian British					X	
	Black/African/Caribbean/Black British					X	
	Gypsies / travellers					X	
	Other ethnic group					X	
Disability	Physical					X	Vulnerable person's definition to be considered.
	Sensory					X	
	Learning Difficulties					X	
	Mental Health					X	

Sexual Orientation	Lesbian, gay men, bisexual					X	
Age	Older people (50+)					X	
	Younger people (16 - 25)					X	
Religion or Belief	Faith Groups					X	
Pregnancy & maternity						X	
Marriage & Civil Partnership						X	
Socio-economic Background						X	
Carers						X	

The purpose of the Equality Impact Assessment is to improve the work of the Council by making sure it does not discriminate against any individual or group and that, where possible, it promotes equality. The assessment is quick and straightforward to undertake but it is an important step to make sure that individuals and teams think carefully about the likely impact of their work on people in Woking and take action to improve strategies, policies, services and projects, where appropriate. Further details and guidance on completing the form are [available](#).

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Sustainability Impact Assessment

Officers preparing a committee report are required to complete a Sustainability Impact Assessment. Sustainability is one of the Council's 'cross-cutting themes' and the Council has made a corporate commitment to address the social, economic and environmental effects of activities across Business Units. The purpose of this Impact Assessment is to record any positive or negative impacts this decision, project or programme is likely to have on each of the Council's Sustainability Themes. For assistance with completing the Impact Assessment, please refer to the instructions below. Further details and guidance on completing the form are [available](#).

Theme (Potential impacts of the project)	Positive Impact	Negative Impact	No specific impact	What will the impact be? If the impact is negative, how can it be mitigated? (action)
Use of energy, water, minerals and materials			X	
Waste generation / sustainable waste management			X	
Pollution to air, land and water			X	
Factors that contribute to Climate Change			X	
Protection of and access to the natural environment	X			Clean and safe environment
Travel choices that do not rely on the car			X	
A strong, diverse and sustainable local economy	X			Improved aesthetics
Meet local needs locally			X	
Opportunities for education and information	X			Enforcement and education
Provision of appropriate and sustainable housing			X	
Personal safety and reduced fear of crime	X			Clean and safe environment
Equality in health and good health			X	
Access to cultural and leisure facilities			X	
Social inclusion / engage and consult communities			X	
Equal opportunities for the whole community			X	
Contribute to Woking's pride of place	X			Clean and safe environment