

PROPOSED RESTRICTIONS TO CONTROL THE REPAIR OF VEHICLES

ON THE PUBLIC HIGHWAY

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 repairing a car on the road in the course of a business.

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by exception and at this time the remaining provisions of the Clean Neighbourhoods and Environment Act 2005 have been superseded with appropriate authority already delegated to officers for normal enforcement regimes.

Recommendations

The Executive is requested to:

RECOMMEND TO COUNCIL That

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 4 of the Clean Neighbourhoods and Environment Act 2005.

Reasons for Decision

Reason: The proposed penalty of £100 is in accordance with the requirements of the Clean Neighbourhoods and Environment Act 2005.

The item above will need to be dealt with by way of a recommendation to Council.

Background Papers: None.

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Proposed Restrictions to Control the Repair of Vehicles on the Public Highway

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Proposed Restrictions to Control the Repair of Vehicles on the Public Highway

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 The Clean Neighbourhoods and Environment Act 2005 introduces a new offence of carrying out restricted works on a motor vehicle on a road.
- 1.4 A fixed penalty notice offers the offender the opportunity to discharge their liability by accepting a fixed penalty.
- 1.5 It is intended that fixed penalty notices will typically be used by officers to address ongoing nuisance resulting from repairs to cars on the road in the course of a business.

2.0 Background and Proposal

- 2.1 Repair of vehicles by a business for gain or reward on the road is not common but where this practice is observed this can be a considerable inconvenience to local residents. Repairing vehicles on the road can be a safety hazard particularly if the car is left on its jack for long periods of time. Oil may also leak from the vehicle leading to permanent damage to the road.
- 2.2 Where it is confirmed that an offence is being committed under Part 2, Section 4 of the Clean Neighbourhoods and Environment Act 2005 to repair a car on the road in the course of a business, officers would always seek to communicate directly with such individuals in the first instance.
- 2.3 A person who carries out "restricted works" on a motor vehicle on a road is guilty of an offence.
- 2.4 Restricted works includes:-
 - repairing, maintenance, servicing, improvement or dismantling of a motor vehicle or of any part of or accessory to a motor vehicle; and
 - works for the installation, replacement or renewal of any such part or accessory.
- 2.5 Only businesses or those carrying out restricted works for gain or reward will be guilty of this offence unless the activity gives reasonable cause for annoyance to persons in the vicinity. There is a statutory defence if a person can prove that the works were being carried out within 72 hours following an accident or breakdown. Roadside assistance organisations or mechanics repairing broken down vehicles at the roadside are exempt as long as the work is completed within 72 hours.
- 2.6 Businesses that repair vehicles on the road and cannot prove the repairs are being carried out within 72 hours of an accident or breakdown will be sent a warning letter in the first instance.
- 2.7 '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".

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2.8 '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”.

2.9 The Act allows any person authorised by a Local Authority who has reason to believe that a person has committed an offence under section 4 (repair of vehicles on the road) in the area of that authority to give that person a notice offering him the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty notice. If the person served with the fixed penalty notice fails to pay within 14 days, the Local Authority may consider prosecution. A prosecution may not be instigated if the fixed penalty notice is paid.

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 A person found guilty of an offence under Part 2 section 4 of the Act, is liable on summary conviction to a fine up to level 4 on the standard scale, currently £2,500.

2.12 If the offence continues we will also consider prosecution. Fixed penalty notices will be offered for first offences only.

2.13 Part 2, section 7 of the Act also makes provision for an additional power available to Local Authority officers to require the name and address of an offender when the officer proposes to issue a fixed penalty notice. This further offence under section 7 attracts a fine of up to £1000 on summary conviction if a person fails to give the information or gives false information.

2.14 '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:

- 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 4 of the Clean Neighbourhoods and Environment Act 2005.

4.0 Implications

Financial

4.1 Whilst 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.

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.

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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.

Safeguarding

- 4.8 There are no safeguarding issues arising from this report.

5.0 Consultations

- 5.1 The Portfolio Holder for Environment has been consulted in the drafting of this report.

6.0 Conclusions

- 6.1 The introduction of a fixed penalty notice for carrying out restricted works on a motor vehicle on a 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