

# **Report to Environment & Planning Scrutiny Panel**

**Date of meeting: 6 December 2007**

**Subject: Clean Neighbourhoods & Environment Act (CNEA)  
Rogers Review 2005**



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## **Recommendations:**

- (1) To receive the report of the Cleaner Neighbourhoods and Rogers Review sub group; and**
- (2) To consider the recommendations of the sub group as follows:**
  - (a) that the enforcement priorities for the Council be agreed as set out in the table in paragraph 6 and that in the context of street scene services Crime & Disorder matters should also be included as an enforcement priority;**
  - (b) that enforcement activities falling outside of these priorities be further reviewed;**
  - (c) that the general findings of the Encams Local Environmental Quality report be accepted;**
  - (d) that existing partnerships be reviewed and where appropriate new ones established to enable the full suite of Cleaner Neighbourhoods powers to be utilised; and**
  - (e) that the use of fixed penalty notices be endorsed as part of a revised enforcement strategy, including the use of the Essex Police Community Safety Accreditation Scheme.**

## **Report**

### **Background**

1. The Panel at a meeting earlier in the year resolved to establish a sub group of Members to consider the implications and best use of the Cleaner Neighbourhoods & Environment Act 2005. That group comprised Cllrs Mrs Smith, Mrs Sartin, Mrs Whitehouse and Angold-Stephens and met for the first time on 18 October 2007. Officers present were J Gilbert (Director of Environment & Street Scene) and J Nolan (Environmental Health Manager).
2. At that first meeting the sub group considered:
  - (i) the Rogers Review of enforcement priorities;
  - (ii) an outline of the Cleaner Neighbourhoods legislation and where it sat in relation to the Rogers Review priorities; and
  - (iii) delivery of appropriate services.

Copies of the supporting papers are attached as appendices to this report.

### The Rogers Review

3. Peter Rogers is the Chief Executive of the London Borough of Westminster and he was commissioned by the government to investigate local authorities' enforcement roles and how they established priorities. The commissioning of this report was welcomed by councils who were becoming increasingly concerned about additional regulatory burdens being placed upon them at a time of increasing downward pressure on resources.

4. Rogers produced a report earlier this year, the conclusions of which were presented to and discussed in part by the Panel at its meeting on 26 April 2007. Rogers undertook an evidence based review of enforcement priorities in order to establish national and local priorities, as well as setting out those issues which he considered to be low priority. It should be noted that some of the low priority issues are statutory functions, but the degree to which they are undertaken can be determined by the individual authorities. The then Minister for the Cabinet Office, Hilary Armstrong stated in a letter to local authorities dated 2 May 2007:

*"This report should not be used as a justification for reducing budgets or resource allocations to services, but rather for improving local authorities' effectiveness. The evidence gathered by this Review on a range of regulatory policy areas will be enormously helpful to local authorities when considering what their local priorities should be for regulatory services."*

5. The Group carefully considered the outcome of the Roger's Review and concluded that it agreed with most of the outcomes. It considered that a number of the lower priorities in the Review were in fact important to the District, especially matters such as litter, taxi licensing and fly-tipping. The Group thought that these could sensibly be considered as part of "Local Environmental Quality" which was a category in the local priorities section.

6. It was noted by the Group that a number of other local authority enforcement issues had not been included in the review and therefore not considered above. This is because the Roger's Review only dealt with the enforcement functions of Environmental Health & Trading Standards services and therefore excluded topics such as crime & disorder and planning enforcement. That is not to say that these are not equally important and should continue to be delivered, especially in the context of local environmental quality. In particular the Group took the view that although excluded from the Rogers Review, Crime & Disorder was a key local enforcement issue and should therefore be included within the Council's overall enforcement priorities. This overall consideration resulted in the following being suggested as enforcement priorities for the district:

<b>Enforcement function</b>	<b>Rogers Report priority</b>	<b>Proposed priority</b>	<b>Present status</b>
Air quality	National priority	National priority	Routine service provision
Health in the workplace	National priority	National priority	Routine service provision
Alcohol licensing	National priority	National priority	Routine service provision
Hygiene in food businesses	National priority	National priority	Routine service provision
Local environmental quality	Local priority	Local priority extended to include non priority areas (see ** below)	Some components as a routine but significant parts of CNE Act agenda not yet undertaken
Contaminated land	Local priority	Local priority	Routine service provision
Noise nuisances	Local priority	Local priority	Routine service provision (including 24/7 call out arrangements)
Housing health & safety rating scheme	Local priority	Local priority	Routine service provision
Accidents in the workplace	Local priority	Local priority	Routine service provision
Licensing of houses in	Local priority	Local priority	New service provision

<b>Enforcement function</b>	<b>Rogers Report priority</b>	<b>Proposed priority</b>	<b>Present status</b>
multiple occupation			
Litter, fly-tipping, dog fouling, statutory nuisances, stray dogs	Non priority	Local priority (**)	Some components as a routine but significant parts of CNE Act agenda not yet undertaken
Crime & Disorder	Not included in review	Local priority	Routine service provision but resources currently limited
Animal related licensing	Non priority	Local priority	Routine service provision
Private water supplies	Non priority	Local priority	Routine service provision
Private sewers & drains	Non priority	Local priority	Routine service provision (although not wholly statutorily required)
Unauthorised encampments	Non priority	Local priority	Routine on 'as and when required' basis
Land drainage	Non priority	Local priority	Routine service provision including call-out arrangements
Planning enforcement	Not included in review		
Building control enforcement	Not included in review		

7. The table above includes a number of enforcement areas which were either categorised as non priority by Rogers or were not included in the review at all. The Review does not however suggest that Councils cease to provide these activities; indeed in many cases they are statutorily required. The Group has not considered these enforcement activities, such as planning enforcement, building control contraventions etc. However, as part of any overall review the Council ought to consider all enforcement activities and prioritise accordingly

#### The Cleaner Neighbourhoods legislation

8. Having considered enforcement priorities the Group went on to discuss the powers made available through the Clean Neighbourhoods & Environment Act (CNEA) 2005, the Environmental Protection Act (EPA)1990 and other associated legislation. In so doing the Group also took into account guidance issued by Defra on "Clean Neighbourhoods"

9. The Group were provided with a paper setting out the powers provided by the CNEA. That paper is attached. The Group went through the list in detail and agreed in principle that all were important street scene/neighbourhood issues. The Group were particularly concerned to ensure that a range of officers were empowered to use the legislation including for example employees of a range of the Council's partners, such as PCSOs, local council staff, LVRPA staff, Corporation of London staff etc. It was explained that in some cases these arrangements were already in place, especially in respect of matters such as dog fouling.

10. The Group also considered the Encams Local Environmental Quality report, issued in May 2007. 'Encams' is the former "Keep Britain Tidy" organisation. It undertakes a lot of environmental campaign work and also national research for Defra and DCLG. Encams produces an annual national environmental quality report (LEQ) but Defra also commissioned it to provide local LEQ reports for each local authority.

11. The LEQ report presents its information from the standpoint of an average person living in or visiting the district. The Encams inspectors looked at issues such as:

- litter and detritus
- highway infrastructure
- street furniture

- signing & lining

and compared their condition against national benchmarks established from the national reporting system. Where relevant the standard used was a best value indicator, such as BV199 (litter, detritus, fly tipping and fly-posting).

12. The report paints a rather mixed picture of the condition of the district, but it raises particular concerns in respect of:

- (a) the quality of street cleansing;
- (b) highway infrastructure; and
- (c) the condition of street furniture

Whilst for example, highway infrastructure is not this Council's direct responsibility, the LEQ report takes the view that it is this Council's task to ensure that the local environment is protected and to ensure that other agencies play their part in achieving high standards. This Council's (and other) LEQ reports can be found on the Encams website [www.encams.org/leqreports](http://www.encams.org/leqreports) and members are encouraged to read it.

13 The report is useful in presenting information in a different way, thus enabling councils to think about their local environment priorities. The report sets out its findings based upon BVPI measures where appropriate and also provides a comparison against national standards. Although it is considered that the report paints perhaps a somewhat over gloomy picture of the district, it does clearly establish those issues which are important to the local community and are also capable of being dealt with, in many instances, through the cleaner neighbourhoods legislative regimes.

#### Enforcement activity

14. The second meeting of the group was held on the 6<sup>th</sup> of November. All Members and officers were present save for Councillor Mrs Sartin. The Members reviewed the outcome of the previous meeting and the notes above reflect that consideration.

15. The Group considered the powers available to the Council within the Cleaner Neighbourhoods legislation, with particular reference to issues such as the use and issue of fixed penalty notices. The following matters were discussed:

#### **(a) Information**

It was agreed that the key to delivering local street environmental improvements was the ability of the Council to gather information about problems and then acting upon that information. The general principle that all members, officers and the public should be encouraged to report issues was accepted and that the Council should find a way of enabling this. The following were identified as key factors:

- providing mechanisms whereby reporting of problems can be made easy (e.g. 'freefone' numbers, environmental 'hot lines' etc)
- officers being visible through a 'branding' exercise
- encouraging the public to act as the eyes of the council, including seeking interested residents to be environmental ambassadors, to be trained in awareness and reporting
- making use of all other agencies whose staff are out and about in the district to report problems
- training of all involved to encourage (and later require) officers and members to also adopt this ambassador role
- being able to provide rapid solutions to identified problems (e.g. 'man-in-a-van')

#### **(b) Enforcement processes**

Officers set out the Council's general approach to enforcement, making reference to the

adopted Cabinet Office “Enforcement Concordat” and the Council’s own adopted enforcement policy. Both are attached to these notes. The Council generally has a light touch to enforcement, seeking always to deal with matters informally in the first instance (for example through meetings & correspondence) and only resorting to more formal action (such as service of notice or prosecution) when these informal approaches have failed to provide the required outcomes. There will of course always be circumstances where the use of formal powers immediately is appropriate.

**(c) Partnerships**

There are parts of the CNEA powers which can only be utilised following the establishment of partnerships with groups such as local traders. A good example of this is the use of Defacement Removal Notices, which can be used to require the removal of graffiti from buildings etc. Such action can only be taken once a partnership has been established but that this has not resulted in the desired outcomes.

Other partnerships are also suggested, for example with fast food outlets in order to better manage the problems of the litter which is often associated with that type of operation. There are doubtless others, and the Council may need to consider the most appropriate mechanisms for establishing such partnerships either through new arrangements or modifications to existing arrangements such as the Town Centre Partnerships.

**(d) Fixed penalty notices**

The CNEA provides for the extensive use of fixed penalty notices (FPN). The areas where these can be used are set out in the table below:

<b>Statutory Power</b>	<b>Present Provision</b>	<b>Possible future provision</b>
<p><b>Nuisance Parking and Repair</b> Some garages and businesses place cars for sale, for an extended period, on the street. This can cause a significant nuisance to local residents and takes up valuable car parking spaces. This is also true of vehicles that are repaired on the street, which can also look unsightly, can lead to damage of the local environment (for example when oil is spilled or leaked) and may also present a danger to passers by.</p>	<p>Street trading legislation used, vehicles stickered by licensing officers following a complaint, little follow up powers available.</p>	<p>Proactive enforcement, the use of fixed penalty notices.</p>
<p><b>Abandoned Vehicles</b> For ease of reference the legislation is covered under the following headings:</p> <ul style="list-style-type: none"> <li>• The offence of abandonment;</li> <li>• The removal and custody of abandoned vehicles;</li> <li>• The disposal of abandoned vehicles;</li> <li>• Recovery of costs connected with removed vehicles;</li> <li>• Powers of entry.</li> </ul>	<p>Vehicles stickered and then removed for storage and/or destruction.</p>	<p>As is, but with additional enforcement officers available.</p>
<p><b>Litter and Refuse</b> This section provides guidance on litter legislation in sections 86–98 of, and Schedule 3A to, the Environmental Protection Act 1990, as amended by the Clean Neighbourhoods and Environment Act 2005. It deals with Litter Clearing Notices, street litter notices, litter abatement notices etc.</p>	<p>Action taken by waste management officers on complaint.</p>	<p>Action taken by enforcement officers, authority given to PCSOs, adoption of the provisions relating to private land. “Mobile Response Unit”.</p>
<p><b>Graffiti and Flyposting</b> This part of enables a local authority to serve a defacement removal notice on the owners,</p>	<p>Action taken by Anti-Social Behaviour Co-</p>	<p>Action taken by enforcement officers, authority given to</p>

<b>Statutory Power</b>	<b>Present Provision</b>	<b>Possible future provision</b>
occupiers, operators (such as telecommunication companies and outdoor advertising companies) of 'relevant surfaces' (including street furniture), statutory undertakers and educational institutions whose property is defaced with graffiti and / or fly-posting.	Ordinator on complaint.	PCSOs, use of defacement removal notices. Links with ECC Trading Standards, the use of fixed penalty notices. "Mobile Response Unit".
<u>Waste</u> This part deals with the unregistered transportation of controlled waste and the deposit & disposal of such waste.	Presently we have no powers relating to the transport of waste. Flytipping is dealt with under the provisions of the Environmental Protection Act.	The setting up of vehicle checks. Action taken by enforcement officers, authority given to PCSOs, the use of fixed penalty notices. Adoption of powers to seize vehicles which have been involved in flytipping.
<b>Dog Control Orders</b> Provide for five offences which may be prescribed in a dog control order: <ul style="list-style-type: none"> <li>• failing to remove dog faeces;</li> <li>• not keeping a dog on a lead;</li> <li>• not putting, and keeping, a dog on a lead when directed to do so by an authorised officer;</li> <li>• permitting a dog to enter land from which dogs are excluded;</li> <li>• taking more than a specified number of dogs onto land.</li> </ul>	EFDC has not made any dog control orders as yet. Dog fouling complaints are dealt with on an adhoc basis using existing legislation.	Action taken by enforcement officers. The power to make dog control orders, authority given to PCSOs, the use of fixed penalty notices.
<u>Noise</u> This provides powers to local authorities to deal with audible intruder alarms (which do not include fire alarms) in their areas and the annoyance they may cause. A local authority may designate its area as an alarm notification area. The occupier or the owner of any premises that are fitted with an audible intruder alarm in the designated area must nominate a key-holder for those premises and notify the local authority of the contact details of that key-holder.	Officers have already used the powers made available in the Act to disable nuisance alarms. No alarm notification areas have been made by EFDC.	Action taken by enforcement officers. The provision of alarm notification areas, the use of fixed penalty notices. "Mobile Response Unit".
<b>Abandoned Shopping Trolleys</b> This provides powers for dealing with abandoned shopping and luggage trolleys. It's aim is to remedy the problem of abandoned trolleys that have become a blight on the quality of the local environment.	Limited abandoned trolley collection.	Action taken by enforcement officers. Seizure and removal powers, recharge for collection. "Mobile Response Unit".
<b>Statutory Nuisance</b> This extends the statutory nuisance regime to include two new statutory nuisances: <ul style="list-style-type: none"> <li>• statutory nuisance from insects; and</li> <li>• statutory nuisance from artificial light.</li> </ul>	These provisions are already being utilised.	Extend use to all enforcement officers.

16. The Group identified a number of issues associated with the use of fixed penalty notices. These included:

- (a) training of officers;
- (b) safety of officers;
- (c) accreditation by the Police;

- (d) identification of officers;
- (e) the nature of offences for which FPNs might be appropriate;
- (f) publicity for the residents and general public; and
- (g) the need to review and amend the existing enforcement framework and protocols

17. All of the above are linked and reflect concerns as to the manner in which some people might react to the attempt to issue a FPN for a witnessed offence. The legal requirements are clear in that Councils may not utilise these powers without a comprehensive publicity campaign setting out the Council's intentions and rationale for the use of FPNs. This is required so that everyone who lives in, works in or is likely to visit the district are clearly aware that certain offences carry with them the possibility of the issue of a FPN. This in turn will require a review of existing enforcement policies and protocols.

18. The Group also considered it important that this review and the inclusion of the use of FPNs did not somehow present a false picture of the district. Whilst there are clearly concerns about crime and disorder (which must and should include environmental crime) and action contemplated must be seen as proportionate to the scale and nature of the problem.

19. Items (a), (b), (c) and (d) in paragraph 16 above are all encompassed within the Essex Police Community Safety Accreditation Scheme (see attached). This scheme enables the Chief Constable to confer certain powers upon accredited persons, but in so doing requires those persons to meet certain standards, be adequately trained and identifiable. The Group was of the view that officers empowered to use FPNs should also be subject to the accreditation regime. This provided training and relevant legal protection for officers empowered in this way. However, it must be recognised that the health, safety and welfare of officers engaged in these duties rests squarely with the Council as employer, and the Council will have to ensure that appropriate measures are in place to safeguard officers who are expected to use these powers.

20. Finally the Group recognised that FPN powers could be utilised to some extent without direct intervention, through for example the issue of FPNs for litter thrown from motor vehicles.