

The Highland Council

Transport, Environmental and Community Services Committee
16 May 2013

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| Agenda Item | 10 |
| Report No | TEC 43-13 |

Zero Tolerance on Litter / Maximum Civic Participation

Report by Director of Transport Environmental and Community Services

Summary

This report invites Members to approve a number of measures, including extending the powers of Community Wardens to issue fines, to support a Zero Tolerance approach to litter.

1. Introduction

- 1.1 The Council's programme "Working together for the Highlands 2012 to 2017" contains a commitment to introduce a "zero tolerance" approach to litter, including a review into the Council's bulky uplift charges, and extend the powers of community wardens to issue fines.
- 1.2 The review of the bulky uplift service is the subject of another report on the Agenda.
- 1.3 This report describes the historical context of "zero tolerance", attempts to define what it means for Highland, and details the Council's proposed approach to tackling littering. It does not deal with the much wider subject of street cleansing which will be the subject of a future report to Committee.

2. Zero Tolerance

- 2.1 The term "zero tolerance" was first used in America in the early 1980s when the federal administration launched an initiative on drugs. Since then, it has been intimately related to policing techniques both in the US and elsewhere.
- 2.2 The theory is that if minor crime (or incivilities) such as litter and graffiti, is left unchecked, this will lead to a gradual deterioration in "order" (lawlessness and social decay). This was first described in an article in 1982 and is known as the "Broken Window Theory".
- 2.3 The corollary being that if minor incivilities such as these are quickly attended to or preferably prevented in the first place, then the public is more likely to engage in social norms, generally enjoys a greater sense of wellbeing, thereby manifesting itself in a higher quality of life.
- 2.4 It then follows that minor crimes such as littering should be pursued with equal

intensity and vigour as given to more serious crimes.

- 2.5 Public attitudes in Scotland to litter and a range of other issues (incivilities) were reported on in 2005 by the Scottish Executive.

The survey found the following:

1. The most commonly reported incivilities reported were cat and dog mess, litter and rubbish, uneven pavements and the absence of safe places for children to play;
2. Those reporting one incivility were relatively likely to report a second and as such incivilities are likely to co-occur ie where there is dog mess there is also likely to be litter;
3. People living in the most deprived parts were substantially more likely to report an incivility than those in less deprived areas; there was a tendency for more reporting in urban areas;
4. Those who reported a problem with incivilities also reported feeling anxious, more likely to say they get depressed and more likely to consider their health to be poor for someone of their age. They are more likely to smoke. Those who also reported an absence of some-where pleasant to walk were more likely to report not having taken a walk of a mile or more over the last year; and
5. Those who reported a problem felt less likely to trust people and more likely to be resigned about the difficulties for their area and more likely to report fear of crime ie taken together they have an adverse impact on “community cohesion”.

3. Litter and the Law

- 3.1 Part IV of the Environmental Protection Act 1990 conveys powers and duties to local authorities, in Scotland, in relation to litter and fly-tipping.
- 3.2 Practical guidance is given in a Code of Practice, the most recent edition of which was published by the Scottish Executive in 2006.
- 3.3 Since the enactment of the Clean Neighbourhoods and Environment Act in 2005, the law relating to litter (and a number of other environmental crimes) in England and Wales differs from that which is applicable to Scotland.
- 3.4 The Environmental Protection Act does not define “litter”, however the courts appear to take a common sense view and thus litter includes anything that is thrown down; or more simply defined : *“litter is waste in the wrong place”*.

4. Litter Enforcement

- 4.1 Councils have the following powers to deal with litter enforcement:
1. Fixed Penalty Notices: Councils can issue individuals with a FPN of £50.
 2. Street Litter Control Notice: Where litter can be traced to a business (eg

a food takeaway) a SLCN can be issued, which makes the owner responsible for keeping the shop front and sides clear of litter.

3. Litter Control Area: Where private land is littered (such as a supermarket car-park) councils can declare an LCA which means the occupier/owner must keep it free of litter.

4. Criminal Offence: Littering can attract a fine of up to £2,500 on conviction in court.

5. Fly-Tipping

5.1 Although fly-tipping is also “waste in the wrong place” the distinction between fly-tipped waste and littering appears to relate to the quantity involved.

5.2 SEPA has powers to prosecute those who deposit waste on land that does not benefit from a Waste Management Licence or other appropriate permit.

5.3 Councils and SEPA have powers to require occupiers of land to remove such waste and to recover costs.

5.4 If however the occupier/owner didn't have anything to do with the dumping of the waste then neither the notice nor recovery of costs are likely to be successful.

5.5 The Council will make every effort to identify the source of the fly-tipping and if there is sufficient evidence will make every effort to pursue the culprit.

5.6 In situations where the culprit cannot be identified it is generally expected that the Council should remove it at its own cost; or if on private land then it is for the land owner to decide whether or not to have it removed

6. Fixed Penalty Notices

6.1 The Antisocial Behaviour etc. (Scotland) Act 2004 introduced fixed penalty notices for littering and fly-tipping.

6.2 The key difference between the use of FPNs and more traditional forms of offence contained in the Environmental Protection Act is that the activity does not need to be actually witnessed before an FPN is applied to an individual.

6.3 If an FPN is challenged or is not paid, it can be reported to the Procurator Fiscal. In these cases a witness is required, so in practice it is prudent for enforcement staff to operate in pairs (this is also useful from a health and safety point of view).

7. Litter in Highland

7.1 There is a discrete measurement of “litter” which is reported as “cleanliness of streets” and includes faeces but not weeds and detritus.

7.2 The overall cleanliness score for Highland, since the introduction of the inspection regime in 2004/5, has been consistently in the range 70% to 80% (the higher the score the better).

7.3 Anecdotally however, there is a view that littering in some parts of Highland, at least, is getting worse.

8. Current Resources

8.1 The service transferred from Roads and Community Works to Waste Management in September 2012. The resource which transferred to deal with pest control, dog control and enforcement is as shown in the table below. It is the intention to fill the two to fill the vacancies with multi-function officers.

| Location | Main Activity |
|---------------------------------|---|
| Wick, Caithness | 0.8 FTE Dog Warden |
| Brora, Sutherland | 1 FTE Pest Control |
| Invergordon, Ross & Cromarty | 1 FTE Education & Enforcement Officer |
| Dingwall, Ross & Cromarty | 1 FTE Pest Control 1 FTE Dog Warden |
| Fort William, Lochaber | 1 FTE Dog Warden/Pest Control |
| Inverness, Inverness-shire | 1 FTE Education & Enforcement Officer 1 Vacancy Pest Control |
| Aviemore, Badenoch & Strathspey | 1 Vacancy Dog Warden/Pest Control |

8.2 The level of resources currently available to deal with a zero tolerance approach to littering is limited and Section 10 of this report sets out proposals for increasing the level of resources.

9. Zero Tolerance Approach

9.1 Given there is no single definition for “zero tolerance” there are several options that the Council could implement the most extreme being that the circumstances around an allegation are ignored and a penalty is applied.

9.2 However this stance would appear to be unreasonable and it is proposed that there is a measure of discretion given to enforcement officers when considering the application of a penalty.

9.3 The principles the Council may therefore wish to adopt can be described as follows:

We are **actively** engaged in enforcement of litter laws and this activity is a **priority**; depending on the **circumstances** a warning **may** be given or an opportunity to rectify the situation before a penalty is applied.

9.4 The zero tolerance approach will see a shift from Education to Enforcement

around our main centres of population, and Inverness city and towns across the Highlands will be specifically targeted.

- 9.5 The number of staff authorised to issue Fixed Penalty Notices will be extended to include other personnel in Waste Management.
- 9.6 There will be much closer working with Environmental Health staff who are well versed in enforcement to bolster the number and flexibility of enforcement across Highland.
- 9.7 We will continue the existing dialogue with Police to ensure that they are fully aware of Waste Management- Environmental Health activity and where practicable to complement these actions with staff resource.
- 9.8 Community Wardens will be authorised to issue FPNs and Planning and Development will consider authorising Countryside Rangers.
- 9.9 We will also engage with other public bodies to determine the full extent of their powers with regards to the issuing of penalties and to establish whether or not they would be inclined to do so and to work with the Council on this matter.
- 9.10 Due in part to the geography and the actual number of dedicated enforcement staff in the Council it will not be possible to carry out enforcement action in such a way as to meet public expectation. It is therefore proposed that a calendar of enforcement days will be prepared and implemented whereby a concentrated enforcement effort is applied to individual locations.
- 9.11 It is also proposed that this calendar is publicised on the Council's website, providing advance notice to the public, in a similar way notice is given to the public in relation to the location of the mobile speed camera van on any given day.
- 9.12 Education and awareness resources will continue to be provided to schools and others on the problems associated with litter and fly-tipping.
- 9.13 It would also be useful to consider the following possibilities to bring a degree of flexibility to the process:
 1. Payment of fixed penalties in instalments.
 2. As an alternative to a fixed penalty taking part in a litter picking/street cleansing project.
 3. The potential for using tenancy agreements to effect behavioural change thereby improving environmental conditions within the curtilage of Council Housing stock will be examined.

10. Civic Participation

- 10.1 The public have an important role to play in keeping their communities free from litter, and a number of communities take part in annual "clean ups" which are supported by the Council.

- 10.2 These “clean ups” tend to be ad-hoc, and are normally arranged through local community groups. The proposal is to actively encourage more communities to take part in these events and for the Council to provide support, including practical assistance through the supply of protective clothing and equipment to support communities in their efforts to improve their local environments.
- 10.3 Civic participation will also be promoted through education and campaigns to improve the local environment.

11. Implications

- 11.1 The proposals set out in this report will be delivered from within existing resources.
- 11.2 There are no legal implications arising from this report.
- 11.3 There are no equalities implications arising from this report.
- 11.4 There are no climate change implications arising from this report.
- 11.5 There are no risk implications arising from this report.

12. Recommendations

- 12.1 Members are invited to approve the following to support a Zero Tolerance approach to littering.
- a) The definition and approach to “zero tolerance” as described in this report will be carried out with a degree of discretion.
 - b) Additional staff will be authorised to enforce the law relating to litter and fly-tipping.
 - c) Waste Management and Environmental Health staff carry out joint enforcement days.
 - d) The preparation and publication of a calendar of enforcement days on the Council website.
 - e) The Council encourages and supports local communities to organise events aimed at keeping their communities free of litter and improving the overall environment.

Designation: Director of Transport, Environmental and Community Services

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