

CABINET

18 October 2016

Title: Publicising Enviro-Crime and Anti-Social Behaviour Cases Policy	
Report of the Cabinet Member for Enforcement and Community Safety	
Open	For Decision
Wards Affected: All	Key Decision: Yes
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Accountable Director: Jonathon Toy, Operational Director, Enforcement Services	
Accountable Strategic Director: Claire Symonds, Strategic Director Customer, Commercial and Service Delivery	
Summary: <p>This report sets out the Council's approach to publicising cases of enviro-crime and anti social behaviour, including images of offenders. Enviro-crime, which is also referred to as 'grime crime', and anti social behaviour affects the quality of life for residents and businesses, often blighting and area and costing thousands of pounds to address. This policy sets out a clear framework for the publication of cases and images of those who commit enviro-crime and anti social behaviour. It makes it clear how the Council will determine when it is necessary and proportionate to use publication and the checks that will be undertaken to ensure publication takes into account vulnerabilities of victims, offenders or businesses.</p>	
Recommendation(s) <p>The Cabinet is recommended to approve the policy for publicising cases of enviro-crime and anti social behaviour, including CCTV images of offenders, as set out at Appendix 1 to the report.</p>	
Reason(s) <ol style="list-style-type: none">1. To ensure that the Council has a consistent and proportionate approach for the publication of both images and cases of those who commit acts of enviro-crime and anti social behaviour to the detriment of the local community.2. To enable the council and its partners to take action against those who commit enviro-crime and anti social behaviour by increasing the ability to identify them.3. To reduce the amount of fly-tipping, enviro-crime and anti social behaviour by using publicity in a manner which increases the likelihood of detection.4. To enable local communities to identify those that commit anti social behaviour and enviro-crime, encouraging social responsibility and civic pride.	

1. Introduction and Background

- 1.1 The Environmental Protection Act 1990, Crime and Disorder Act 1998 and Anti Social Behaviour Crime and Policing Act 2014 set out the civil and criminal offences for enviro-crime and anti social behaviour. These legislative frameworks were designed to address activity which affects the quality of life of local residents and a deterrent for those who commit them.
- 1.2 By Minute 27 (19 July 2016) the Cabinet adopted an Enforcement Policy which set out the Council's approach to enforcement, adopting a firm but fair approach which is considerate, proportionate, transparent and consistent.
- 1.3 Establishing a policy to publicise cases of enviro-crime and anti social behaviour provides the Council with a defined approach of where, how, when and against who it will use media in line with the legislation.

2. Proposal and Issues

- 2.1 Barking and Dagenham is seeing significant changes socially, economically and demographically. These changes both increase opportunity for current and future residents and business, but also increase behaviour that can have a detrimental effect on the quality of life in the Borough's town centres and residential areas.
- 2.2 Local residents and businesses highlight that persistent anti social behaviour and enviro-crime, often referred to as "grime crime" including such as fly-tipping, littering or eyesore gardens, has impacted on their daily lives and creates an environment where they feel the area they live and work is unsafe and uncared for.
- 2.3 The Council deals with an average of 5,600 complaints for enviro-crime and anti social behaviour per annum. The Street Enforcement Team issued over 1,200 fixed penalty notices for fly-tipping and littering offences in 2015/16. The Anti Social Behaviour Team dealt with 810 cases resulting in 29 civil injunctions.
- 2.4 The Street Enforcement Team and Council CCTV service have invested in 21 cameras specifically for deterring and detecting those committing enviro-crime and anti social behaviour offences, particularly in areas which are blighted by these issues. The cameras have been deployed in 30 different locations over the past 12 months.
- 2.5 Despite the work of these teams, offenders often remain undetected and areas become blighted through this anti social behaviour. Currently the Council spends an average of £190,000 per annum on clearing fly-tips and waste disposed of unlawfully.

3. Proposal

- 3.1 The proposal is to introduce a policy which covers:-
 - The publication of images of those people who commit anti social behaviour and enviro-crime where they cannot be identified by any other means.

- Publication of descriptions of individuals or groups where there is intelligence related to persistent anti social behaviour or enviro-crime, where the persons cannot be identified by any other means. The Council will take every possible step to ensure that the person or persons are not under the age of 18. Publication in such circumstance will be considered as a last resort and only used where all other means of identification have taken place.
- Publication of successful civil or criminal prosecution cases of enviro-crime and anti social behaviour, including the name and images where it is deemed appropriate and proportionate.

3.2 This approach will enable the Council and its partner agencies to actively encourage local communities and businesses to take a stand against the inconsiderate behaviour of a minority of people, whose actions blight a local area.

3.3 It is important to highlight that the ability for the Council to publicise images for the purpose of preventing and detecting crime is defined through a legislative framework. The framework includes :-

- **Data Protection Act 1998 – Section 29** – provides agencies with the ability to share information for the prevention and detection of crime or the apprehension or prosecution of offenders.
- **Crime and Disorder Act 1998 – Section 115** – provide statutory agencies, including the council, with the ability to disclose information where it is necessary and expedient for the purposes of addressing anti social behaviour crime and disorder.
- **Criminal Justice and Public Order Act 1994 Section 163** - provides local authorities with the power to record visual images in order to “promote the prevention of crime or the welfare of the victims of crime”.
- **Local Government Act 1972 – Section 111** - provides local authorities with the power do anything “which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.”. This power enables the local authority to release/publish images (“do anything”) with a view to identifying offenders (“facilitate, conducive or incidental to”) who have fly tipped or committed anti social acts, so that they may be prosecuted, fined or cautioned (“discharge of any functions”).
- **Human Rights Act 1998 – Article 8** – cover the right to a private life and would include a requirement for the local authority to balance the need to publicise images, the extent of publicity and the impact of publicity, specifically for vulnerable groups.
- **Data Protection Act 2016** – sets out a series of principles for public bodies in relation to the retention, access and sharing of information. This includes CCTV and is supported by a code of practice for surveillance cameras and personal information, published by the Information Commissioners Office.

3.4 The publicity of cases or images related to enviro-crime and anti social behaviour offer a valuable approach in preventing, detecting crime, and protecting the public from harm. The purpose of this policy is to assist the Council in deciding whether such a cause of action is necessary and proportionate. The aims are to:

- Provide clear and consistent guidance in establishing if it is necessary and proportionate to make a disclosure.
- Ensure openness in the reporting of criminal investigations and proceedings.

- Ensure that the Council acts in accordance with general public law principles, and with national guidance.
- Ensure that the Council fully considers the Data Protection Act and the Human Rights Act.
- Protect the public and the public realm

3.5 Risk Assessment / Health and Safety Considerations

3.6 There must be a balance between the rights of an individual suspect and those of the wider community. Any decision to release an image must be for a **legitimate purpose**, be **necessary** and **proportionate**.

3.7 The risk to the public from prolific or potentially dangerous offenders will almost always support the release of images in certain circumstances. The release of any publicity, including images, must be necessary for a legitimate purpose. A legitimate purpose may include, but is not limited to

- The prevention and detection of crime
- Encouraging witnesses and/or victims to come forward
- Discouraging offenders
- Reassuring and informing the public
- Reinforcing confidence in the criminal justice system
- Identification of offenders
- Raising public awareness

3.8 The following key criteria will be used in assessing the publicity of images and prosecution cases of anti social behaviour and enviro-crime.

- Publicising is in the public interest either due to the scale, location or impact of the offending behaviour.
- If a successful prosecution has been achieved at court and the other criteria has been considered, publicity can be used, setting out the case, the fine and convicted offender(s). However the decision to publicise in such cases will be based on the public interest and not for purposes of naming or shaming a person, company or organisation.
- No person whom we know to be under the age of 18 will be named, or identified, in any publicity related to enviro-crime or anti social behaviour.
- Individuals with a known vulnerability, or businesses, or companies who could become vulnerable through publicity will not be placed in the public domain.
- No cases which could incite community tensions will be publicised.
- No cases will be publicised which could result in any complainant or victim being identified. Where images are to be used such as CCTV images, these can only be published where they have been obtained through a public body, such as the council or Police and not a third party, such as a private individual or private business. Images must be clear and innocent parties are suitably obscured before images are disclosed to the media or published on the Local Authority's website.
- Such images, or description of offenders, will only be publicised where the person or persons cannot be identified by any other means. However, in such cases, the council will undertake checks with relevant services to ensure the person (or persons) identified is not a vulnerable person, at risk, or is under the age of 18.

- Prior to any publicity, officers will ensure that the case does not form part of a wider investigation by another partner agency or Council services, such as the Metropolitan Police Service, Environment Agency or Legal Services. Consultation with these services will take place prior to the images or descriptions are released.
- Publicity will only take place in an area which is proportionate to the offence.

- 3.9 The process for publicising enviro-crime and anti social behaviour will be the same, whether the Council or its partner agencies are looking to identify a person, or persons, whose actions are having an impact on the quality of life of local people, or where a case has been successfully prosecuted.
- 3.10 A criteria form (Appendix 2) will be used by the lead officer in all cases. Once the form has been completed the details of the case will be provided to Legal Services to confirm that there are no legal concerns in terms of publicity.
- 3.11 The details will also be sent to the Council's Children and Adult Safeguarding lead officers to verify if any named person is known to them and no publication will take place until those checks have taken place.
- 3.12 The process will require a final approval by the relevant Strategic Director, the Operational Director for Enforcement Services, the Director of Public Health or the Director of Law and Governance.
- 3.13 There will be a requirement that the person making the application retains a copy of the form and any images. The CCTV control room will also be required to maintain any application form and images requested for publicity.
- 3.14 A log will be maintained by the communications team of all anti social behaviour and enviro-crime cases which have been published. This will include details of any CCTV images, where and when they were obtained, the date and time of any alleged offence.

4. Options Appraisal

- 4.1 The Council currently has a process for publicising successful prosecution cases and anti social behaviour cases which have been to court. The Council could continue with this approach. However, it does not provide the Council with the ability to publish images of offenders of enviro-crime or anti social behaviour where the person or persons cannot be identified. As a result there may be missed opportunities to gain valuable community knowledge of offenders, which could result in preventing further offences taking place.
- 4.2 The Council could take the step to publicise a wider range of images and reduce the criteria set out above. However, the publication of images remains a contentious area. As such the Council will need to demonstrate that it has a robust policy which balances proportionality with public interest. By applying the criteria set out above and maintaining a record of the decision making and images used, the Council can provide evidence that a reasonable approach is taken prior to any publicity.
- 4.3 In consideration of the above, it is proposed that the proposals within the report provides the Council with a well considered approach to the publication of enviro-

crime and anti social behaviour, in terms of successful court action and of images of offenders who cannot be identified by any other reasonable means and who affect the quality of life of a local community.

5. Consultation

- 5.1 The Community Safety Partnership team has been consulted, along with Legal Services, CCTV management and the Communications Team.
- 5.2 Consultation has taken place with the MPS senior management team who support the approach.

6. Financial Implications

Implications completed by: Katherine Heffernan, Group Manager, Service Finance

- 6.1 Enviro-crime and Anti Social Behaviour impose a range of costs on the Council including the costs of prevention and detection and dealing with the consequences. For example it is estimated the costs of removing fly tipping is in the region of £190,000 a year. In addition these behaviours have a number of detrimental effects on the local area and residents.
- 6.2 Where offenders are known the Council may in certain circumstances issues fixed penalty notices, prosecute offenders or seek to recover costs. However in general the net financial benefit to the Council of detection and prosecution is often limited; however there may be a beneficial deterrent effect.
- 6.3 This report sets out an approach to publicising enviro crime and anti social behaviour that may assist in the identification of offenders (thus increasing the chances of prosecution or financial redress) and in deterring further offences (thus reducing the costs to the Council.)
- 6.4 The policy set out relies on a certain amount of administration and checking of information. This may result in a small amount of additional work for services which must be met from within existing resources. Low cost options for the publicising of images such as the Council's own websites or local media will be used and any associated costs will be met from within existing resources.

7. Legal Implications

Implications completed by: Fiona Taylor, Director of Law and Governance

- 7.1 The Council as a public authority must give effect to Article 8 of the Human Rights Acts and ensure it does not interfere with a person's right to respect for their private life. Therefore, any images released must be the minimum to achieve the legitimate purpose as set out within the policy, and ensure that the image released is of a person who it can be said with a high degree of certainty is or has committed a criminal offence, to avoid the risk of a damages claim.
- 7.2 If images are recorded and stored in accordance with the provisions of the Data Protection Act 1998, and the CCTV Code of Practice, which is published from time to time by the Information Commissioner's Office, the Council can reduce the risk of

any findings against it by the ICO in the event of a complaint. A robust and clear policy will further strengthen the position of the Council.

- 7.3 It is important that the Council ensures that it is satisfied that those identified within any images are adults. This is due to the added vulnerabilities that a child may have and the impact on them by a release of their image into the wider public arena than that of an adult.
- 7.4 The report sets out appropriate safeguards to ensure the appropriate release of an image for a legitimate purpose as set out in the policy.

8. Other Implications

- 8.1 **Crime and Disorder** - This policy supports section 17 of the Crime and Disorder Act.
- 8.2 **Equal Opportunities** - A screening for the equalities impact assessment has been carried out on the effect of the policy. The policy has low relevance in relation to its impact on the areas under the statutory duties contained in the equalities impact assessment while contributing towards the Council's corporate priorities of open and transparent decision making. The Council, when taking decisions in relations to any of its functions, must comply with its public sector equality duty as set out in S149 of the Equality Act 2010 (Act).

Public Background Papers Used in the Preparation of the Report: None

List of Appendices

- **Appendix 1** - ASB/Enviro crime publicity policy
- **Appendix 2** - ASB/ enviro crime publicity proforma