

Report to Cabinet

Subject: Policy on Enforcement in relation to wheelie bins left on the highway after collection

Date: 12 July 2016

Author: Community Protection Manager

Wards Affected

All Wards

Purpose

To present for adoption the policy for the use of enforcement powers to address the issue where residents fail to retrieve their wheelie bins from the highway following the day of collection.

To obtain approval as part of the enforcement process to set the fixed penalty level at £60 payable within 14 days of service.

Key Decision

This is not a key decision

Background

- 1.1 Gedling Borough Council residents are provided with wheelie bins by the Council, who are the waste collection authority for the Borough. Residents are required to present their bin on the day of collection at the boundary of their property without obstructing the highway, or in the case of terraced properties with no frontage, the presentation point is the back of the pavement, which forms part of the highway.
- 1.2 Members in some areas of the Borough have been approached by residents who have raised concerns about wheelie bins being left on the highway for some considerable time after collection and in some cases left on the pavement indefinitely. Wheelie bins left on the highway have the potential to cause a range of problems including causing an obstruction, nuisance and impacting on the visual amenity of an area.

Officers within Public Protection were tasked to set up a working group to consider the options to reduce the numbers of wheelie bins left on the highway and concluded that enforcement was seen as a viable option. The working group proposed to develop and review the Council's current practices and procedures in respect of wheelie bins being left on streets, to ensure they were suitably robust.

- 1.3 Currently, the Council has no policy specifically relating to dealing with wheelie bins left on the highway. Officers have used informal negotiation with residents resulting in some improvement, however, there has never been full compliance and complaints continue. Historically the Environmental Protection Act 1990 ("the Act") gave authorities the power to use criminal sanctions where residents failed to comply with notices requiring removal of bins from the highway including prosecution. The Deregulation Act 2015 removed criminal sanctions in England from March 2015 and introduced a civil enforcement process in relation to bins being left on streets and other issues in respect of the collection of household waste. The process does ultimately permit the service of fixed penalties, the penalties, if not paid are recovered through a civil debt recovery process.
- 1.4 Since March 2015, the Act gives waste collection authorities certain civil powers in relation to waste receptacles (s.46-46D). In particular, s.46 of the Act provides that a waste collection authority may serve a notice under that section requiring the occupier of a premise from which household waste is collected to follow specified steps in relation to the placing of the receptacle for collection. If the occupier fails, without reasonable excuse, to comply with the requirements of the notice, and the result causes or is likely to cause a nuisance, or has been or is likely to be detrimental to any amenities of the locality, the authority may serve a warning letter and ultimately a fixed penalty on the person responsible for the bin.
- 1.5 In terms of the level of the fixed penalty the authority can determine the level of fixed penalty; alternatively the Act specifies an amount of £60. The Act also provides that an authority may allow a reduced penalty if it is paid within a specified period. In line with the Council's other fixed penalty schemes for example littering, the Council considers a 14 day repayment period with no reduction for early repayment is appropriate. The Council also consider the statutory rate of £60 to be an appropriate level for a fixed penalty for failing to comply with a s.46 notice. This is slightly higher than fixed penalties for littering and dog fouling but is the level put forward in the Act as the default level. The statutory process involved in the service of a fixed penalty is more protracted than for matters such as littering. The process is not a criminal one and requires the issuing of a warning letter and a notice of intent before a fixed penalty is demanded. The person on whom the s.46 notice is served

also has the opportunity to make representations to the authority prior to a fixed penalty being issued and has the right of appeal to the First Tier tribunal against the issuing of a fixed penalty. The level of £60 ensures the additional costs associated with the enforcement process can be met.

- 1.6 The working group have considered the powers of enforcement under the Act and feel that in order to tackle the problem of wheelie bins being left on the highway, residents should be educated about the enforcement options available and the Council should be in a position to utilise these powers in situations where bins left on the streets are causing problems for residents.
- 1.7 Officers have drafted a Policy which lays out how it will investigate cases of wheelie bins left on the pavement and carry out enforcement. This Policy has been prepared and is attached at Appendix A.
- 1.8 To ensure any enforcement carried out in line with this Policy is done in a proportionate, fair and equitable manner officers have carried out an Equality Impact Assessment in relation to the Policy which is set out in Appendix B.
- 1.9 It is hoped that the development of this Policy, the education of residents and a more robust approach by the Council to enforcing this issue, will alleviate the problems caused by bins being left on the pavement following the day of collection.
- 1.10 In preparing this Policy the working group had regard to the Public Protection Enforcement Policy and the Regulator's Code.
- 1.11 In order to ensure the Council has taken a proportionate approach with regard to this Policy officers have consulted with My Sight Nottingham, Age UK, the Netherfield Polish Parents Forum, Disability Nott's and Gedling Homes. However, no comments have been received from these organisations.

Proposal

- 2.1 It is proposed that the Council adopt the Policy at Appendix A for the use of enforcement powers where residents fail to retrieve their wheelie bins from the highway following the day of collection.

It is proposed that the Fixed Penalty level for failing to comply with s.46 of the Environmental Protection Act 1990 be set at a level of £60.

It is proposed that the period in which a Fixed Penalty must be paid is 14 days from the date of service.

Alternative Options

- 3.1 The Council can carry out enforcement under the Act without adoption of the Policy, however it is important that any enforcement action the Council takes is proportionate and processes are transparent. It is also important that residents understand their responsibilities in respect of waste collection and understand why the Council takes the action it does with regard to enforcement.
- 3.2 The Council could choose not to issue fixed penalty notices, however in line with the Council's other public protection enforcement a fixed penalty, where possible, is always offered and is often a more cost effective and swift method of enforcement.

Financial Implications

- 4.1 There are no financial implications for this Policy. All investigation and enforcement actions carried out by Neighbourhood Wardens will be done as part of general environmental improvement work and done within existing budgets.

Any income generated by the payment of fixed penalty notices is expected to be negligible and will be paid into the existing fixed penalty notice account and distributed along with similar payments.

On a more general note, it is expected that the timely retrieval of bins from the highway by members of the public may create savings in other areas of the public sector for example the National Health Service (NHS) and with potential fewer hospital admissions due to accidents.

Appendices

- 5.1 Policy and procedures for use of enforcement powers to be used in incidents where residents fail to retrieve their wheelie bins from the highway following the day of collection. Appendix A
- 5.2 Equality Impact Assessment, Appendix B

Background Papers

- 6.1 None

Recommendation(s)

That Members:

1. Adopt the Policy at Appendix A explaining how officers can use enforcement powers where residents fail to retrieve their wheelie bin from the highway following the day of collection.
2. Set the level of fixed penalty issued as part of the enforcement process at £60 with no reduction for early repayment.

Reasons for Recommendations

To ensure the Council has a clear and transparent Policy when using enforcement powers where residents fail to retrieve their wheelie bins from the highway.

To ensure that the Council's enforcement is consistent with other Public Protection enforcement in that where possible a fixed penalty notice is offered.

Appendix 1.



Policy and Procedures for dealing with wheeled bins left on the Highway after the day of collection.

The Policy

Introduction

This document sets out for Members, officers and residents, the high level action that Gedling Borough Council ('the Council') intends to take regarding wheelie bins which are not returned to their proper place of storage and left to cause an obstruction to pedestrians on the highway following the day of collection. It also explains how we intend to take a reasonable, equitable, and proportionate approach to enforcement, with the aim of reducing the number of wheelie bins left on the highway and the associated problems they can cause.

In an attempt to ensure that any enforcement action is proportionate, officers have carried out an Equality Impact Assessment, a copy of which can be seen at Appendix A

In the preparation of this Policy the Council has had regard to the Public Protection Enforcement policy and the Regulator's Code under the Legislative and Regulatory Reform Act 2006.

Background

Gedling Borough Council residents are provided with wheelie bins by the Council, who are the waste collection authority for the Borough. Residents are required to present their bin on the day of collection at the boundary of their property without obstructing the highway, or in the case of terraced properties with no frontage, the presentation point is the back of the pavement, which forms part of the highway. Wheelie bins should be removed from the highway as soon after collection as possible, but always by the end of the day of collection.

In some parts of the Borough, especially in high density housing areas, a problem has developed whereby residents leave their bin permanently on the

pavement for an excessive period of time. Where this occurs, bins have the potential to cause an obstruction of the highway and impact on the amenity of the area.

The Council recognise that enforcement is a last resort and the measures described in this Policy are considered necessary and proportionate to tackle the problem.

Some of the problems created by wheelie bins left on the highway have been identified as:

- a. Presenting an obstruction to pedestrians, especially those who are visually impaired or use mobility aids and pushchairs.
- b. Making the area look unsightly.
- c. Bins are vulnerable to be vandalised or blow over and cause damage to parked vehicles.
- d. Bins left on the highway have the potential to be targeted for arson.

Relevant Legislation

The Environmental Protection Act 1990 (“the Act”) gives waste collection authorities powers in relation to waste receptacles. In particular, s.46 of the Act provides that a waste collection authority may serve a notice under that section requiring the occupier of a premises, from which household waste is collected, to follow specified steps in relation to the placing of the receptacle for collection. If the occupier fails, without reasonable excuse, to comply with the requirements of the notice, and this failure causes or is likely to cause a nuisance or has been or is likely to be detrimental to any amenities of the locality, for example by failing to remove the receptacle from the highway when specified, which in turn causes an obstruction or affects amenity, he/she could ultimately receive a fixed penalty of £60. The statutory process in relation to the service of such fixed penalties is set out in the procedure below.

Other legislation highly likely to be used to assist in the implementation of this policy will be:

1. The Environmental Protection Act 1990, s79 and s80 relating to Statutory Nuisances and Abatement Notices.
2. The Public Health Act 1936 s78 relating to the scavenging of common

courts and passageways.

3. The Town and Country Planning Act 1990 s215 relating to the proper maintenance of land.

4. Local Government (Miscellaneous Provisions) Act 1976 s16 relating to powers of Local Authority's to obtain the particulars of persons interested in land.

Residents with additional support needs or restricted storage areas.

It is recognised that some residents have additional support needs such as infirmity, limited mobility, age related frailty or live in dwellings where the design and layout does not lend itself easily to the storage of bins off the road.

Where residents have limited mobility, assistance is provided by the refuse operative and this service will remain in place.

Some properties do not have easily accessed bin storage areas. In such cases officers will attempt to offer solutions on a case by case basis prior to considering an enforcement approach.

The Procedure

Introduction

This procedure is to assist Council officers when dealing with complaints or incidents of wheeled bins not retrieved from the highway in the Gedling Borough Council area by the end of collection day.

NB: (A copy of the wheeled bin collection rota can be obtained by contacting the Waste Management Officer on 0115 9013611)

Complaint recording

All complaints about bins left on the highway received from a member of the public, a waste officer or an officer within the Public Protection team, will be logged on the Idox system, this will trigger a visit from a Council officer to the area/premises complained about.

Enforcement

First Stage

Officers will visit the area/premise complained of the day after collection should have taken place. The officer must first try to identify who is responsible for the bin and check that there are no obvious reasons why the person responsible for the bin has not returned it to its proper place of storage. These reasons may be to do with the individual having difficulty physically placing the bin out, they may be on holiday or the collection may have been missed by the Authority.

If this is the first time the officer has dealt with the address and there is no reasonable excuse for leaving the bin on the highway the officer will most likely offer advice to the occupant regarding bin storage and serve a notice under s.46 of the Act on the occupier. The notice will specify when the bin should be removed from the highway after collection. The purpose of the notice is to educate the occupier so it is clear when their bin should be returned to its storage location.

Should the reason given by the person responsible for the wheeled bin relate to an obstructed court or passageway to the rear of a row of terraced houses, the case must be reported to the Environmental Health Officer (EHO) who deals with area. The EHO will consider taking action under the Public Health Act 1936 section 78, to clear the passageway and as such enforcement will not be appropriate against that person until the court or passageway has been cleared.

Should there be another reason why the person responsible for the bin, is not able to retrieve it from the highway the officer may feel it appropriate to work with other agencies to provide appropriate support to the resident. These agencies may include Nottinghamshire County Council Adult Social Care, local residents groups, social landlords or Age Concern for example, but this list is not exhaustive.

Second stage - Serving a warning letter.

If there are further complaints about bins being left out on the highway for a premises where a s.46 notice has been served, or if officers checking compliance with the s.46 notice find it is not being complied with and bins are still being left out after collection, officers may serve a warning letter on the person responsible for the bin. A warning letter may only be served where there is no reasonable excuse for failing to comply with the s.46 notice and:

- The failure to comply has caused, or is likely to cause, a nuisance, or has been, or is or was likely to be detrimental to any amenities of the locality.

The written warning will identify how the person has failed to comply with the s.46 notice, the nature of that failure, how the failure has caused a nuisance or been detrimental to the amenity and explain what will happen if the failure to comply continues. If the non-compliance with the notice is a continuing one, that is for example the wheelie bin is permanently left on the highway without reasonable excuse causing a nuisance or affecting amenity, the warning letter may include a period within which action must be taken to remove the bin from the highway.

Third Stage – fixed penalty notice

If there is evidence, following service of a warning letter that the person responsible continues to fail to comply with the s.46 notice, or if the warning letter specifically included a time by which action to stop the breach must occur and this has not been done, the person responsible for the failure to comply may be required to pay a fixed penalty to the Council of £60.

The fixed penalty will only be required if the failure to comply with s.46 causes or is likely to cause a nuisance or has been, or is or was likely to be detrimental to any amenities of the locality. A fixed penalty can be required if the above grounds are satisfied within one year of a warning letter being served.

Process for serving a fixed penalty

Where officers wish to require a fixed penalty to be paid following a warning letter, they must first serve a 'notice of intent' on the person responsible for the bin. This notice of intent must specify the grounds for proposing the fixed penalty, the amount of that penalty and the right for a person to make representations to the Council as to why payment of a fixed penalty should not be required. Any such representations should be made to the Service Manager, Public Protection within 28 days beginning with the day the notice of intent is served.

After the expiry of 28 days from the service of the notice of intent, if there are no representations following the notice of intent, or if the officer considers the representations but determines the fixed penalty is still necessary, the officer will serve the final notice on the person responsible for the failure to comply with s.46. The final notice must explain the grounds for requiring the fixed penalty, the amount of the fixed penalty,

how payment can be made, the period within which payment must be made (14 days), the right of appeal against the penalty and the consequences of non-payment.

First - Tier Tribunal

Any person served with a final notice under this legislation can appeal against it to a First-Tier tribunal. The First-Tier Tribunal can withdraw or confirm the requirement to pay the fixed penalty. Any requirement to pay the fixed penalty is suspended pending the determination or withdrawal of the appeal. If any appeal is dismissed or withdrawn the fixed penalty must be paid within 28 days of the decision to withdraw or dismiss the appeal.

Non Payment of Fixed Penalty Notice

If the fixed penalty is not paid within 14 days of serving the final notice when there is no appeal, or within 28 days of an appeal being dismissed or withdrawn, the Council will pursue the penalty as a civil debt and will take any appropriate enforcement action in line with the Council's debt recovery processes.

Officers will consider the circumstances of every case when determining whether enforcement action is appropriate.

Appendix 2



EQUALITY IMPACT NEEDS ASSESSMENT

Policy to be assessed	Introduction of the policy to issue Fixed Penalty Notice under the Environmental Protection Act 1990 where residents fail to retrieve their wheelie bin from the highway..
Assessment completed by:	Mr Kevin Nealon, Community Protection Manager, Public Protection Service.

Aims/objectives of the Policy/Service/Procedure

The aim of this policy is to.

Set out the high level actions Gedling Borough Council intends to take against residents who fail to remove their wheelie bin from the highway, following the day of collection.

To reduce the number of obstructions to pedestrians especially those who are visually impaired or those with a mobility problems and users of pushchairs.

Reduce the risk of potential accidents and injuries to those using the pavement.

To reduce the negative visual impact caused by wheelie bins being left on the highway.

Reduce the risk of wheelie bins being vandalised.

Reduce the risk of wheelie bins being stolen.

To ensure that officers take a firm, balanced, and considered approach to any enforcement action taken.

To ensure are officers are trained to identify safeguarding issues and apply our Safeguarding Children, Young People and Vulnerable Adults Policy and procedure where relevant to do so when dealing with bins on streets issues.

Who are the customers and stakeholders of this service?

1. The public who live in areas which have an history of residents failing to retrieve their wheelie bins from the highway.
2. Council employees.
- 3 Elected members.

Detail below what information you already have about the impact this policy/service/procedure has on the following groups including results from consultation, complaints, census:

Black and minority ethnic people	The Council has no formal data relating to the ethnicity of residents who fail to retrieve their wheelie bins from the highway in the Gedling Borough Council area.
Men/women and transgender	The Council has no formal data relating to the balance of male and female ratio of people who fail

	to retrieve their wheelie bin from the highway. However some of the areas affected are in high density housing areas and as such there is an increased chance that some of residents might live alone. Statistics suggest that females outlive males and as such more of these residents may be female and live on their own.	
Disabled people	The Council has no formal data relating to disability of residents who fail to remove their refuse bins from pedestrian footpaths in the Gedling Borough Council area in the past.	
Gay/Lesbian/bisexual People	The Council has no information held on this characteristic regarding the number of who fail to remove their refuse bins from pedestrian footpaths in the Gedling Borough Council area	
People from different faiths	No information is held on this characteristic.	
People of different ages	No information is held on this characteristic.	
How will this policy/service/procedure impact on the following groups:		
	Positive impact	Negative impact
Different racial groups	None	None
Men/women and transgender	Both men and woman who transport young children in push chairs and perambulators will meet with fewer obstructions whilst using the pedestrian footpath.	None
Disabled people	People who are visually impaired or those with mobility problems will meet with fewer obstructions whilst using	Some residents who have difficulty handling and moving refuse bins might feel pressurised by the threat of

	the pedestrian footpath.	enforcement to carry out tasks they are unable to	
Gay/Lesbian/bisexual people	None	None	
People from different faiths	None	None	
People of different ages	Some elderly residents will find it easier to use footpaths as they will meet with fewer obstructions, especial those using mobility aids such as walking aids such as frames or scooters.	Some elderly residents may have difficulty in both moving their bins and negotiating them through rear passageways and alleyways.	
What changes could be made to the policy/service/procedure to address any negative impacts?			
This is a new policy; no previous policy was in place prior to its introduction.			
What monitoring will be carried out to ensure this policy/service/procedure meets diverse needs			
Officers will review this policy within one year.			
What actions will be included in your service plan arising from this assessment?			
Action	Outcome	Date?	Who?
Where residents have limited mobility assistance is provided by the refuse operative to return their bin to its proper place of storage and his service will remain in place.	Some residents have additional support needs such as infirmity, limited mobility, age related frailty or live in	Ongoing	Kevin Nealon

	dwellings were the design and layout does not lend itself easily to the storage of bins off the road. This action will address the negative issues raised in the age and disability sections of this EIA.		

Are you satisfied that all aspects of this policy/service/procedure have been thoroughly assessed for all the strands of diversity and that no further investigation is required? **Yes**

If no then a fuller impact assessment is required.

Signed.....(Manager)

Signed.....(Corporate Equality)