

CITY SERVICES - ENFORCEMENT DIVISION

Operational Policy Subject: **Waste in Gardens**

Approved By: Director of City Services

Date: 08/05/06

Version No: 2

1 **Scope**

- 1.1 This policy refers to gardens which have waste, debris, and other unwanted materials left in the garden for unreasonable lengths of time, and could be applied to gardens which have materials which are said to be of value, yet create a detriment to the amenity of the area by virtue of the visual impression they leave, e.g. rusting vehicles; building materials.

Gardens which have damaged fences, walls etc which are detrimental to the amenity of the community will be included within the scope of the document.

The policy does not apply to gardens which are merely unkempt, scruffy or not designed in a "traditional" manner.

- 1.2 This policy only refers to relevant gardens belonging to occupied properties. Three other corporate policies will also address waste - Derelict property policy (to respond to problem derelict properties), empty property strategy (to aim to get empty properties back into use) and the flytipping policy (aimed at flytipping outside the perimeters of property).

2 **Objective**

- 2.1 To seek an improvement in the visual street environment by addressing the external images of properties which have a detrimental effect on the area.

Gardens and yards that contain waste materials are an eyesore and detract from the amenity value of a whole area. They can also encourage vermin. People will be expected to maintain their properties so that they are not detrimental to the amenity of the area.

3 **Link to corporate plan**

- 3.1 Ensuring that all neighbourhoods are safe, clean, green and well maintained is one of the five strategic objectives of the plan. Improving the physical appearance and condition of the streets and immediate surroundings to improve quality of life helps support this aim.

The presence of waste and unwanted materials can encourage a spiral of decline; undermine community cohesion and reduce the effectiveness of regeneration work. It can exacerbate the fear of crime; undermine local investment in regeneration; and adversely affect education, aspirations and jobs. Conversely, tackling environmental crime sends a message to a community that things can improve and encourages the establishment of a stronger, more confident local community.

Waste is unsightly, downgrades the environment, and makes it look dirty and neglected. To those who keep their properties neat and tidy, waste and neglect in neighbouring property is unwelcome, distressing and reduces the overall quality of life.

This Policy contributes to The Vision for Leeds 2004-2020 to make Leeds an internationally competitive city and the best place in the country to live, work and learn, with a high quality of life for everyone.

4 Application of the Enforcement Policy

4.1 sec 5.1 Statutory Notices.

Notices shall be served to require offenders to cease contravening activities, or give offenders reasonable time to rectify a contravention.

4.2 sec 5.2 - Fixed penalty notices

Allows for the use of fixed penalty notices where the legislation allows.

Sec 5.2.1 Fixed penalties will be applied through sections 94A and sec 47ZA of the Environmental Protection Act 1990 (as provided in the Clean Neighbourhoods & Environment Act 2005.)

4.3 sec 5.3. Failure to Comply with Lawful Requirements

If a person fails to comply with lawful requirements, having been advised on previous occasion(s), proceedings shall be taken.

4.4 sec 5.5 Work in Default

Work required in the interests of public health, safety or the environment may be undertaken by the Authority in default, and the costs recovered.

5 Legislation

5.1	Environmental Protection Act 1990 -	Sec 46
	Town & Country Planning Act 1990 -	Sec 215
	Clean Neighbourhoods and Environment Act 2005	Sec 20

Other provisions included in the following acts may also be considered:

Prevention of Damage by Pests Act 1949 -	Sec 4
Environmental Protection Act -	Sec 80 - nuisance
Public Health Acts -	verminous premises

6 Policy

- 6.1 Waste in gardens of occupied properties will initially be dealt with by Neighbourhood Wardens (NW), Customer Services Officers (CSO) or by staff from the Arms Length Management Organisations (ALMO), which manages houses owned by the council. All ALMO related cases will be followed up by the ALMO tenancy team. This team will be able to draw on advice from the Enforcement Team.
- 6.2 In general, where there is a problem of occupiers not handling their normal waste properly or not using their bins correctly, CSOs will deal with this. Where there is general debris remaining in a garden for long periods of time, Neighbourhood Wardens will deal with this. In areas where there are no NWs, enforcement staff will respond to complaints. ALMO tenancy staff will take the lead with ALMO run properties.
- 6.3 Cases will be identified through activities in an area, or by receipt of complaint. Anonymous complaints from the public will not normally be investigated unless public interest factors are in favour.
- 6.4 Initial contact can be either verbal or in writing. If verbal, it will be confirmed using a standard letter. The letter will explain what the concern is and how it should be resolved. Records of the service and date of service of the letter will be retained.
- 6.5 Should the occupier not address the requests made within 7 days, a second and final letter will be sent to the occupier. Records of the service and date of service of the letter will be retained.
- 6.6 If this second letter is not complied with within a further 7 days, the issue will be referred to Enforcement for follow up. Such complaints will receive a visit within 10 working days of receipt of the referral.
- 6.7 The Enforcement Officer (EO) will visit and obtain evidence from site and/or from the NW/CSO. This will include written descriptions and photographic evidence. They will determine the appropriate person to serve notice upon and then explain the process that is about to occur to that person.
- 6.8 In cases where the garden is affected by litter which is trapped in the garden, and is detrimental to the area, the occupier will be served with a Clean Neighbourhoods and Environment Act 2005 (CNEA) litter clearing notice (sec 92A EPA – as provided by sec 20 of the CNEA). This notice will specify the steps required to remove litter from the garden. The notice can be used where the extent of the problem is resolved using a litter picking process into a refuse bag which can then be disposed of in the normal household waste collection process.
- 6.9 An EPA section 46 notice will be served in all cases where larger items or amounts of refuse in gardens is not being contained properly. The Notice will be served on the occupier(s) of the property, although where there are problems associated with rented accommodation, the landlord may also be served with a similar notice.

- 6.10 The timing of service of the sec 46 Notices should take into account the opportunity to use the bulky waste collection service.
- 6.11 Alongside the section 46 Notice, a sec 215 TCPA notice relating to amenity will be served on the owner and occupier. Where the material creates a visual detriment to the area, but would not normally be described as household waste, eg - old, rusty, untaxed, unused cars; engine parts; materials associated with construction; rotting animal shelters etc, a section 215 Notice will be served alone, requiring removal of the material. Section 215 Notices will need to be recorded on the land charges register (see appendix 2).
- 6.12 Failure to comply with a section 46 Notice will result in prosecution, although the person will be offered the opportunity to discharge the liability to prosecution for that activity by payment of a £75 fixed penalty notice.
- 6.13 Failure to comply with a section 92A Notice will result in prosecution, although the person will be offered the opportunity to discharge the liability to prosecution for that activity by payment of a £100 fixed penalty notice.
- 6.14 There is a right to appeal to the magistrate's courts against sec 92A, 46 & 215 notices. All Notices will allow a minimum of 28 days to carry out works. A sec 215 Notice will state 28 days PLUS whatever time is thought necessary to complete the works, taking into account the fact that 2 letters have been sent already allowing 2 weeks to complete the works.
- 6.15 If an appeal is lodged, the processes described in this policy will be suspended pending the outcome of the appeal.
- 6.16 The investigating officer will contact all complainants as part of an ongoing investigation, and to advise of the outcome.
- 6.17 If the waste is not removed, the works will be carried out in default under the provisions of the section 215 or section 92A notices. The costs of doing such works and carrying out the administrative processes associated with this will be recharged to the owner of the land. If arrangements to pay these are not agreed within 21 days, the failure to comply will result in a prosecution file being prepared. As part of this package, an application will be made to the courts for the recovery of costs. Should they not be awarded, where the offender owns the property, a financial charge will be placed against that property.
- 6.18 The authority normally clears bin yards that are in a mess. CSOs will monitor and respond to problem yards, and are able to seek enforcement support if necessary.
- 6.19 EHOs will deal with occupied properties where the occupier is not capable of handling the accumulation of refuse due to incapacitating mental or physical illness. The EHO will lead a case team specifically organised to deal with the environmental problems and to ensure a sustainable outcome by supporting the occupier.
- 6.20 In some cases materials may be kept in a garden for the benefit of the occupier, ie - restoration projects as a hobby or materials being gathered for subsequent

improvement of the property. If this is the case, each case must be treated on its merits, taking into account the nature of the materials, the visual effect on the community and time scales involved.

Appendix 1 - Legislation available:

Town & Country Planning Act 1990.

215.—(1) If ... the amenity ... of the[.] area, ... is adversely affected by the condition of land ..., [the local planning authority] ...may serve on the owner and occupier of the land a notice under this section.

(2) The notice shall require such steps for remedying the condition of the land ... within such period as ... specified.

(3) ... the notice shall take effect ... (4) ... not ... less than 28 days after the service of the notice at the end of such period as may be specified in the notice.

S219 (1)(b) - the authority may recover from the ... owner of the land any expenses reasonably incurred.

Environmental Protection Act 1990

46.—(1) Where [an] authority has to arrange for the collection of household waste from any premises, the authority may... require the occupier to place the waste for collection in receptacles of a kind and number specified.

(4) ... the authority may, by .. notice ... [specify]

(a) the size, construction and maintenance of the receptacles;

(b) the placing ... for ... emptying ... and access to [them] ...

(c) the placing ... on highways ...

...

(e) the steps to be taken by occupiers of premises to facilitate the collection of waste from the receptacles.

(6) A person who fails, without reasonable excuse, to comply ... shall be liable ... to a fine not exceeding [£1000].

(7) ...an occupier ... may... appeal to a magistrates' court ...against any requirement ..[within 21 days]... on the ground that—

(a) the requirement is unreasonable; ...

...

79.—(1) Subject to [exceptions outlined in the act - relevant ones included here] , the following ... constitute "statutory nuisances" ...

(a) any premises ... to be prejudicial to health or a nuisance;...

(c) fumes ... emitted from [private dwellings]... prejudicial to health or a nuisance;...

(e) any accumulation ... prejudicial to health or a nuisance;

.....

(7) In this Part—

"fumes" means any airborne solid matter smaller than dust;

"prejudicial to health" means injurious, or likely to cause injury, to health;

"premises" includes land ...

"private dwelling" means any ... part of a building, used ... as a dwelling;

80.—(1) Where ... a statutory nuisance exists, or is likely to occur or recur, ... the local authority shall serve ... "an abatement notice"

(a) requiring the abatement of the nuisance or prohibiting or restricting its occurrence or recurrence;

(b) requiring ... such works [or] other steps, ... for any of those purposes, and ... specify the time ... within which ... the notice [is] to be complied with.

Clean Neighbourhoods and Environment Act 2005

92A Litter clearing notices

(1) A principal litter authority may... serve a "litter clearing notice" in relation to any land in its area which is open to the air.

(2) *where it is* ... satisfied that the land is defaced by litter or refuse so as to be detrimental to the amenity of the locality.

(3) A ... notice is to require the person... to clear the land of the litter...and... to take reasonable steps to prevent it from becoming so defaced again.

(4) A litter clearing notice must be served on... the occupier, or... owner -

Appendix 2

Town & Country Planning Act 1990 - Section 215.

For each property, send a copy of the Notice to land charges section, with a covering memo stating that the Notice is for entry into Part 3 of the local land charges register. The following details should be included:

Town & Country Planning Act 1990 Section 215.

Notice Title/reference:

Date served:

Served on *address of property*

Requiring *description of corrective action*

Land charges have the following information:

T & CP General Regulations 1992 (as amended by the T & CP General (Amendment) Regulations 1992).

Where a Notice has been served under S.215 of the T & CP ACT 1990, any expenses recoverable by a local planning authority (who have entered onto the land to carry out the necessary works to secure compliance) under S.219(1) of the Act will be, until recovered, a charge that is binding on successive owners of the land to which the Notice relates. This legislation became effective from 8 January 1998.

If work is carried out in default, Finance section should notify land charges to register a financial charge under sec 219(1)

