



DERBY CITY COUNCIL

**COMMUNITY COMMISSION
30 MARCH 2009**

Report of the Corporate Director –
Environmental Services

ITEM 11

INTERVENTION AND ENFORCEMENT BY ENVIRONMENTAL HEALTH IN RESPECT OF GARDENS IN DISREPAIR

SUMMARY

- 1.1 When the Community Commission met on 20 January 2009 a sub-issue was raised concerning gardens in disrepair. Mention was made of the garden maintenance scheme to assist residents who through age or disability cannot tend to their own gardens. The other aspect was about enforcement action that can be taken in cases of deliberate neglect.
- 1.2 The Commission decided they would like to have information on the thresholds for EPA intervention and enforcement.
- 1.3 This report details those actions that are available to officers within the Environmental Health and Trading Standards Division of Environmental Services to deal with issues relating primarily to waste in gardens.

RECOMMENDATION

- 2.1 To note the report.

SUPPORTING INFORMATION

- 3.1 There are a number of pieces of legislation that can be used to deal with issues relating to neglect of gardens. From an Environmental Health aspect these relate primarily to the removal of refuse. They do not generally extend to gardens that are merely untidy or neglected (for example overgrown) or contain quantities of hoarded material that do not constitute waste.

Circumstances such as these may be dealt with using other legislation, such as powers under planning legislation, which are currently outside the remit of the Division.

Legal Powers

- 3.2 The relevant pieces of legislation that can be used are:
 - a) The Environmental Protection Act 1990 – Section 80 (Statutory Nuisance).
 - b) The Prevention of Damage by Pests Act 1949 – Section 4 (Control of Rats and Mice).
 - c) The Environmental Protection Act 1990 – Section 92 (Litter Clearing Notices).

- d) The Environmental Protection Act 1990 – Section 59 – Removal of Controlled Waste from Land.

The Environmental Protection Act 1990 – Section 80 (Statutory Nuisance)

- 3.3 This piece of legislation defines a number of specific ‘statutory nuisances.’ This includes any accumulations or deposits that could be prejudicial to health or a nuisance. It is used where there are deposits of waste or other material that could be causing problems through smell, flies, etc. In most cases this will relate to items such as food waste, dog faeces, other putrescible matter, discarded nappies, etc. It cannot be used to deal with inert waste which is causing no nuisance.
- 3.3.1 A Formal Notice can be served on the owner/occupier/person responsible for the nuisance. This will require the recipient to carry out any necessary steps to abate the nuisance. The Notice can require work to be carried out immediately, but usually a period of compliance is allowed which can be up to 21 days depending on the nature of the problem. There are provisions for an appeal. The Notice can also contain a recurring element so that it prevents the recurrence of the problem, and an offence is committed if that takes place.
- 3.3.2 It is an offence not to comply with the Notice. If the Notice is not complied with the Council can carry out the work in default and recharge the Notice recipient for any charges incurred in doing this.
- 3.3.3 For the period 1 April 2007-31 March 2008 Environmental Health served 41 of these Notices across the city, 8 of which were completed in default. For the period 1 April 2008 - 18 March 2009, 33 Notices have been served with 8 completed in default following non-compliance.

The Prevention of Damage by Pests Act 1949 – Section 4 (Control of Rats and Mice)

- 3.4 This is used where there are existing or potential problems with rats or mice on land at a premises. For example where there are accumulations of household waste or material that are attracting or could attract vermin then a Notice can be served on the owner or occupier to require that material be removed. It cannot be used where the deposit is only inert waste (i.e. building material, white goods, etc.). There is a period allowed for compliance which is usually 28 days. There is a right of appeal and there is no recurring element permitted in the Notice.
- 3.4.1 It is an offence not to comply with the Notice. If the notice is not complied with the council can carry out the work in default and recharge the Notice recipient for any charges incurred in doing this.
- 3.4.2 For the period of 1 April 2007-31 March 2008 Environmental Health served 154 of these Notices across the city. Work was carried out in default in 29 of these cases and charges recovered from the person responsible. For the period of 1 April 2008 – 18 March 2009, 185 Enforcement Notices have been served with 40 being carried out in default.

The Environmental Protection Act 1990 – Section 92 (Litter Clearing Notices)

- 3.5 These provisions were introduced as part of the Clean Neighbourhoods and Environment Act 2005. Environmental Health have recently started using these Notices. This allows a Notice to be served where land is heavily defaced by litter

and refuse. It can be used for any land in the Council's area, which would include gardens.

- 3.5.1 The term heavily defaced should be noted, as although this is not specifically defined, action would not be considered under this legislation unless there was a significant problem. The legislation states that the powers should not be used unless reasonable efforts to contact the occupier or owner are unsuccessful.
- 3.5.2 The Notice can specify steps to be taken to clear the land and can include a recurring element. There are powers to carry out work in default if the Notice is not complied with and there is provision for the service of a Fixed Penalty Notice (currently £100) for non-compliance.

The Environmental Protection Act 1990 – Section 59 Removal of Controlled Waste from Land

- 3.6 This provision can be used where controlled waste has been deposited on land that does not hold a waste management licence. Controlled waste can include household, industrial and commercial waste.
 - 3.6.1 Notice may be served on the occupier of the land (or the owner if there is no occupier) giving no less than 21 days for them to remove the waste. There are powers to do the work in default, as with the other provisions it is an offence not to comply with the notice.
 - 3.6.2 In reality this power is not often used and is more aimed at removing larger quantities of fly-tipped waste. There is an appeal provision if the owner or occupier was not responsible for the deposit. In most cases relating to gardens any deposits of waste are better dealt with under the provisions described earlier in the report.

City Council Policies and Practice

- 3.7 Officers from the division use these above powers on a frequent basis, and work is commonly carried out in default following non-compliance. Further legal action would not normally be taken for a first time offence as steps are taken to recover the costs incurred. If there was a repeat offence by the same person then prosecution would definitely be recommended.
 - 3.7.1 It is hoped to make more use of the Litter Clearing Notice provisions that were introduced under Clean Neighbourhoods and Environment Act 2005 and the fixed penalty provisions contained in this.
 - 3.7.2 Enforcement action is taken for all types of property – owner occupied and rented properties can all be dealt with. There is some crossover with legislation relating to the management of houses in multiple occupation which can address issues in relation to the maintenance of properties. This legislation is dealt with outside the department.
 - 3.7.3 In terms of Derby Homes properties then liaison takes place with regards to actions to be taken. In normal circumstances, in the first instance Derby Homes will try and resolve the problem, but if this fails the matter can be referred to Environmental Health.

Resources

- 3.8 This legislation is enforced by staff on the Public Health Team within the Environmental Health and Trading Standards Division of Environmental Services.

Links to other agencies

- 3.9. The Division works closely with the Neighbourhood Team who will refer issues relating to accumulations of refuse/waste in properties.

For more information contact: Ian Donnelly 01332 641943 e-mail ian.donnelly@derby.gov.uk
Background papers: None
List of appendices: Appendix 1 – Implications

IMPLICATIONS

Financial

1. None.

Legal

2. None.

Personnel

3. None.

Equalities Impact

4. None.

Corporate Priorities

5. Environmental Health & Trading Standards contributes to the priority of **giving excellent services and value for money.**