

Report of:	Head of Environmental Health
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Key Decision:	Yes
Report Track:	Cabinet: 17/0714

**CABINET
17 JULY 2014
ENFORCEMENT ACTION FOR SPITTING**

1 Purpose of Report

1.1 Cabinet are asked to determine if they wish to implement measures to take action against spitting in public places.

2 Recommendations

- 2.1 That Cabinet:
- a) Resolve whether or not they wish to take action against spitting in public places;
- and, if they do so resolve:
- b) Determine whether this should be implemented by way of the provisions of the Environmental Protection Act 1990, or by way of local byelaws.

3 Key Issues and Reasons for Recommendation

- 3.1 Historically, spitting has aided the spread of infectious diseases, notably tuberculosis (TB). In more recent times with improved hygiene and living standards, and routine immunisation it's public health significance has diminished.
- 3.2 Those Councils that have taken a stand on the issue of spitting appear to have received considerable public support. Spitting in public places is generally regarded as a repulsive anti-social habit.

- 3.3 There is no specific legislation prohibiting spitting in public places. The original ban on spitting in the UK which carried a £5 fine was repealed in 1992. Recently a few local authorities have been tackling spitting using either the litter provisions in the Environmental Protection Act 1990, or by making local byelaws.
- 3.4 There appears to be very little established case law. Should Cabinet decide that this is an issue they wish to pursue then there appear to be two potential enforcement options. The litter enforcement provisions of the Environmental Protection Act 1990 might be used, or alternatively approval of local byelaws could be sought from the Secretary of State.

4 Relationship to Corporate Priorities

- 4.1 This report supports the Council's Corporate Priorities as follows:
- (i) Health & Wellbeing, by reducing the risk of spreading infectious disease;
 - (ii) Environment, by contributing to a more pleasant living environment.

5 Report Detail

- 5.1 In the absence of specific central legislation there are two legal routes to tackle spitting in public places.
- 5.2 Firstly, section 87 of the Environmental Protection Act 1990 (EPA1990) makes it an offence to leave litter in any open public place. Section 88 makes provision for a fixed penalty notice (FPN) to be served on the offender rather than them being prosecuted. If the FPN is not paid then prosecution should follow. Litter is defined in section 98 as including "*a) the discarded ends of cigarettes, cigars and like products, and b) discarded chewing-gum and the discarded remains of other products designed for chewing.*" It is not clear whether deposits from spitting can be classed as litter.
- 5.3 Secondly, local byelaws can be made that prohibit spitting in public places. The byelaws have to be drafted, approved by Council and then submitted to the Secretary of State for ratification.
- 5.4 The London Borough of Waltham Forest has been using the Environmental Protection Act FPN powers for spitting since early 2013. Recently two offenders did not pay the FPNs and were prosecuted. The magistrate's court ruled in favour of Waltham Forest and convicted the two offenders.
- 5.5 The London Borough of Enfield is tackling spitting by making local byelaws. The Secretary of State confirmed the byelaws on 8th December 2013. Several other Councils are either considering or actively pursuing byelaws. Anyone breaching the byelaws would be guilty of an offence and could face prosecution and a fine of up to £5,000. There is no provision for the service of a fixed penalty notice.

- 5.6 The preferred route in terms of ease of implementation would be to utilise existing FPN powers under the EPA1990. The FPN offers significant benefits to both the Council and the offender. For the Council the process is straightforward and already in place. Experience with littering and dog fouling is that the majority of FPNs are paid. For the Offender, payment of the FPN discharges responsibility for the offence and no criminal record results. However, although the magistrates in Waltham Forest have accepted that spitting is litter, the use of the power carries some risk until the use of EPA1990 powers has been tested in the higher courts.
- 5.7 Local byelaws have the advantage that they would create a specific offence and there shouldn't be any question as to their enforceability. Their disadvantage is that there is no FPN facility and therefore enforcement must be by way of a prosecution. This will be a more protracted and cumbersome process.

6 Implications

6.1 Financial

There are no additional costs associated with the preferred route of using existing powers under the Environment Protection Act 1990 to take action against spitting in public places. Enforcement activity could therefore be contained within existing resources.

Although the drafting of a local bye-law and gaining the approval of the Secretary of State could be contained within existing resources, there would be additional costs associated with prior public consultation and advertising the bye-law. It is estimated that the costs would be around £2,000.

6.2 Legal

Section 87 EPA 1990 specifically deals with the offence of leaving litter. It is arguable whether spitting falls within the definition of litter. It has been accepted as litter by one magistrates court but there remains some risk until it has been tested in the higher courts.

Section 235 Local Government Act 1972 gives local authorities the general power to make their own local bye-laws. Firstly, a formal resolution has to be made to introduce the bye-law and some form of prior public consultation needs to take place. After making the bye-law the authority must advertise it at least once in the local press, and after a period of one month application to the Secretary of State to have the bye-law confirmed can be made. Once confirmed the bye-law will come into force after a further period of one month. Breaching the provisions of a bye-law would constitute a criminal offence, resulting in a possible prosecution against the offender.

6.3 Human Resources

None.

6.4 Section 17 (Crime Prevention)

None.

6.5 Human Rights Act

None.

6.6 Data Protection

None.

6.7 Risk Management

Risks in relation to this matter concern the legal process and are dealt with in the Legal Implications above.

6.8 Equality & Diversity

None.

6.9 Best Value

None.

7 Appendices to the Report

Previous Consideration

Background Papers