

## PART 1 - PUBLIC

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**Decision Maker:** Public Protection & Safety Policy, Development and Scrutiny Committee

**Date:** 29 November 2011

**Decision Type:** Non-Urgent Executive Non-Key

**Title:** PORTFOLIO PLAN and ENFORCEMENT ACTIVITY 1<sup>st</sup> APRIL 2011 to 30<sup>th</sup> SEPTEMBER 2011

**Contact Officer:** Clive Davison, Assistant Director, Public Protection  
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**Chief Officer:** Nigel Davies, Director of Environmental Services

**Ward:** Boroughwide

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1. Reason for report

To advise Members of the activity undertaken by the Public Protection Division during the period 1<sup>st</sup> April 2011 – 30<sup>th</sup> September 2011 relating to the annual Portfolio Plan and enforcement under delegated powers (the enforcement information includes other relevant divisions in the Environmental Services Department).

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2. **RECOMMENDATION(S)**

Members are asked to

- comment on the contents of this report.
- agree to receive further reports, every six months, on the activity relating to the Portfolio Plan and enforcement under delegated powers

## Corporate Policy

1. Policy Status: Existing policy.
  2. BBB Priority: Safer Bromley. Quality Environment, Vibrant, Thriving Town Centres
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## Financial

1. Cost of proposal: Estimated cost See Total budget - All services have an enforcement element
  2. Ongoing costs: Recurring cost.
  3. Budget head/performance centre: Public Protection and Safety Portfolio Budgets
  4. Total current budget for this head: £3.7m
  5. Source of funding: Existing revenue budgets 2011/12
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## Staff

1. Number of staff (current and additional): 59ftes
  2. If from existing staff resources, number of staff hours: N/A
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## Legal

1. Legal Requirement: Statutory requirement. Numerous statutes covering Public Health and Safety, Environmental Protection, Licensing, Consumer Protection, Anti Social Behaviour, Food Safety and Control of Communicable Disease etc
  2. Call-in: Call-in is not applicable.
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## Customer Impact

1. Estimated number of users/beneficiaries (current and projected): All of the Council's customers (including council tax payers) and users of the services.
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## Ward Councillor Views

1. Have Ward Councillors been asked for comments? N/A.
2. Summary of Ward Councillors comments: N/A

### 3. COMMENTARY

- 3.1 At the meeting of the Public Protection and Safety, Policy Development & Scrutiny Committee on 15<sup>th</sup> November 2007 Members agreed they should receive reports of the enforcement activity undertaken by the Public Protection division on a six monthly basis. On the 22<sup>nd</sup> October 2010 the Portfolio Holder and Chairman of the Public Protection and Safety, Policy Development & Scrutiny Committee requested that this report should also include an update of Portfolio Plan activity.
- 3.2 The enforcement activity for the period 1<sup>st</sup> April 2011 – 30<sup>th</sup> September 2011 is set out in Appendix A to this report. This covers not only Public Protection enforcement (i.e. Environmental Protection, Food Safety, Public Health & Safety, Licensing, Trading Standards and Anti-social behaviour) but also related enforcement action by the Street Scene and Greenspace division of the Environmental Services Department.
- 3.3 The Public Protection and Safety Portfolio Plan activity for the same period is set out in Appendix B to this report.

### 4. POLICY CONSIDERATIONS

- 4.1 Enforcement activity is undertaken in accordance with the agreed Enforcement Policy:
  - a. The Public Protection Division undertakes its regulatory functions in accordance with risk assessment criteria ensuring that service resources are focused upon those activities or practices the present the greatest risk to public health, safety or potential economic loss to the consumer.
  - b. Consistency of approach aims to ensure that officers are consistent in the exercise of their discretion to achieve similar ends in similar circumstances, irrespective of which officer deals with the matter.
  - c. It is important to the service that people understand what is expected of them and what they should expect from the Council. This includes making it clear between statutory requirements (what they have to do) and, where relevant, what they do not have to do (advice or guidance on good practice).
  - d. Where enforcement action is necessary, officers will take appropriate action dependent upon the seriousness of any breach of the law. The action that they take will be proportionate to the seriousness of any breach of the law relating to the health, safety, quality of life or economic position of the local and business community.

### 5. FINANCIAL & PERSONNEL CONSIDERATIONS

- 5.1 All enforcement activity is undertaken within existing resources and agreed grant allocation

<b>Non-Applicable Sections:</b>	N/A
Background Documents: (Access via Contact Officer)	N/A

**PUBLIC PROTECTION ENFORCEMENT ACTIVITY - STATUTORY NOTICES**

<b>LEGISLATION</b>	<b>DESCRIPTION</b>	NOTICES 1/4/10 - 30/9/10	NOTICES 1/10/10 - 31/3/11	<b>NOTICES 1/4/11 – 30/9/11</b>
Environmental Protection Act S.80	Nuisance from premises	2	2	-
Environmental Protection Act S.80	Nuisance from bonfires	2	-	2
Environmental Protection Act S.80	Nuisance from noise (other)	13	10	6
Environmental Protection Act S.80	Nuisance from dog barking	1	1	1
Environmental Protection Act S.80	Nuisance from accumulations	14	8	14
Environmental Protection Act S.80	Nuisance from amplified music (commercial premises)	1	1	1
Environmental Protection Act S.80	Nuisance – intruder/car alarms	8	9	7
Environmental Protection Act S.80	Nuisance from amplified music (domestic premises)	7	13	17
Environmental Protection Act S.80	Nuisance - other	-	2	-
Environmental Protection Act S.80	Nuisance from light	-	-	2
Environmental Protection Act S34	Disposal of waste/Written descriptions	3	9	5
Environmental Protection Act S92	Litter clearance	1	3	1
Local Gov. Misc. Prov. Act S.20	Sanitary accommodation	-	-	-
Health & Safety at Work Act	Improvement Notice	2	4	2
Health & Safety at Work Act	Prohibition Notice	5	2	3
Local Gov. Misc. Prov. Act S.16	Requisitions for information	2	14	2
Environmental Protection Act S.71	Requisition for information	2	5	0
Prevention of Damage by Pests Act S4	Pest infestations/Rubbish accumulations	20	44	52
Public Health Act 1936 S78	Cleansing alleyways	6	-	6
Public Health Act 1936 S287	Notice of Entry	-	-	2
Public Health Act 1961 S83	Filthy & verminous premises	1	4	1
Building Act 1984 S 59	Defective Drainage	4	-	2
Food Hygiene Regulations	Improvement Notice	6	16	19
Control of Pollution Act S.60	Noise from building/demolition	4	-	3

**STREET SCENE & GREENSPACE ENFORCEMENT ACTIVITY**

Highways Act - 1980 S154	Overhanging Vegetation	1287	1259	809
Highways Act - 1980 S184	Illegal Crossover	53	60	158
Highways Act - 1980 S143 (1)	Removal of Structure	48	49	68
Highways Act - 1980 S131	Damage to Highway	56	66	99
Highways Act - 1980 S166	Dangerous Forecourt	19	56	100
Environmental Protection Act 1990	Fly tipping	24	48	123
Refuse Disposal (Amenity) Act 1978, as amended	Nuisance Vehicles	85	77	78

## **STREET SCENE & GREENSPACE FIXED PENALTY NOTICES ISSUED**

Clean Neighbourhoods and Environment Act 2005 - S19	Deposited Litter	32	47	<b>43</b>
Clean Neighbourhoods and Environment Act 2005 - S22	Failure to comply with Street Littering Control Notice	1	3	<b>1</b>
Clean Neighbourhoods and Environment Act 2005	Abandoned Vehicle	8	7	<b>1</b>
London Local Authorities Act 1990 (c.vii) - S38(1)	Unlicensed Street Trading	3	3	<b>4</b>
Clean Neighbourhoods and Environment Act 2005 - S59	Dog Fouling	-	4	<b>14</b>
London Local Authorities Act 2004 - S15/16	Sale of Vehicle on Highway	-	2	<b>9</b>

## **ANTI-SOCIAL BEHAVIOUR ENFORCEMENT ACTIVITY**

Anti Social Behaviour Act	ASBOs	0	0	<b>1</b>
Anti Social Behaviour Act	ABCs	29 issued	27 issued	<b>13 issued</b>

## **REGULATION OF INVESTIGATORY POWERS ACT 2000**

Fraud Act & Doorstep Selling Regulations	Collection of evidence - Rogue Traders	27	1	<b>7</b> (6 no evidence 1 evidence)
Anti Social Behaviour Act	Collection of evidence	23	21	<b>18</b> (9 no evidence 7 ongoing 2 evidence)
Age related sales legislation (E.g. Licensing Act)	Age related sales – test purchasing campaigns	5	6	<b>4</b> (4 reviews of Licences)
Environmental Protection Act	Collection of evidence – fly-tipping	5	8	<b>7</b> (5 ongoing, 2 no evidence)

## **PROSECUTIONS (All heard at Bromley Magistrates Court unless otherwise stated)**

<b>LEGISLATION</b>	<b>DESCRIPTION</b>	<b>PENALTY</b>
Env. Protection Act 1990	Failure to comply with S80 abatement notice (amplified music)	12mth conditional discharge + £250 costs
Env. Protection Act 1990	Failure to comply with S80 abatement notice (amplified music)	£500 fine + £350 costs
Env. Protection Act 1990	Failure to comply with S80 abatement notice (amplified music)	£100 fine + £15 victim's surcharge + £85 costs Forfeiture order for equipment
Env. Protection Act 1990	Failure to comply with S80 abatement notice (amplified music)	£150 fine + £15 victim's surcharge + £950 costs Forfeiture order for seized equipment
Env. Protection Act 1990	Failure to comply with S80 abatement notice (amplified music)	12mth conditional discharge + £50 costs
Env. Protection Act 1990	Failure to comply with S80 abatement notice (amplified music)	£200 fine + £15 victim's surcharge + £150 costs Forfeiture order for seized equipment
Env. Protection Act 1990 s34	Failure to transfer waste to an authorised person	£100 fine + £15 victim's surcharge + £85 costs
Env. Protection Act 1990 s34	Failure to transfer waste to an authorised person	3mth conditional discharge + £745 costs

Env. Protection Act 1990 s34	Failure to transfer waste to an authorised person + Failure to obtain written descriptions	£225 fine+ £15 victim's surcharge +£400 costs
Env. Protection Act 1990 s33	Illegal deposit of waste	6mth conditional discharge + £75 costs
Env. Protection Act 1990 s34	Failure to obtain written transfer notes	£300 fine + £15 victim's surcharge + £300 costs
Children & Young Persons Act 1933, Firework Safety Regs. 1997	Sale of tobacco and fireworks to a person under the age of eighteen	25/5/11; £2,000 fine; £1,159.90; £15 victim surcharge
Trade Marks Act 1994	Possession of counterfeit goods	25/5/11; £700 fine; £425 costs; £15 victim surcharge
Trade Marks Act 1994	Sale/possession of counterfeit goods	31/5/11 6 months imprisonment
Consumer Protection from unfair trading regulations	Mis-use of logos	17/8/11 £2,800 fine; £980 costs; £15 victim surcharge.
Restricted Premises Order (for the sale of Tobacco) Criminal Justice & Immigration Act 2008.	Persistent sale of tobacco to a person under the age of eighteen	20/7/11 Magistrates refused to make an order.
Fraud Act 2006	Participation by sole trader in fraudulent business (rogue trader)	27/7/11; 2 months imprisonment suspended for 1 year; 100 hours unpaid work; 12 month supervision order; £800 compensation; £370 costs.
Fraud Act 2006	Participation by sole trader in fraudulent business (rogue trader)	17/8/11; 80 hours unpaid work; 12 month supervision order; £400 compensation; £600 costs.
Fraud Act 2006	Fraud by false representation (rogue trader)	23/9/11; 6 months imprisonment suspended for 1 year; 180 hours unpaid work; 12 month supervision order; £2300 compensation; £500 costs.
Fraud Act 2006; Proceeds of Crime Act 2002	Fraud by false representation & money laundering (rogue trader)	26/8/11; 9 months imprisonment
Licensing Act 2003	Breach of Licence Conditions (selling after permitted hours)	25/07/11 fine £1,700 + £15 victim surcharge costs £693.70. & Personal Licence suspended 3 months

### **STREET SCENE & GREENSPACE PROSECUTIONS**

<b>LEGISLATION</b>	<b>DESCRIPTION</b>	<b>PENALTY</b>
Highways Act 1980 S139	Illegal Skip on Highway	£1,000 fine, £15 surcharge, £420 costs
Highways Act 1980 S139	Illegal Skip on Highway	£500 fine, £15 surcharge, £300 costs
Highways Act 1980 S139	Illegal Skip on Highway	£400 fine, £15 surcharge, £420 costs
Highways Act 1980 S139	Illegal Skip on Highway	£300 fine, £15 surcharge, £420 costs (included in above)
Environmental Protection Act 1990 S33	Fly Tipping	£400 fine, £30 surcharge, £100 costs
Highways Act 1980 S139	5 Illegal Skips on Highway	£1,250 fine, £15 surcharge, £420 costs (included in above)
Highways Act 1980 S139	Illegal Skip on Highway	£900 fine, £30 surcharge, £300 costs

## **PROSECUTIONS PENDING**

Environmental Protection Act 1990	2 x Failure to comply with Section 80 abatement notice (Noise)
Environmental Protection Act 1990	1 x Failure to comply with Section 80 abatement notice (Accumulation)
Environmental Protection Act 1990	1 x Transporting waste without being a registered waste carrier
Environmental Protection Act 1990 + Fraud Act 2006	1 x Failure to transfer waste to an authorised person Failure to obtain written descriptions Fraud
Environmental Protection Act 1990	2 x Failure to transfer waste to an authorised person & to obtain written descriptions
Environmental Protection Act 1990	1 x Illegal deposit of waste
Environmental Protection Act 1990	1 x Failure to obtain written descriptions
Environmental Protection Act 1990	1 x Illegal deposit of waste, Failure to obtain transfer to authorised person & failure to obtain written descriptions
Health & Safety at work etc Act 1974	1x Failing to protect employee from risk from using access equipment (S. 2) and failing to comply with work at height regulations.
Food Safety Act 1990	1x Foreign body in loaf of bread 3x Failures to maintain documented food safety systems
<b>Prosecutions Pending Street Scene and Greenspace</b>	
Environmental Protection Act 1990 S33	Fly Tipping
Environmental Protection Act 1990 S33	Fly Tipping
Highways Act 1980 S139	Illegal Skip on Highway
Highways Act 1980 S139	Illegal Skip on Highway
Highways Act 1980 S139	Illegal Skip on Highway
Clean Neighbourhoods & Environmental Act 05	Non payment of 3 FPNs
Highways Act 1980 S139	Illegal Skip on Highway
Environmental Protection Act 1990 S33	Fly Tipping
Environmental Protection Act 1990 S33	Fly Tipping
Highways Act 1980 S139	Illegal Skip on Highway
Highways Act 1980 S139	Illegal Skip on Highway

## **UNDERTAKING/ASSURANCE GIVEN UNDER THE ENTERPRISE ACT 2002\***

Doorstep Selling Regs 2008	19 x matters involving traders who failed to provide consumers with a cancellation notice following a cold call for property repairs
Consumer Protection from Unfair Trading Regulations 2008	3 x Mis-use of a logo (including mi-use of Bromley splash logo) 2 x aggressive practices (refusing to leave a consumers home when asked)
Trade Marks Act	4 x supply of counterfeit goods
Tobacco Products Regs 2002	Possession of niche tobacco products

\*Breach of an undertaking given under the Enterprise Act can lead to a formal enforcement order issued by a court. Breach of any such order is contempt and can result in imprisonment of up to 5 years.

### **FORMAL/WRITTEN CAUTIONS**

Formal Closure of food businesses	2
Voluntary Closure of food businesses	0
Flytipping	2
Licensing	0

### **WORKS IN DEFAULT**

Works in default	18
Equipment Seizures	6

### **LICENSING REVIEWS**

Newlands News	Trading Standards under age sales	Conditions applied to licence
The Golden Lion PH	Public Health Nuisance	Conditions applied to licence

### **LICENSING APPLICATION HEARD**

Applications heard by the Licensing Sub Committee / Appeals at Magistrates Court	<p>23 hearings by Licensing Sub Committee</p> <p>6 applications refused</p> <p>1 Appeal at Magistrates Ct against Sub Committee decision to Revoke a licence. Appeal allowed as new owner operating the business</p>
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