

**ENVIRONMENTAL PROTECTION ACT 1990 – SECTION 33 & 34**  
**TRADE WASTE BURNING & FAILURE TO KEEP WASTE TRANSFER DOCUMENTS - SGUC LIMITED**

**Submitted by:** Environmental Protection Team Manager – Darren Walters

**Portfolio:** Environmental Health

**Ward(s) affected:** Newchapel

**Purpose of the Report**

To seek authority from the Committee to instigate prosecution proceedings for the burning of commercial waste and in the event that waste transfer notes are not forthcoming to instigate further legal proceedings.

**Recommendations**

(a) That subject to the Head of Central Services being satisfied with the evidence to instigate, prosecution proceedings for the breaches of section 33 of the Environmental Protection Act 1990.

(b) That in the event that a fixed penalty notice in respect of the failure to supply waste transfer notes to the Council is not complied with to instigate legal proceedings for failure to keep the transfer notes in accordance with section 34 of the Environmental Protection Act 1990 and for failure to comply with the fixed penalty notice.

(c) To receive a further report detailing the outcome of proceedings.

**Reasons**

To act as deterrent to the improper disposal of waste and to encourage compliance with the waste duty of care requirements in respect of disposal and the requirements to keep and produce waste transfer notes.

1. **Background**

- 1.1 On the 11 November 2011, an officer from the Council's Environmental Protection Team witnessed a substantial amount of furnishings and fittings associated with the refurbishment of a former public house being burnt in the open air and giving rise to emissions of smoke which could be seen over a mile away.
- 1.2 Subsequent investigations established that proper provision had not been made to dispose of the waste in an environmentally sustainable manner and that the burning was intended to take place under the cover of Bonfire Night. Attempts have been made to interview the Company Director in accordance with the provisions of the Police and Criminal Evidence Act 1984, however these attempts have failed and no mitigating factors have been formally offered. An employee was also interviewed under caution; however your officers were only able to obtain a pre-prepared statement which did not provide any mitigation.
- 1.3 Disposal of waste in this manner is contrary to the provisions of section 34 of the Environmental Protection Act 1990 and businesses who dispose of waste in this way have a competitive advantage over those that comply with the law. In addition burning such materials causes harm to the environment and nuisance to nearby neighbours. Landfill tax

is also payable on any waste sent to landfill, for non inert waste such as that burnt, this stood at £56 per tonne from 1 April 2011 although this is set to increase to £64 per tonne on 1 April 2012 £72 per tonne on 1 April 2013 and £80 per tonne on 1 April 2014.

- 1.4 A formal notice has been served on the Company undertaking the work to require the production of waste transfer notes for all waste materials arising out of the refurbishment of the premises. A waste producer is required to keep these notes for two years from the date of production of the waste and detail the types and quantity of waste, the place of production, the waste carrier and the place of disposal. The waste transfer notes must be produced on request of either the Environment Agency or the appropriate Waste Collection Authority, which in this case is the Borough Council. Failure to comply with the requirement to produce the waste transfer note is a criminal offence as is the failure to keep waste transfer notes for the prescribed two year period. This liability can be discharged by payment of a fixed penalty notice which currently stands at £180 if paid within 10 days or £300 if paid after this time. Failure to pay a FPN is in itself an offence. To date no payment has been received and a request to instigate legal proceedings is made should no payment be received prior to court.

## **2. Reasons for Preferred Solution**

- 2.1 The action proposed is proportionate to the perceived environmental harm caused and is in accordance with the Environmental Protection Enforcement Policy and government policy regarding environmental crime enforcement and the Governments Better Regulation agenda.

## **3. Outcomes Linked to Sustainable Community Strategy and Corporate Priorities**

- 3.1 The proposed action achieves the following priorities within the Sustainable Community Strategy and the Council's corporate priorities:
  - creating a cleaner, safer and sustainable Borough

## **4. Legal and Statutory Implications**

- 4.1 Sections 33 and 34 of the Environmental Protection Act 1990 are relevant to this offence.

## **5. Equality Impact Assessment**

- 5.1 The Environmental Protection Enforcement Policy has been equality impact screened and the recommendations outlined in this report are made in accordance with this policy.

## **6. Financial and Resource Implications**

- 6.1 In the event that a successful prosecution is obtained, an application for the full costs incurred by the Council in investigating the matter and taking legal action will be made to the Court. It will be for the Court to consider this application when passing sentence and it may be possible that full costs may not be awarded to the Council.

## **7. Major Risks**

None foreseen.

8. **Sustainability and Climate Change Implications**

- 8.1 The proposed action helps to ensure that waste is disposed of in an appropriate manner, minimising environmental harm and the generation of greenhouse gases.

9. **Background Papers**

Environmental Protection Enforcement Policy - [http://svint/utilities\\_page.asp?id=SX72E6-A7802EA8](http://svint/utilities_page.asp?id=SX72E6-A7802EA8)