

BABERGH DISTRICT COUNCIL

FROM: Head of Environmental Services

REPORT NUMBER **E295**

TO: Strategy Committee

DATE OF MEETING 9th March 2006

ADOPTION OF A POLICY RELATING TO ABANDONED AND ‘NUISANCE’ VEHICLES

1. SUMMARY

The report presents a draft policy relating to the Council’s duties and obligations in respect of abandoned or nuisance vehicles reported within the District. In undertaking its statutory duty and ensuring fulfilment of its duty of care, the policy identifies the process and procedures which should be followed in investigating complaints relating to vehicles alleged to be abandoned or inappropriately located on land for which the Council may exercise its powers. Adherence to the policy should ensure that the Council has acted within the appropriate regulatory framework and with regard to its Enforcement Policy and other relevant protocols. It is intended that, prior to formal adoption, the policy will be the subject of consultation with the police and emergency services, town and parish councils and other stakeholders. Subject to there being no significant or substantial alterations to the draft policy, this to be implemented from a date declared by the Head of Environmental Services.

2. RECOMMENDATIONS

- 2.1 The Committee is recommended to approve the adoption of the Policy on Abandoned and Nuisance Vehicles subject to there being no substantial nor significant amendments following consultation.
- 2.2 That the Council’s Policy take effect from a date to be confirmed by the Head of Environmental Services.

The Committee is able to resolve this matter

3. FINANCIAL IMPLICATIONS

- 3.1 The present budgeted net cost of the service is £74,850, half of which is contractor costs. In the first half of this year there has been a reduction in complaints concerning abandoned vehicles, but adoption of the policy may result in a more proactive role for the Council. It is therefore considered that the adoption of the policy, whilst leading to a more formal enforcement approach involving officer time, should result in a reduction in vehicles for which removal and storage is necessary. There will not be any requirements to increase budgets in response to the adoption of the policy, but this will be subject to review in future years.
- 3.2 Fines levied under the fixed penalty system will be retained by the Council, whereas formerly they were paid to the Exchequer

4. **KEY INFORMATION**

- 4.1 The existing powers to remove abandoned vehicles are contained in the Refuse Disposal (Amenity) Act 1978. Local Authorities are required by section 3 of the Act to remove vehicles abandoned in their area. This duty extends to any land in the open air or on any other land forming part of a highway. This legislation has been supplemented by the Road Traffic Regulation Act 1984 and the Removal and Disposal of Vehicles Regulations 1986, and sets out the procedure to be followed where a motor vehicle is abandoned on both highway and private land. More recently the Clean Neighbourhoods and Environment Act 2005 has added and amended powers. The procedures are largely prescriptive and require the Council to give various periods of notice to landowners and those responsible for a vehicle before removal can take place.
- 4.2 For many years the problem of abandoned vehicles within the Babergh District was manageable and relatively 'low-key'. Since about 1999 we have seen an upturn in both complaints about vehicles and in the numbers of vehicles actually removed. At its peak the Council was receiving notification of around 950 vehicles and removing about one third. It is important to be aware that about half of the notifications received are not relating to circumstances for which the Council has legal powers; this may be complaint simply about inappropriate parking, or an issue where, although behaviour may be unreasonable, the ownership of the vehicle is known and acknowledged but the vehicle is an eyesore in the locality. The current level of reporting is about 30% down on the 2004/05 peak. The Council does run a voluntary surrender scheme for which a charge is made. (£32)
- 4.3 The Council has close and effective working relationships with the emergency services and acts in response to potential anti-social behaviour or immediate risk requests.
- 4.4 The key issues identified and clarified by the policy are:
- Purpose of the policy and target audience
 - Relevant statutory provisions and enforcement responsibilities
 - Definitions: meaning of 'abandoned', 'nuisance vehicle', 'responsible person', 'owner' etc.
 - Outline of procedures for investigation and removal of vehicles.
 - The Council's interpretation of the regulations where open to challenge.
 - Working in partnership with other agencies.
 - Enforcement protocol.

5. **APPENDICES**

- (a) Appendix 1 – Council's Policy Regarding Abandoned and Nuisance Vehicles

6. **BACKGROUND PAPERS REFERRED TO:**

None.

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POLICY STATEMENT ON ABANDONED AND NUISANCE VEHICLES

The Purpose of the Policy

Babergh District Council can exercise a range of duties and responsibilities in relation to vehicles both as a statutory undertaker and as landlord and landowner. This policy provides a statement of intent as to how the Council's powers will be exercised and will serve to inform:

- Residents and visitors in Babergh
- Council Officers including Enforcement Officers
- Councillors
- The Council's Contractors
- Suffolk Police
- Suffolk County Council
- Legal representatives

The prime aims of the policy statement are:

- To inform of the Council's stance in respect of vehicles parked within the District.
- To ensure the decisions of the Council and its officers are consistent and transparent and in accordance with the Council's Enforcement Policy.
- To support the Council's actions when enforcing law for which it is responsible.
- To provide a basis on which the Council interprets its duties for the benefit of the public and the Courts.

Powers available to secure the removal of vehicles

<i>Power</i>	<i>Enforcement Agency</i>
Refuse Disposal (Amenity) Act 1978	
<i>Duty to remove a vehicle from public & private land</i>	<i>Babergh DC</i>
<i>Power to dispose of a vehicle held in Local Authority custody.</i>	<i>Babergh DC</i>
<i>Power to recover expenses for vehicle's removal/disposal/storage</i>	<i>Babergh DC</i>
Road Traffic Regulation Act 1984	
<i>Power to remove vehicles illegally, obstructively, dangerously parked or broken down</i>	<i>Police</i>
<i>Power to remove unlawfully abandoned vehicles.</i>	<i>Police/Babergh DC</i>
<i>Power to recover expenses from removal, Disposal and storage</i>	<i>Suffolk County Council</i>
Removal & Disposal of vehicles regulations 1986	
<i>Power to require removal of vehicles from roads</i>	<i>Police</i>
<i>Power to remove burnt out and dangerous vehicles immediately</i>	<i>Police / Babergh DC</i>

Local Government Act 2000

*Power to remove a vehicle parked or stationed so as to
Give rise to concern for public health, safety
or environment* Babergh DC

Clean Neighbourhoods & Environment Act 2005

*Power to enforce offences relating to 'nuisance' vehicles
(Vehicles for sale or being repaired on the highway)* Babergh DC
Power to impose 'Fixed Penalty Notices' Babergh DC

Definitions

All definitions shall be as specified in the relevant legislation. However, in some cases it is necessary to provide the Council's interpretation of these definitions for clarity and consistency.

'Abandoned'; means given up by the owner with no intention to recover or accept responsibility for a vehicle.

'Abandoned vehicle' is, for the purpose of this policy, one, which, in the opinion of the council, *appears* to have been abandoned. In interpreting this the Council will take into account

- The length of time the vehicle has been in its current position
- The overall condition, age and appearance of the vehicle
- The display of a valid tax disc (or SORN if on private land)
- The presence of a number plate
- Apparent roadworthiness
- Security
- Proximity of the vehicle to the registered address of the last registered keeper.

'Owner' will be presumed to be the 'last registered keeper' of the vehicle unless that person can provide evidence to the contrary

'Person responsible'; in the event that no other person is clearly identified, shall be the owner at the time when any offence was committed, unless that person can provide evidence to the contrary.

'Vehicle'; is defined, for the purpose of this policy, as a mechanically propelled vehicle intended or adapted for use on roads, whether it is fit or unfit to be used as such. This also includes any trailer (including caravans) adapted for use as an attachment to a vehicle, and any chassis or body, with or without wheels, normally attached to a vehicle.

'Vehicle only fit for destruction' is a description used in and affected by procedures specified under the Refuse Disposal (Amenities) Act 1978. It is for the Local Authority to define this description and this will be assessed on the fact and degree of the vehicle's condition as identified in the definition of 'abandoned vehicle' above. The DVLA sets this limit as a vehicle worth less than £2000. Babergh District Council defines these vehicles as having a trade value of less than £2000 as defined in the Parkers Price Guide (using the 'good/average' category in the guide).

Land to which the policy applies

The Council has a statutory duty to investigate reports of, and if satisfied they are abandoned, remove a vehicle from any location in the open air so long as the vehicle is easily accessible without excessive cost. (Refuse Disposal (Amenity) Act 1978, Removal & Disposal of Vehicle Regulations 1986.)

In practice, the power of the local authority applies to all roads, footways and open land adjacent to the highway including verges, public open spaces, parking bays, garage areas and car parks. The land upon which the vehicle has been abandoned does not have to be in public ownership, as the 'land open to the air on at least one side' definition will also apply to some land in private ownership.

The duty does not apply if the cost of removal from land would be unreasonably high.

The Council will only remove vehicles from private land with the written consent of the owner of the land, or on expiry of any Notice served upon the owner.

Where vehicles are parked or stationed inappropriately on other sites such as the highway, on private land or in any other circumstances not specified under the Council's statutory duties or role as landowner described above, the Council will work in partnership with the Police, the County Council and other relevant agencies to secure the removal of such vehicles. In respect of persistent activities deemed inappropriate or giving rise to complaint the Council may use additional legislation (i.e. Clean Neighbourhoods Act 2005) to control such activities (i.e. vehicles stationed on the highway or verge for sale, the carrying out of vehicle repairs or the operation of other similar or related business activity.)

Removal of an abandoned Vehicle

The general procedure for the removal of an abandoned vehicle on public land (including highway) will be as follows:

- The vehicle's details (make, model, location, registration number and other information relating to its condition) will be logged onto the council's database. The Police will be informed of the vehicle's details.
- The registration number will be checked on the DVLA database. The Registered Keeper so identified will be regarded by the council as being responsible for the vehicle.
- The Registered Keeper, if identified, will be written to, to inform them of the fact that the vehicle has been reported as abandoned.
- On satisfying itself that the vehicle appears to be abandoned, an authorised Officer of the Council will visit and affix a Notice to the vehicle only in circumstances where this is considered appropriate and does not conflict with the Council's statutory duty of removal
- Following expiry of any notice, the vehicle will be removed by the Council
- The owner (Registered Keeper) will be informed in writing that the council have the vehicle in their custody and will be invited to claim the vehicle within 7 days.

- The vehicle will be stored for a minimum of 7 days in order for the owner to make a claim. If unclaimed, the vehicle will be disposed of (subject to the Council's statutory obligations). The DVLA & Police will be informed.
- The Council will claim any statutory fees and approved charges from the last Registered Keeper as the owner or person responsible for the vehicle, unless that person can provide evidence to the contrary.
- Where it appears to the Council that a person has committed an offence in relation to the abandonment of a vehicle the Council may institute proceedings, including application of fixed penalty fine provisions.

Identification of owner

The Council will use its direct link to the DVLA database to identify the last registered keeper of any vehicle abandoned, which is carrying a GB registration mark.

The registration marks (if known) of all reported vehicles will also be passed to the police in order to secure any information that may lead to the identification of the owner. All vehicles reported to the council by the public will be reported to the Police to ensure that the vehicle is not subject to criminal investigation or other legitimate activity.

For the purpose of enforcement, and in the absence of any other information to the contrary, the Council will consider the last registered keeper to be the owner or person responsible for the vehicle. It will be for that person to provide evidence to the contrary.

Removal of vehicles

Once any notice of removal has expired, the vehicles will be removed on behalf of the council. All untaxed vehicles will be destroyed 7 days after collection, if the owner does not register an interest in keeping them. Once a vehicle has been removed, the registered keeper will be contacted in writing to advise them that the vehicle has been removed and of any outstanding charges associated with this action. The registered keeper will be advised to contact the Council within 7 days of its removal date if they wish to re-claim the vehicle.

Vehicles which have no registered keeper with the DVLA or which do not display a registration mark may be destroyed immediately.

Costs

The council has the right to refuse to remove a vehicle if the costs are unreasonably high.

Babergh District Council will always attempt to recover the costs of removal, disposal and storage from the last registered keeper of the vehicle.

Vehicles abandoned on Council Land

The Council may grant or refuse permission for persons to park or store vehicles on its own land. This may include Council owned Car Parks, some verges and areas of open space, service areas to commercial precincts and industrial estates. On its own land, generally, the Council will require persons to provide proof of ownership of a vehicle if requested, will require that the vehicle:

- Displays a current road tax disc
- be in a roadworthy condition
- does not present a risk to public health, safety or the environment.

On land where the council acts as Landlord, abandoned vehicles may be referred for removal under the instruction of an authorised officer, where they will be subject to the procedure outlined above.(para xxx)

Vehicles abandoned on Private Land

Where vehicles have been abandoned on private land, the council is able to remove them, having served notice on the landowner of its intention to enter the land to remove the vehicle. A charge may be made for this service, which is the equivalent cost of surrendering a vehicle to the council.

Where a landowner has reported that a vehicle has been abandoned on their land, the council will inform them of the charge and adopt the following procedure:

- The landowner is required to write to the council, giving authorisation for the council to enter the land for the purpose of removing the vehicle,
- S/he will state the details of the vehicle i.e. Registration number if known, make and description
- Agree to be invoiced for the cost involved if appropriate.
- The procedure outlined above (paraxxx) will then be followed

Where a member of the public/person who is not the landowner reports a vehicle, a 15-day notice will be attached to the vehicle, informing the landowner of the council's intention to enter his/her land to remove it. If a landowner can be traced s/he will be informed of the cost involved and if they have no objections to the council entering the land the procedure outlined above (para xxx) will be adopted

Dangerous Vehicles

Vehicles deemed to be dangerous by the council may be immediately removed from land where the council acts a landlord in order to meet its obligations under the Occupiers Liability Act. This applies only to land which the council owns. On all other land a 24-hour notice may be affixed. The Council will act under powers defined in section 2 of the Local Government Act 2000.

Vehicles may be deemed dangerous if they exhibit one or more of the following characteristics:

- Parked so as to cause a potential obstruction to emergency vehicles
- Parked on/near a junction

- Parked in an area known for vandalism/arson and in such a condition so that the council believes it may be a target
- Leaking fuel
- Smashed windows/glass
- Vehicle unlocked and inside wrecked
- Burnt out
- Badly damaged.

Voluntary Surrender Scheme

The Council offers a voluntary surrender scheme for the removal and destruction of unwanted vehicles from residents of the district at a subsidised rate which may be reviewed annually (Refer to the Council's current 'List of Fees and Charges') To qualify for this scheme, those requiring the service must be resident in the district and the vehicle must be registered to their current address.

Return of removed vehicles

In the event that a person claims ownership of the vehicle, before releasing the vehicle the Council will request sight of at least two of the following:

- The vehicle registration document or log book
- A valid Tax Disc or SORN
- A valid certificate of insurance
- A current or recent MOT certificate
- A bill of sale or similar evidence of purchase which can be verified
- Proof of ownership of land where vehicle is to be returned, or written permission from the owner of said land.

No vehicle will be returned to its owner before the payment of any fees or outstanding charges.

Out of Hours procedure

Vehicles reported out of hours will be logged by the out of hours answering service and dealt with at the earliest available opportunity during office hours. If a vehicle is thought to be dangerous or emergency removal required the Police will be contacted to remove the vehicle under their powers as stipulated in the Road Traffic Regulation Act 1984

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