



Car Repair & Spray Painting Garages

A One Council Overview & Scrutiny Committee Task Group Report

June 2011

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Chair's Foreword

First of all I would like to take this opportunity to thank my fellow task group members, Councillor Allie and Councillor Colwill, for their time, effort and input into completing this investigation and producing this report.

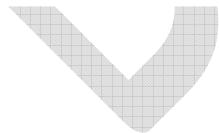


While we have not been able to find a significant problem across Brent in relation to this type of premise we have identified instances where problems arising from an individual premise are significant to those living and working nearby. We want to inform operators that Brent Council will not tolerate noise and nuisance and will take action when necessary. We hope that the recommendations in this report will be fully implemented by all of enforcement services in the council.

Finally I would like to thank all of the officers who produced information and evidence for the task group and Jacqueline Casson from the Strategy, Partnership and Improvement Department for her support.

Recommendations

- 1. That the complaint and referral form and log developed by officers at the task group's request is implemented. Each department will nominate an officer responsible for maintaining and monitoring this**
- 2. That complaints made in relation to this type of premises should be monitored and reported back to members via the annual complaints report.**



Executive Summary

This task group was set up following a motion to Full Council in September 2010 which raised concerns about the disruption residents face for the activities of car repair and spray painting garages.

Scale and Nature

The task group's first key task was to establish the scale and nature of the problem in the borough. To do this a survey was sent to all members of the councils and complaints information was provided by Environmental Health, Streetcare Enforcement and Planning Enforcement. The task group concluded that while the problems caused by these kind of premises can be significant for those living nearby, with the exception of Hassop Road we have not been able to identify a significant number of problems caused by this type of business in the borough.

Enforcement Activity

The task group investigated the council's ability to deal with issues as they arise. This included looking at the existing legislative powers, whether or not there was a need for extra powers and how issues were dealt with across the different departments that deal with enforcement activities. The task group concluded that the powers available to the council were sufficient but that as enforcement activity tends to be reactive it was important the residents and councillors complain as soon as an issue arises. Cross departmental working does rely heavily on good individual working relationships and the task group would like to ensure that the process through which this type of complaint is dealt with is strengthened so that the issues we identify around time, cost and the collection of good quality evidence are addressed.

Enforcement Action Taken as a Result of the Task Group's Work

As a result of site visits made by members of the task group enforcement action was taken in two areas. This is detailed in the main body of the report.

Introduction

This task group was set up following a meeting of Full Council in September 2010 when members of the council agreed the following motion.

This Council :

shares the concerns of residents who face disruption from the activities arising from and out of car repair and spray painting garages across Brent, particularly where these are unregulated;

- *notes that many areas of the Borough, including in particular the Alperton area, are adversely affected by the sometimes inconsiderate activities of these businesses;*
- *recognises that problems caused to local residents have included not being able to park their cars in their streets, being unable to reverse out of driveways, smells from paint fumes, noise at all hours of the day, and abuse from workmen for challenging activity that clogs up local streets;*
- *regrets the impact on safety, where emergency vehicles find it difficult to pass through, and on the overall character of our local communities*
- *recommends to overview and scrutiny that a Panel be established to look into better regulation of car repair/spray painting garages in mainly residential areas, including the possibility of restricting their operation times to 9am to 6pm weekdays, and 10am-5pm on Saturdays, and to investigate how the impact on surrounding streets can best be mitigated and enforced against*
- *supports efforts to seek the relevant Secretary of State's approval for any appropriate bye-laws which may be thought necessary or desirable to assist towards the objectives of this motion.*

At Full Council's request the One Council Overview & Scrutiny Committee agreed in October 2010 to set up a task group to look at the issue and produce a short report setting out the results of its investigation.

Task Group Membership

Councillor Moloney (Chair)
Councillor Allie
Councillor Colwill

Methodology

This task group is unusual in that it was set up following a motion to council rather than on the basis of a fully developed scope. Therefore the task group's first job was to discuss and agree a scope for its work. Members of the task group agreed that it would need to undertake the following work.

- Establish the scale and nature of the problem in Brent. The task group wanted to map out where this problem existed. To help with this an email was sent to all members of the council asking them to provide local information about their wards. This information was looked at in conjunction with information provided by Environmental Health, Streetcare Enforcement and Planning Enforcement.
- Review the actions that are currently taken, the existing legislation, how effective it is at tackling problems as they arise.
- Identify any gaps in either the powers available or the process.
- Investigate other possible solutions / actions

In order to undertake this work the task group took evidence from a number of sources.

- Keith Balmer, Director of Street Care provided a report on issues relating to Hassop Road an area known for problems relating to this issues.
- John Mc Swann, Enforcement Manager Environment & Neighbourhoods, provided information on the scale and nature of the problem and current enforcement activities from a street care perspective.
- Jennifer Barret, Team Manager, Environmental Health, provided information on the scale and nature of the problem from an environmental health point of view and current enforcement activities.
- Tim Rolt, Planning Enforcement Manager, provided information on the scale and nature of the problem from a planning enforcement point of view and enforcement action that can be taken.
- Lindsay Weinstein Senior Prosecutions Lawyer provided information about legislation that can currently be used to tackle this issue

In addition members of the task group undertook two site visits to Beresford Avenue, and High Road Willesden on the corner of Colin Road.

Legislative Context

The following legislation can be used to address issues and problems that can result from this type of business whether or not the business is legal or illegal.

NOISE NUISANCE

1. Statutory Nuisance, "*noise emitted from premises so as to be prejudicial to health or a nuisance*"; **[Section 79(1)(g)EPA 1990]**.
2. Serve Abatement Notice prohibiting further specified acts from occurring **[Section 80(1) Environmental Protection Act 1990]**.
3. If Abatement Notice breached – power to prosecute for breach of Abatement Notice **[Section 81 EPA 1990]** "*If a person on whom an abatement notice is served, without reasonable excuse contravenes or fails to comply with any requirement or prohibition imposed by the notice, he shall be guilty of an offence.*"
4. Prosecution – Magistrates Court [6 months to issue proceedings] → Sentencing powers Fine Maximum £5000 [Level 5 Fine].

SMELL/FUMES

1. Statutory Nuisance, "*Fumes or gases emitted from premises so as to be prejudicial to health or a nuisance,*" **[Section 79(1)(c)EPA 1990]**.
2. Serve Abatement Notice [as above]
3. Breach → prosecute [as above]

ABUSIVE BEHAVIOUR

1. **Section 5 Public Order Act 1986** – Harassment, alarm or distress
2. Matter for police not LBB to prosecute
3. Prosecution – Magistrates Court [6 months to issue proceedings] → Sentencing powers Fine Maximum £1000 [Level 3 Fine].

PLANNING LAW

Enforcement Notice

1. Time limits [**Section 171B(3) Town & Country Planning Act 1990**]
“In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.”

2. Serve owner and occupier of land Enforcement Notice [**Section 172 T&CPA 1990**] where it appears to LA,
 - a) *That there has been a breach of planning control and*
 - b) *That it is expedient to issue the notice, having regard to the provision of the development plan to any other material considerations*

3. Offence where Enforcement Notice is not complied with [**Section 179(1) T&C PA 1990**]
“Where, at any time after the end of the period for compliance with an enforcement notice, any step required by the notice to be taken has not been taken or any activity required by the notice to cease is being carried on, the person who is then the owner of the land is in breach of the notice.”

4. **S179(2)** Breach → guilty of offence

5. **S179(3)** defence – did everything he could be expected to do to secure compliance with the notice

6. **Sentence**

Magistrates Court	Fine not exceeding £20,000
Crown Court	to a fine

Key Findings

1. Scale & Nature

The motion agreed at Full Council suggested that problems caused by car repair and spray painting garages were numerous and affect many areas of the borough. The task group was keen to ascertain whether or not this perception was a reality and where problems occurred. As the motion did not differentiate between legal and illegal businesses the task group has not made this distinction.

In order to gather evidence on the scale and nature of the problem the task group sent a survey to all members of the council asking them for specific information about any businesses in their ward that cause them or their local community concern in relation to the problem highlighted in the motion to council.

There were 11 responses 7 of which have highlighted one or more addresses. Four members responded to say that there are no related issues in their ward.

- Responses were received from one or more councillors in the following wards: Alperton, Dollis Hill, Dudden Hill, Harlesden, Kensal Green, Kilburn, Northwick Park, Mapesbury, Queensbury, Tokyngton, Willesden Green,
- No response has been received from any councillors in the following wards: Barnhill, Brondesbury Park, Fryent, Kenton, Preston, Queens Park, Stonebridge, Sudbury, Welsh Harp
- The responses provided 14 addresses though one of these was Hassop Road which will include several incidents and is a well known problem area. In some cases only the address was provided without any details of a specific issue/ problems that related to that address.

The task group was then provided with a breakdown of the number of complaints received by Environmental Health regarding the operation at vehicle re-spraying / MOT garages and similar over the last four years. By far the greatest number of complaints received relating to garages concerned fly-tipping and this issue accounts for more complaints than those relating to nuisance odour and noise combined. This is highlighted in the table below:

Complaint type	No. of complaints from 2006-2010
Refuse/ Flytipping	56
Nuisance odour/ fumes	31
Noise	2
Pest Control	4
Public Health and Drains	4
Graffiti	1

The map below indicates an approximate distribution of the complaints received by Environmental Health over a four year period. This provides a snapshot of the most affected wards based on data held by Environmental Health.



Streetcare informed us that there have been no complaints in the last two years from residents about businesses working on vehicles in the street. If a complaint was received they would work closely with Environmental Health to resolve it.

We heard that in terms of planning enforcement the number of complaints the council received about car repairs represents a small proportion of the total number of enforcement complaints that the council receives per year. For example in 2010 of 961 complaints only 15 or 1.56% were related to this type of premises as is demonstrated in the table below:

Year	No of complaints	No of car repair complaints	No notice's issued per calendar year	No notices issued for car repairs per calendar year
2010	961	15 (1.56%)	120	3 (2.5%)
2009	853	17 (2%)	143	5 (3.5%)
2008	872	13 (1.49%)	137	5 (3.65%)
2007	954	17 (1.78%)	151	6 (3.97%)
2006	904	14 (1.55%)	132	5 (3.79%)

The task group received a separate report on Hassop Road as it is a known hot spot for issues relating to car repair and spray painting garages. We heard that Hassop Road has a significant number of private garages that have been converted into small businesses. There are a number of issues including car repairs taking place on the pavement, contaminated water runs directly on to the road side pavements and gullies, oil from vehicles is poured down gullies and the area is littered with car parts. In addition the area is problematic for buggy and wheel chair users. This area is a unique situation that has been ongoing for a number of years, though there have been drives on issues such as parking enforcement that have resulted in improvements in the last few years. At the same time we noted that there is a desire not to adversely impact on the local economy by driving genuine businesses out of business.

Given the evidence provided the task group has concluded that although problems caused by this kind of premises can be significant for those living nearby, with the exception of Hassop Road, we have not been able to identify in terms of number of complaints received by the relevant services, or information provided by members a significant number of problems caused by this kind of business across the borough.

2. Enforcement Activity

We were keen to look at the council's ability to deal with issues when they arise and actions that can be taken.

Environmental Health is responsible for regulating larger vehicle re-sprayers using powers under the Environmental Permitting Regulations 2010 which limits the solvents the operators use to reduce pollution emissions to air. Few complaints are received in relation to this activity and we were told that they would be dealt with effectively under this regime.

It is more difficult to deal with smaller businesses for many reasons, for example; they may be below the threshold for solvent use to warrant regulation so on issues such as on street spraying, noise, odour and dust Environmental Health work closely with Street Care. In most cases an informal approach is used in the first instance, explaining the problem(s) and actions required for resolution. If this does not work, then a more formal approach will be taken using the Environmental Protection Act 1990 to serve a nuisance abatement notice. This action tends to be complaints driven, so does rely on a complaint being made to the department by a member of the public or a councillor. A pattern of nuisance would then need to be established and witnesses identified. In most cases this process takes time and it is sometimes difficult to accrue the evidence required to take action. One of the difficulties highlighted was ensuring that details of the complaint and potential witnesses are not lost along the way, particularly when reported to one department when the issue relates to the work of another department.

We heard that Streetcare check around 1500 premises a year for waste licences. Town centre premises are examined more regularly than back street premises. Bona fide businesses tend to comply with informal approaches but rogue businesses sometimes disappear when pursued then reopen quickly elsewhere.

The task group was keen to look at the role that planning enforcement could play in relation to this issue. Brent takes more enforcement action than most other local authorities in the country and in the last ten years has been in the top five in terms of the number of enforcement actions taken.

Planning permission is required for making a material change of the use of land. However that change of use must be 'material'. For instance you do not need planning permission to change the use from an electronics shop to a grocers shop because it is not material i.e. it is still in use as a shop. Likewise planning permission would not be needed to change a use from a factory making kitchen appliances to a car repair work shop as both of these are considered to be general industrial use B2.

Planning enforcement action can only be taken where no planning permission has been granted for material change of use or there is a breach of a planning condition attached to a planning permission. Action cannot be taken if the material change of use took place more than 10 years ago.

Enforcement action is slow with a right of appeal so the whole process can take up to 2 years. Enforcement notices usually will require the use to stop and the removal of all items associated with that use to be removed from the premises. Generally they can only be effective on private land (e.g. not on council highways/pavements). The issue of a notice normally results in the occupants having to find alternative accommodation. If they can't, they may be put out of business. There is a risk with this action as the council could be liable for loss of business if a mistake has been made.

In deciding to take enforcement action, the council needs to decide whether or not it is expedient. The law states that enforcement action must not be taken purely to remedy the absence of planning permission. The council has to consider the planning merits of the case and in particular the relevant planning policy for the area.

If the council considers it expedient to take enforcement action, it can:

- issue an enforcement notice (s172 Town and Country Planning Act)
- take the steps required by an enforcement notice at the owner's expense (s178 Town and Country Planning Act)
- prosecute owner/person in control for breaching the enforcement notice (s179 Town and Country Planning Act)

There is a right of appeal against enforcement notices. These appeals can be made on the following grounds:

- Planning Permission ought to be granted
- Allegation has not occurred
- Not a breach of planning control
- Immune from enforcement action
- Notice not properly served
- Remedial Steps Excessive
- Compliance Period too Short

Appeals usually take between 6 months to a year to determine.

The task group explored the possibility of informal enforcement, for example visits by an officer to discuss and try to resolve the issue informally. We were told that while this can help in some cases, resources meant that it is not cost effective to keep a watching brief across the borough. The Planning Enforcement Team currently consists of 4 officers, of which 3 carry out investigations and appeals. The team is already stretched on investigation across the range of planning enforcement issues.

We were told that Hassop Road is an ongoing problem though this is getting better. Planning enforcement is not necessarily the best service to deal with an issue. We were informed that Hassop Road has special policy status within the unitary development plan.

The report we received on Hassop road outlined the enforcement actions taken over time by Planning, Trading Standards, Health and Safety, Licensing, Environmental Health, Streetcare and Parking. While all of the people we talked to believed that some improvements to the area have been achieved through continued daily enforcement by the Police and the parking attendants supported by daily cleaning of the road to a high standard, a longer term solution was required.

We heard that the longer term solution that would be acceptable to the residents would be the closure of the garages. The area has some potential for a housing development with shops and would be ideal under the circumstances. However this has to be balanced against the council's planning policies for Hassop Road. These are set out below:

UDP Policy on Hassop Road

This area of Local Employment Sites, with its main road frontage on to Cricklewood Broadway, is a long-established busy employment area. Many of the small businesses which front both sides of Hassop Road cause problems to the access and servicing arrangements in the road itself and partly in the adjoining residential area.

Although these businesses do cause problems, many have lawful use rights and the Council has very little control over them. In the special environmental circumstances of this area, it is important, however, to ensure that future piecemeal development or redevelopment of the area will result in a reduction of adverse impacts and improved operating conditions within and around the area.

Policy [EMP23](#) sets out the special considerations which are relevant to this area. In addition, the Council will have regard to its guidelines for development in the area, set out in Supplementary Planning Guidance (SPG16). Consideration will be given to the introduction of 'Permitted Parking' in adjoining residential streets.

EMP23 HASSOP ROAD SPECIAL POLICY AREA

In considering development or redevelopment proposals for employment uses in the Hassop road area as identified on the proposals map, special attention will be paid to the following factors:-

- (a) The impact of the proposed development on neighbouring occupiers (including the height of buildings); and
- (b) The extent to which noise and fumes can be controlled and premises can be screened.

In order to minimise the impact on neighbouring residential uses, conditions controlling hours of operation may, depending on the nature of the development proposed, be necessary.”

The task group would like to ensure that this is pursued in relation to Hassop Road while regular enforcement actions and engagement continues.

We asked officers to investigate best practice from other London local authorities. The Enforcement Manager in Environment and Neighbourhoods currently sits on the Keep Britain Tidy Enforcement Working Group with representatives from all 33 London Boroughs. The officer tabled a question at the December meeting on behalf of the task group. The response we received showed that council's have differing procedures when dealing with this issue, but that no one stood out as best practice. Most, like Brent appeared to deal with arising issues by virtue of Sec 80 Environment Protection Act (Statutory Nuisance). This requires the serving of a statutory notice which includes a 21 day appeal period and a level 5 fine at the Magistrates Court if convicted. Others rely upon Part 2 Section 6 & 9 CNEA which allows for the issue fixed penalties for offences committed under sections 3 and 4 of the Act. Sections 3 and 4 provide for exposing vehicles for sale on a road and repairing vehicles on a road. We were informed that the Brent Council does not rely on this legislation because it is difficult to prove that the works are for the purpose of a business and or gain or reward i.e. that money has changes hands. Some council's have problems with pollution arising from spraying vehicles which is dealt with by Environmental Health departments.

The task group explored the possibility of developing extra powers via bye-laws. The Senior Prosecution Lawyer told us that bye-laws do not have the same force as the statutory framework for enforcement and prosecution deterrent. She believed that the powers to deal with problems emanating from car repair premises were

sufficient but there were issues around time, cost and the need to collect good quality evidence to ensure successful action is taken.

3. Site Visits and Resulting Action

Members of the task group visited two of the sites identified by members in the survey. All of the other information provided by members was passed on to the relevant service. The first site visited, Beresford Avenue was largely an issue related to parking by customers in a residential area. Some parking enforcement activity has now taken place but members of the task group believe that the problems on this road warranted more consistent parking action.

The second site on High Road, London, NW10 2EA (corner of Willesden High Rd and Colin Rd) involved a change of use of the premises from a shop selling car parts to a mixed use car parts and car repair business. As a result of the visit by the task group planning enforcement action was started. The investigation has now been completed and an enforcement notice has been issued. The enforcement notice requires the occupiers to stop the use of the premises for car repairs by 17th August, 2011 unless an appeal is made against the notice in the meantime. If an appeal is made, the notice is suspended pending the outcome of the appeal. Appeals are currently taking between 6 to 9 months to determine.





Conclusion

The task group believes that the legislative framework available to the council to tackle issues that relate to car repair and spray painting businesses is in general sufficient. However we do feel that there are areas of process that can be improved.

Firstly as general enforcement activity across the departments tends to be reactive residents and councillors need to be encouraged to complain as soon as an issue arises so that the issue can be dealt with quickly before it escalates.

Secondly dealing with a complaint frequently requires good cross departmental working. While we understand that in most cases departments work well together, this does rely heavily on good individual relationships. We did hear of occasions when the need to collect the evidence required to take action was compromised by incomplete information being passed on. This is partially because the complaint has been raised with the wrong service in the first place, but why should a member of the public be expected to know which services to contact – the council is the council. The work being undertaken on the Future Customer Services One Council Project will help to address with this issue. However, to aid the current situation the task group asked the Senior Prosecuting Lawyer to develop a complaints referral form/log that would enable any service dealing with enforcement to complete and forward to the correct service without losing any information that would be important to the enforcement activity. The relevant enforcement teams have been involved in this process and have agreed to nominate someone in their team to be responsible for maintaining and monitoring this. This approach has been discussed with the Corporate Complaints Manager who agrees that this would also be helpful from a corporate complaints perspective.