

REPORT TO: CABINET

DATE: 4 NOVEMBER 2021

TITLE: ENVIRONMENTAL ENFORCEMENT DELIVERY

PORTFOLIO HOLDER: COUNCILLOR ALASTAIR GUNN, PORTFOLIO HOLDER FOR ENVIRONMENT

LEAD OFFICER: ANDREW BRAMIDGE, DIRECTOR OF STRATEGIC GROWTH AN REGENERATION (01279) 446410

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This is a Key Decision
It is on the Forward Plan as Decision Number I012852
Call-in Procedures may apply
This decision will affect no ward specifically.

RECOMMENDED that:

- A** The Council tender for environmental enforcement services as set out under Proposals in the report with a service specification to be determined by the Director of Strategic Growth and Regeneration, in consultation with Portfolio Holder for Environment.
- B** The current pilot operation continue with NES as the Council's contractor until 31 March 2022 to provide service continuity through the procurement process recommended at A above.
- C** The Council engage in communications measures to enhance the effect of enforcement as set out under Proposals in the report.

REASON FOR DECISION

- A** To provide for future enforcement capacity in relation to environmental offences such as fly tipping dog fouling and littering that lie within the Council's remit.

BACKGROUND

1. Issues such as littering and dumping of rubbish have long been regarded as forms of antisocial behaviour which have an adverse impact on the wellbeing of communities by degrading the environment.

2. The Council, in addition to its community leadership role, has a statutory role in dealing with the cleanliness of the environment being defined as a principal litter authority for the purposes of the Environmental Protection Act 1990.
3. There are broadly three forms of response used by litter authorities to address littering and related issues: street cleansing including the provision and emptying of litter bins; communication and education; and enforcement of relevant legislation provided by Parliament.
4. Whilst these forms of response do interrelate the present report deals primarily with the last of these, enforcement action
5. Central government has put in place a number of offences which might be described as dealing with “enviro-crime”. Enforcement responsibility for the most serious of these, such as operating an unlicensed land fill site or dumping waste on a large scale, lies with the Environment Agency. Enforcement responsibility for smaller scale offences lies with Principal Litter Authorities such as the Council. Traditionally offences could be pursued through the Courts, where any fines imposed would be contributed to national funds. More recently legislation has provided that certain offences may at the discretion of the alleged perpetrator be discharged by payment of a Fixed Penalty Notice instead of being heard in Court. Where Government has specifically so provided, fixed penalty notice receipts may be retained by the enforcing authority to support the costs of enforcement action. These provisions apply to most “enviro-crime” offences for which the Council is the enforcing authority. [The offences most likely to be used by councils dealing with “enviro-crime” are set out at Appendix A]
6. Whilst litter authorities have no specific obligation to commit a defined level of resource to pursuing enforcement action, they do have a responsibility to keep the relevant land in their areas reasonably clear of litter; an appropriate level of enforcement action is widely seen as supporting the good behaviour of residents who do not litter; and enforcement may be expected to reduce the likelihood of the less observant to fall into bad habits
7. Enforcement is therefore a tool which the Council is always likely to wish to make appropriate use of, and the remainder of the report below considers the approaches taken in Harlow and options for future enforcement arrangements

ISSUES/PROPOSALS

8. Historically responsibility for investigation of “enviro-crime” offences lay with the Council’s Community Safety team. The Council employed a very small team of officers who were trained and authorised to investigate a range of issues including littering, dog fouling, and reports of dumped rubbish. Directly employed officers could respond flexibly to current priorities. However whilst fixed penalty notices were served and other enforcement action was taken the number of such actions was relatively small, as the small size of the team meant that any investigation of potentially widespread issues such as littering and dog fouling

was possible only in targeted areas and there was limited time to investigate and pursue reports of dumped rubbish

9. From the onset of the Covid-19 emergency, the Council faced changed priorities, and Community Safety team resources were applied to directly supporting disadvantaged members of the community. At the same time necessary COVID-19 related restrictions and vacancies affected team capacity. This meant that effectively litter and dumping investigations were very unlikely to be investigated. At the same time, the Council became aware of rising concerns about litter and dumped rubbish in the environment, no doubt exacerbated by the temporary closure of the Recycling Centres for Household Waste under COVID-19 restrictions, whilst residents more than ever valued outside space for leisure and exercise.
10. To respond quickly the Council engaged with the market to identify an external agency to provide an enforcement resource to respond to littering and fouling offences, and to investigate reports of dumped rubbish
11. A proposal made by National Enforcement Solutions for a pilot operation was considered to best suit the Council's needs in comparison with a second proposal received from another operator. NES's proposal, and the examples of similar work elsewhere identified within this, made appeared most consistent with the Council's needs, and available public information about their activities revealed no cause for reputational concern.
12. Under the proposal a team of officers with management supervision would be dedicated to enforcement work in Harlow. Officers would be trained, uniformed, and equipped with body worn video camera equipment to support evidence gathering
13. It was proposed that the entire operational cost of the pilot, including staffing, training and equipment, would be borne by NES, who in return would retain receipts from any fixed penalty notices served. Enforcement Officers would be salaried and pay would not be related to the number of penalty notices served. The management function would be based at Mead Park Depot in cooperation with HTS, with a view to better integrating investigation of reports of dumped rubbish with the team tasked with clearing the waste. Due to lack of capacity in the Council's Legal Service team at that time, it was agreed that NES would also undertake any court action necessary to pursue offences within the agreed remit.
14. The Council engaged with NES on this basis, the pilot programme commencing in August 2020
15. The Council's experience of the pilot to date is that NES have maintained a team of significant size patrolling in the town, and have been flexible and supporting in targeting any areas of concern that have been flagged up by Councillors and members of the public making reports through Contact Harlow

16. NES been able to identify and investigate a much larger number of offences serving many more fixed penalty notices than had previously been possible. A breakdown of the enforcement actions taken during the first twelve months of operation is given in Appendix B
17. Feedback reaching the Council directly and from social media sources about NES's enforcement activity has largely been very positive. However, there have also been some negative comments about fixed penalty notices issued to some householders (see paragraph 20) and there have been challenges to some littering offences. Action on littering has dominated the responses no doubt because it has dominated the issues reported. That dropping litter is an offence is widely if not universally understood, and the Council's action through working with NES to ensure that there is a significant risk of being penalised for doing so appears to be widely supported by the responsible majority, and at the same time may be taken to provide a credible deterrent for others. However, it is also clear that more work needs to be done to educate the public about the consequences of littering.
18. Fewer cases of dumped rubbish have been pursued, no doubt in large part because littering is more common. However it is often more difficult to obtain satisfactory evidence about the perpetrator where rubbish is left.
19. Overall the pilot is considered to have been a success. However some learning points have been identified.
20. It is clear that residents often do not understand they may be liable under the law if they use public land without authority for temporarily leaving waste close to their homes. Often investigations do arise out of complaints to the Council, however residents have felt unfairly targeted when receiving fixed penalty notices because they have for example placed items such as dismantled furniture, garden sheds and building materials in alleyways behind their homes or on Council verges in front of them while they made arrangements to have the collected or disposed of. Whilst the law may justify issuing a notice in such cases, it was not an objective of the Council to focus enforcement on such situations. The Council should reserve the right to ensure that its land is used properly, but it may be that advice, a warning, and a period of grace to remove the items would be a less contentious approach in cases where there was no intention to leave items indefinitely.
21. Whilst it is well understood that littering is wrong, it seems poorly understood that it remains an offence to drop litter on privately owned land in the open air to which the public have free access for the time being. Littering and dumping of rubbish remains an offence on such land and arguably has a similar effect on residents' perception of the environment as offences on Council land. It may be helpful however for the Council to engage in communication activity so that it is understood that being on privately owned land does not absolve citizens of their responsibilities regarding dumping and litter. Appropriate communication may be expected to increase the deterrent effect of taking enforcement action on both Council and privately owned land. Where appropriate, the Council will seek to

work with private landowners to identify if they are willing to allow the Council's contractor to also enforce littering and fly tipping on private land.

22. While operationally the pilot is without cost to the Council, there are costs in officer time providing a client function
23. The operational model tends to favour service of fixed penalty notice in relation to littering over dumped rubbish cases. It is anticipated that a modified service specification will adjust the balance without an unacceptable effect on the financial sustainability of the operation.
24. The current operation in order to bring a service on line quickly was modelled on approaches used in other authorities. A modified service specification might better mould the service to local needs: for example it might be possible to establish closer liaison with the cleansing operation carried out by HTS; to include other enforcement functions, such as dealing with certain unauthorised advertisements; to include other offences subject to fixed penalty notice such as non-compliance with current or future Public Space Protection Orders; to supplement from time to time in house enforcement operations with uniformed staff equipped with body worn video cameras for specific purposes; and to supplement the Council's CCTV capability with temporary mobile video technology to respond to frequently targeted locations.
25. It is also now the case that the Council has increased its capacity to manage cases where this might be necessary through framework agreements with external legal representatives
26. Strengths and weaknesses of options regarding future delivery of environmental enforcement are considered below

27.

Option	In favour	Against
Reversion to direct provision	Responsive directly managed resource	<p>Visibility of team limited by small size</p> <p>Receipts from FPN unlikely to significantly offset service costs</p> <p>Restricts availability of staff in the Community Safety team to respond to other issues</p>
Continuation of operation on pilot basis	<p>Maintain high rate and profile of enforcement work</p> <p>Maintain high capacity to investigate</p>	<p>Market testing of modified approach may identify enhancements or alternatives</p> <p>Balance between littering and dumped rubbish not</p>

	Relatively quickly achieved	addressed Learning points not addressed Less flexibility
Market testing of modified proposals	Maintain high rate of enforcement work Maintain capacity to investigate dumped rubbish Opportunity to address learning points Opportunity to rebalance priorities Opportunity to identify potential for income that could be returned to the Council to fund client functions and legal proceedings	A revised specification may take some time to develop

ISSUES/PROPOSALS

28. It is proposed that the Council tender for enforcement services of the type piloted with NES for a period of three years, with the option to extend for a further three years.
29. The service specification would be developed in consultation with the Portfolio Holder for Environment to encourage the market to propose solutions that reflect the learning from the pilot, that take account of the Council's anticipated client and legal costs, and that balance the resource devoted to investigating dumped rubbish against that deployed on more straightforward matters such as littering. This would also explore the potential for a revenue sharing arrangement with the Council.
30. To maintain service pending the tendering process, it is proposed that the current pilot operation be extended until 31 March 2022. During this period the Council will work with NES to deliver a service that is more in keeping with future expectations.
31. It is proposed that communications measures calculated to inform the public of their responsibilities regarding use of Council land, liability on private land, and to publicise enforcement action taken be put into place.

IMPLICATIONS

Environment and Planning (Includes Sustainability)

As set out within the report.

Author: Andrew Bramidge, Director of Strategic Growth and Regeneration

Finance (Includes ICT, and Property and Facilities)

As set out in the report – it is anticipated that the service will be at nil cost to the council with enforcement charges being retained by the operator but with operatives pay not linked to the level of fines issued.

Author: Simon Freeman, Deputy to the Chief Executive and Director of Finance

Housing

As outlined in the report.

Author: Andrew Murray, Director of Housing

Community Wellbeing

As contained in the report.

Author: Jane Greer, Director of Communities and Environment

Governance (Includes HR)

The operations and learning from the pilot contract period will assist in shaping the proposed open market procurement process pursuant to Contract Standing Orders.

Author: Simon Hill, Director of Governance and Corporate Support

Appendices

Appendix A – Environmental offences commonly dealt with by Fixed Penalty Notice

Appendix B – Summary of enforcement action taken by NES on the Council's behalf

Background Papers

None.

Glossary of terms/abbreviations used

FPN – Fixed Penalty Notice

NES National Enforcement Solutions – the Council's contractor for the current pilot period