

Bath & North East Somerset Council		
MEETING/ DECISION MAKER:	Cabinet	
MEETING/ DECISION DATE:	On 5 <sup>th</sup> September 2018	EXECUTIVE FORWARD PLAN REFERENCE:
		E3088
TITLE:	Pilot scheme to increase enforcement activity in relation to environmental crimes.	
WARD:	All	
AN OPEN PUBLIC ITEM		
List of attachments to this report: None included		

## **1 THE ISSUE**

- 1.1 The Council has recently adopted the newer higher level of £150 permitted for a Fixed Penalty Notice ("FPN") under the Environmental Offences (Fixed Penalties) (England) Regulations 2017 for litter dropping.
- 1.2 The Council has limited enforcement resource and cannot cover the whole district 7 days per week. Current enforcement activity is focussed in the city centre in partnership with the BID. The public would, however like us to take a much more proactive stance throughout the whole district with a view, to reducing environmental crime and have cleaner, greener communities.
- 1.3 The proposal is to enter into a pilot scheme with a private sector enforcement provider at zero cost to the Council, to increase the amount of enforcement activity that is undertaken in relation to environmental crime such as litter dropping, dog fouling, fly tipping, waste Duty of Care breaches and to ensure that an enforcement presence is available 7 days per week in the district including parks and public spaces.

This report seeks approval for officers to enter into a 12 month pilot scheme with a private sector provider in consultation with the Cabinet Member for Development & Neighbourhoods

## **2 RECOMMENDATION**

The Cabinet is asked to;

- 2.1 To agree that the Group Manager for Neighbourhood Environmental Services, in consultation with the Cabinet member for Development and Neighbourhoods to enter in to a 12 month pilot scheme to increase the enforcement of environmental crime throughout the district with the following provision:
  - a) the contract is at zero cost to the council
  - b) the contract is flexible to include additional enforcement activity as deemed appropriate
  - c) the providers take a proportionate approach in accordance with the legislation
  - d) that education and awareness raising of the consequences of environmental crime are prioritised
  - e) that if successful, proposals for a more permanent arrangement are developed towards the end of the trial.

## **3 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)**

- 3.1 The authority has limited in-house resource to enforce against environmental crime such as litter dropping, dog fouling, fly tipping and Duty of Care waste management issues.
- 3.2 Other local authorities (including our neighbours Bristol City Council) have successfully entered into pilot schemes to engage private sector providers to enforce against environmental crime on their behalf. These pilots are undertaken at no cost to the Council and have had a significant impact in raising the awareness of the need to reduce environmental crimes. The schemes have proved popular with the public who wish to see a cleaner environment.
- 3.3 Officers have researched schemes elsewhere and determined that on average 75% of FPNs issued are paid without the need to refer cases to the magistrates' court. The uniformed officers on the streets act as a deterrent, and also as ambassadors for the Council. They usually work closely with other enforcement bodies, Council departments and third parties to share intelligence and tackle cross-cutting issues also.
- 3.4 The Council will usually provide welfare facilities and an operating base for the enforcement officers, who are largely mobile for the period of the trial. Whilst this could be accommodated within one of the Council's waste operational depots the details will be finalised if accommodation proves necessary.
- 3.5 The private sector partner for the pilot, although nil cost to the Council, will be selected through an informal procurement process and monitored by the Council's Waste & Strategy & Contracts team, working closely with the Waste Operational Service. Following the pilot any ongoing contract would be subject to a formal procurement exercise.
- 3.6 The private sector provides all of the enforcement and administrative support required to ensure successful issue of FPN's including all of the mobile technology requirements and access to identify verification information in accordance with statutory requirements.

## **4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL**

### **4.1 Fixed Penalty Notices for leaving litter**

- 4.1.1 Section 87 of the Environmental protection Act 1990 states that it is an offence to throw down, drop or otherwise deposit any litter in any place which is in the area of a principal litter authority and is open to the air.
- 4.1.2 Section 88 (1) of the Environmental Protection Act 1990 provides for an authorised officer to issue FPN's for littering offences.
- 4.1.3 The Environmental Offences (Fixed Penalties) (England) Regulations 2017 and section 88(6A)(a) of the Environmental Protection Act 1990 provides that the amount of a FPN payable in respect of a FPN issued for Litter shall be not less than £50 and not more than £150, with £100 being the default if no amount is specified. If the FPN is not paid within the specified period, then the person it was issued to will be liable to conviction for the original offence in the Magistrates' Court.

### **4.2 Fixed Penalties for other Environmental Issues**

- 4.2.1 Section 34A, 47ZA and 47ZB of the Environmental Protection Act 1990 provides for an authorised officer to issue a FPN's for failures of waste duty or care and incorrect presentation of commercial and domestic waste for collection.
- 4.2.2 The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 provides for an authorised officer to issue a FPN for incidents of fly tipping
- 4.2.3 The Dogs (Fouling of Land) Act 1996 provides for an authorised officer to issue a FPN for incidents of dog fouling.
- 4.3 The above mentioned legislation are the primary areas that will be considered as part of the trial, but others could be included during the trial where appropriate.
- 4.4 Once appointed enforcement operatives of the 3<sup>rd</sup> Party Provider will be authorised to issue FPNs under delegated authority in accordance with the Environmental Services Delegation scheme.
- 4.5 Should offenders chose not to discharge their liability through payment of the FPN, or where a case involves persistent offenders or more serious incidents, the matter will be referred to the council's Legal Services for consideration of criminal proceedings.

## **5 THE REPORT**

- 5.1 In common with all local authorities, our district suffers from incidences of littering, fly tipping, dog fouling and poor presentation of waste by commercial operators and by domestic residents.
- 5.2 Litter includes items such as cigarette butts, chewing gum and crisp packets, and can cause harm to the environment and can be hazardous to humans and wildlife.
- 5.3 This Council is determined to reduce littering by carrying out an awareness raising campaign to stress the harm caused by this anti-social behaviour, encouraging people to take personal responsibility for their waste, and also by making best use of the of legislation available to us to enforce against littering behaviour
- 5.4 Where perpetrators of littering are identified, it is appropriate that they receive a penalty reflecting the damage to the environment, local community and cost to the Local Authority

for clearing the litter and enforcing the offence. The penalty should also act as a deterrent against future offending.

5.5 This Council has adopted the maximum amount of fixed penalty that can be used in relation to a FPN issued for littering and flytipping. FPNs offer the opportunity for an individual to discharge any liability to conviction for the offence to which it relates, by payment of a FPN. FPNs are ordinarily used to deal with an incident initially, as an appropriate and proportionate way of dealing with the offending behaviour.

5.6 When individuals choose not to discharge their liability through payment of an FPN, or where a case involves a persistent offender then prosecution action can be taken through the courts.

5.5 The Council wishes to increase its enforcement capabilities to make a positive impact on the reduction of environmental crime, but does not have the capability in-house to do this in the current financial climate. The Council is therefore seeking a private sector provider to assist at zero cost to the Council.

5.6 The Council will seek to enter into a flexible pilot scheme to determine success and to ultimately shape the procurement of a longer term enforcement contract developed using lessons learned throughout the pilot.

5.7 Now that Bristol City Council have reached the end of their pilot, they are currently planning a procurement exercise for a 4 year contract for the provision of these services, Bath & North East Somerset will be a named party on the procurement exercise, giving us the option to join it at a later date if it is suitable for our needs. By being named there is no commitment to have to use the contract in future.

## **6 RATIONALE**

6.1 Fixed Penalty Notices are a valuable enforcement tool for dealing with the unauthorised deposit of litter, dog fouling flytipping and specific Duty of Care offences. They help to further the Council's commitment to take enforcement action against those who cause litter.

6.2 By entering into a contract with a third party provider the Council can significantly increase its enforcement activity in relation to environmental crime as requested by residents, and help to keep the District cleaner and reduce pollution.

6.3 Cleaner greener healthier communities form part of the Councils key priorities.

## **7 OTHER OPTIONS CONSIDERED**

7.1 To directly employ additional enforcement officers in-house. This option has been discounted due to the increased overhead costs and administrative support that will be required to implement a significant increase in FPN's and to prepare files for prosecution. Outsourcing this function reduces financial risk to the Council whilst increasing capability.

## **8 CONSULTATION**

8.1 The Council's Monitoring Officer, Section 151 Officer and Corporate Director have had the opportunity to input to this report.

## 9 RISK MANAGEMENT

9.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.

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<b>Background papers</b>	
<b>Please contact the report author if you need to access this report in an alternative format</b>	