

	<h2>Environment Committee</h2> <h3>15<sup>th</sup> March 2017</h3>
<p style="text-align: right;"><b>Title</b></p>	<p><b>Enforcement and Waste Regulations</b></p>
<p style="text-align: right;"><b>Report of</b></p>	<p>Commissioning Director for Environment</p>
<p style="text-align: right;"><b>Wards</b></p>	<p>All</p>
<p style="text-align: right;"><b>Status</b></p>	<p>Public</p>
<p style="text-align: right;"><b>Urgent</b></p>	<p>No</p>
<p style="text-align: right;"><b>Key</b></p>	<p>Yes</p>
<p style="text-align: right;"><b>Enclosures</b></p>	<p>Appendix A – Enforcement Trial Report Appendix B – Enforcement EIA Appendix C – Draft Barnet Waste Regulations 2017</p>
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## Summary

This report looks to update the Environment Committee on the Street Scene Enforcement Trial, and the Keep Barnet Clean campaign. It summarises the success of the trial, and its costs, impact and feedback. It details what Fixed Penalty Notices have been issued and paid. It also sets out the potential next steps for Streetscene enforcement in Barnet.

The report also asks for approval to consult on the draft “Barnet Waste Regulations 2017”. These regulations set out how recycling and waste collections and provision of container shall be carried out within Barnet. Adoption of these regulations, following public consultation, would restricted business and resident from putting out recycling waste for collection on the public highway and footpaths in our town centres (and other key locations) outside of specific time slots.

## **Recommendations**

- 1. That Environment Committee notes the street scene enforcement update and its recommendations in Appendix A**
- 2. That Environment Committee approve the procurement of a street scene enforcement contract**
- 3. That Environment Committee note the ongoing discussion with other local authorities about the possible joint procurement of a new street scene enforcement contract**
- 4. That Environment Committee request the Commissioning Director for Environment to carry out a review of the current street scene Fixed Penalty Notices (FPN) and Penalty Charge Notice (PCN) levels (£), including the early payment discounts, including those in areas of street scene which are not currently enforced**
- 5. That Environment Committee notes the draft Barnet Waste Regulations 2017 set out in Appendix C, and approves the six week public consultation**

### **1. WHY THIS REPORT IS NEEDED**

#### Streetscene Enforcement Trial

- 1.1 The Council is taking steps to address the demands of a developing Borough and the impacts on its built and natural environments through adopting a number of strategies, frameworks and policies. These include a policy for enforcement to ensure that we are well placed to respond to current challenges, and are prepared to be able to manage these issues in the future.
- 1.2 In March 2016 Environment Committee approved a trial to increase street scene based enforcement through a third party supplier. This increased enforcement against street scene crime was aimed at tackling those causing the issues and reduce the burden and impact on law abiding residents and businesses in the borough.
- 1.3 This trial commenced in July 2016. A full report on the trial including the communication campaign which has been carried out can be found in Appendix A. The update highlights:
  - The successful launch of the Keep Barnet Clean Campaign
  - Areas where direct enforcement has been carried out
  - Breakdown of information on Fixed Penalty Notices (FPNs) including, type issued, hotspot locations
  - Breakdown of FPNs issued by age, sex and ethnicity
  - Payment level and methods
  - Feedback
- 1.4 As outlined in Appendix A section 6 the trial has been successful. The aim of the trial was to gain a range of information to inform a decision on how

street scene enforcement can be delivered in the future” This included but was not limited to:

- The cost and benefits of Street Scene enforcement –
  - **Was this aim achieved? Yes.**
- The number and type of FPNs issued during the trial period
  - **Was this aim achieved? Yes.**
- The areas FPNs are issued during the trial period
  - **Was this aim achieved? Yes.**
- The impact on street cleansing in the Borough
  - **Was this aim achieved? Partially**
- Public opinion on the use of increased Street Scene enforcement’
  - **Was this aim achieved? Yes.**

1.5 In addition to meeting the initial aims of the trial, the trial also had other benefits. These included increased collaborative working with internal and external stakeholders, a highly recognised communications campaign, community participation in litter picks etc.

#### Next Steps

- 1.6 As outlined in section 7 of Appendix A there are a number of potential options open to the Council in regard to Streetscene enforcement.
- Option A - Ending all street scene enforcement on 31<sup>st</sup> March 2017
  - Option B - Extend current contract until the 31<sup>st</sup> July 2017 and then end all street scene enforcement
  - Option C - Procure with other local authorities
  - Option D - Procure a standalone contract
  - Option E - Procure a combined contract with parking
- 1.7 Based on the information gathered through the trial it is recommended that street scene enforcement continues within Barnet. The preferred options – would be either Option C or Option D.
- 1.8 The current contract in place with NSL Ltd as part of the trial can be extended until August 2017. A new contract would need to be in place by this time to enable continuity of enforcement. If the procurement of a new contract commenced in April 2017 then a new contract could be in place for August 2017
- 1.9 Between September and December 2016 the Council consulted on an Enforcement Policy Review and draft Enforcement Policy to set clear standards, levels of service and performance that the public can expect to receive from the Council. For local residents this will mean that Barnet Council and its partners will enforce consistently against environmental crime and anti-social behaviour. It will ensure that there is a consistent approach to

enforcement and prosecution across the Council and any other organisation delivering regulatory or enforcement services on behalf of the Council. This will ensure that the Council works towards improving the quality of life for local residents by responding with enforcement in areas where there are persistent problems. Adoption of this new Enforcement Policy is recommended for Policy and Resources Committee in March.

- 1.10 All the recommendations within this report are in alignment with the proposed Enforcement Policy.

### Contract Approach

- 1.11 If the Committee are so minded to procure a new street scene enforcement contract then there are a number of contract models which could be used.
- 1.12 **Option A** – The trial delivery model, where a third party supplier operate the enforcement provision at their own cost but also derived all the income from paid FPNs

Option A (Trial Delivery Model)	
Advantages	Disadvantages
The majority of the back office functions are undertaken by the third party supplier, and thus do not incur addition cost	The Council may not achieve the attributed MTFS target, when client costs are also considered
The Council is able to exert some control over what is being enforced with the limitations of the contract	The third party supplier maybe perceived to be generating income at the expense of the Council.
There is low reputational risk to the Council as seen by the current trial results	The Council would have less flexibility to target resources to emerging area where problems that have occurred, or where the officer time v income achieved in lower
This model has currently been successful in the trial. Onus is on the third party supplier to ensure the scheme is financially sustainable	The council does not benefit from any increased income financially to cover the cost of communications, client cost or support street cleansing
Places the emphasis on the third party supplier to be proactive in their approach.	

- 1.13 **Option B** – Concession contract model. The Council sets out the financial income it wishes to receive on a yearly basis that the third party supplier must agree to as a minimum. The third party supplier undertakes enforcement operations, maintaining all income derived from FPNs.

Option B (Concession Contract)	
Advantages	Disadvantages
The Council could achieve the contributions to the MTFS target, when client costs are also considered	More limited control for the Council control how environmental crimes are being enforced

Places the majority of the risk onto the third party supplier, to ensure that scheme is financially sustainable including the payment to the council	The third party supplier may adopt a draconian approach to enforcement to ensure income covers all costs.
The majority of the back office functions are undertaken by the third party supplier, and thus do not incur addition cost	Potential negative publicity for the Council from the actions and approach of the third party supplier.
The Council is able to exert some control over what is being enforced with the limitations of the contract	Less tested root for an enforcement contract
Places the emphasis on the third party supplier to be proactive in their approach.	The council does not benefit from any increased income financially to cover the cost of communications, client cost or support street cleansing

- 1.14 **Option C – Income share model.** The Council agrees to pay the third party supplier a fixed contract amount. The supplier would also keep a percentage of the FPN income. The Council would also keep a percentage of the FPN income to offset the contract costs, client cost and communication costs.

Option C (Income Share)	
Advantages	Disadvantages
The Council could achieve the contributions to the MTF target, when client costs are also considered	The fixed annual amount paid to the third party supplier needs to be at a level that is attractive to them
Places the emphasis on the third party supplier to be proactive in their approach.	It will require an element of contract monitoring to ensure correct income is passed to the Council.
The Council will be perceived as ensuring they receive their element of the income derived from paid FPNs.	The Council will need to ensure that the third party supplier do not adopt a draconian approach to FPN issuing.
The majority of the back office functions are undertaken by the third party supplier.	
This approach would foster greater partnership working relationship between the Council and the third party supplier, as they both benefit from the income derived, and will need it to cover their cost	
Will enable the council more flexibility to task resources	

- 1.15 **Option D – Full tasking model** (The Council set out a required amount of enforcement hours per annum. The third party supplier offer these

enforcement hours at an agreed rate. All income derived from paid FPNs would be retained by the Council)

<b>Option D (Full Tasking)</b>	
<b>Advantages</b>	<b>Disadvantages</b>
Back office payment functions would be undertaken by the third party supplier, and thus do not incur addition cost	No incentive for the third party supplier to be proactive in their approach to issuing FPNs.
The council benefit from any increased income financially to cover the cost of communications, client cost or support street cleansing	The Council may could achieve the contributions to the MTFs target, but the client costs would be considerably higher and all the risk would be with the Council
Greater flexibility and use of resources	The some of the back office functions would have to be provided by the Council.
	The Council would have to stringently monitor the third party supplier; to ensure they are providing the agreed enforcement hours.

- 1.16 All of the options above have merits. At this time however option C would be most likely to achieve the Council's objectives, as it balances the ability to fund the enforcement through FPN income with flexible staffing which enables emerging issues to be tackled.
- 1.17 Further investigatory work and financial modelling will be undertaken to develop the final approach to how this model will work. This will include but not be limited to:
- The length of the contractual agreement
  - The payment levels and payment approach
  - The performance review mechanisms
- 1.18 The procurement of a new contract would be on a cost neutral basis to the Council, but will enable enforcement of a wider area of issues (such as the Barnet Waste Regulations 2017) and allow enforcement to also be focused outside of the main town areas.

#### Levels of FPNs and PCNs

- 1.19 During the review of the trial, discussions were held with other local authorities to ascertain the payment rates which they achieve for similar Fixed Penalty Notices (FPN). One of the key findings was that although Barnet's payment rates were comparable to other authorities, many other authorities did not have an early payment discount rate.

- 1.20 It would be prudent before the start of any new contract to carry out further research to see where FPNs and Penalty Charge Notice (PCN) levels could and should be adjusted.

### Barnet Waste Regulations 2017

- 1.21 In March 2016 Environment Committee approved the investigation and drafting of Local Waste Regulations to enable time banded waste collection and to ensure waste and recycling was not left out on the street.
- 1.22 Appendix C sets out the draft regulations for both Household Waste and Commercial/Trade waste. These includes the kinds and numbers of receptacle for waste, the placing of receptacle to facilitate emptying, what may or may not be place in receptacle, and steps to be taken to ensure the collection of waste.
- 1.23 It is proposed that a six week public consultation is held on the draft regulations between week commencing 20 March 2017 and week commencing 1 May 2017. Following amendments from the consultation the draft regulations will be presented to Full Council for discussion and recommendation formal adoption.
- 1.24 Enforcement of the regulations, once adopted, would be in line with the Council's wider enforcement policy and it's Environment Enforcement Policy. If the Committee is so minded to approve the procurement of new environment enforcement contract, then within this contract could be provision to enforce Barnet's Waste Regulations 2017.

## **2. REASONS FOR RECOMMENDATIONS**

**Recommendation 1** - It is recommended that Environment Committee notes the Streetscene enforcement update in Appendix A.

**Recommendation 2** - It is recommended that Environment Committee approve the procurement of a Streetscene Enforcement Contract. This would enable continuing street scene enforcement after 31 July 2017, and enable any adopted Barnet Waste Regulation to be enforced.

**Recommendation 3** – It is recommended that Environment Committee note the ongoing discussion with other local authorities about the possible joint procurement of a new street scene enforcement contract. This would enable a joint procurement to proceed if upon further investigation it achieved the best outcome for the Council both considering finance and quality.

**Recommendation 4** – It is recommended that Environment Committee request the Commissioning Director for Environment to carry out a review of the current Streetscene Fixed Penalty Notices (FPN) and Penalty Charge Notice (PCN) levels (£), including the early payment discounts, including those in areas of street scene which are not currently enforced . Using the data gathered in the trail this would enable the criteria for the new enforcement contract to be cost neutral.

**Recommendation 5** - It is recommended that Environment Committee notes the draft Barnet Waste Regulations 2017 set out In Appendix C, and approves the six week public consultation. This will enable the public, local businesses and waste companies to comment on the regulations, and enable amends before proposed adoption.

### **3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED**

- 3.1 Consideration was given to not continuing with Streetscene Enforcement; however, given the success of the trial and the positive feedback from residents this option is not recommended. Streetscene enforcement is a key part of managing demand in street cleansing and ensuring the Borough is as clean as it can be.
- 3.2 Consideration was given to not adopting Barnet Waste Regulations 2017; however, this would mean that no enforcement action could be taken against business who leave waste containers out on our high streets.

### **4. POST DECISION IMPLEMENTATION**

- 4.1 If members are so minded to agree to recommendation 2 and 3 then a procurement process will be followed in line with council policy.
- 4.2 If members are so minded to agree to recommendation 4 then review of all Barnet's Streetscene enforcement FPN and PCN levels will be carried out. Recommendations will be reported to a later meeting of the Environment Committee.
- 4.3 If members are so minded to agree to recommendation 5 then the draft regulation will be put out for a six week public consultation between week commencing 20 March 2017 and week commencing 1 May 2017.
- 4.4 Following amendments from the consultation the draft regulations would be presented to Full Council for discussion and recommendation formal adoption.

### **5. IMPLICATIONS OF DECISION**

#### **Corporate Priorities and Performance**

- 5.1 The Corporate Plan 2015-2020 is based on the core principles of fairness, responsibility and opportunity to make sure Barnet is a place:
- Of opportunity, where people can further their quality of life
  - Where people are helped to help themselves, recognising that prevention is better than cure
  - Where responsibility is shared, fairly
  - Where services are delivered efficiently to get value for money for the taxpayer
- 5.2 The Corporate Plan 2015-2020 includes the following aims:
- We will be a Leader in London for recycling
  - Over 50% of waste collected will be reused, recycled or composted in 2020

- 5.3 At this stage in the development of environment enforcement service, there are no implications relating to the Health and Wellbeing Strategy and its stated priorities, or the future health and wellbeing needs of the local population as identified in Barnet's Joint Strategic Needs Assessment.

### **Health and Wellbeing**

- 5.4 There are no health and wellbeing implications at this time

### **Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)**

- 5.5 The street scene enforcement trial has been mainly self-funding, with the specialist supplier meeting all enforcement costs, retaining all income, and undertaking all back office functions. It is anticipated that any future contract will also be a zero cost to the council, although it is anticipated that the payment mechanisms may be different.
- 5.6 Any future contract must ensure the delivery of the Medium Term Financial Strategy (MTFS) savings associated with demand management through street scene enforcement of £0.025m in 2017/18 and £0.025m in 2018/19.
- 5.7 There are no property implications at this stage
- 5.8 It is likely that any new street scene enforcement will be above the OJEU expenditure threshold, and the procurement of the service for the long term will most likely need to be OJEU compliant.
- 5.9 There are no staffing implications at this stage
- 5.10 There are no IT implications at this stage
- 5.11 The vision for the street scene enforcement service includes those which are clearly linked to sustainability, including encourage recycling, aiming to achieve a 50% recycling rate.

### **Social Value**

- 5.12 The Public Services (Social Value) Act 2013 requires people who commission public services to think about how they can also secure wider social, economic and environmental benefits. This will be done as part of any contract procurement

### **Legal and Constitutional References**

- 5.13 Local authorities have a number of different statutory powers in relation Streetscene enforcement, these are set out in the Streetscene Delivery Unit Enforcement Policy (link available in Section 6)
- 5.14 Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 has created a new section 33ZA in the Environmental Protection Act 1990 which states:

- (1) Where an authorised officer of an English waste collection authority has reason to believe that a person

has committed a waste deposit offence in the area of the authority, the officer may give the person a notice under this section in respect of the offence.

(3) A notice under this section is a notice offering the opportunity of discharging any liability to conviction for the offence to which it relates by payment of a fixed penalty.

(9) The fixed penalty payable in pursuance of a notice under this section—

(a) is an amount not less than £150 and not more than £400, as specified by the English waste collection authority whose authorised officer gave the notice, or

(b) if no amount is specified by that authority, is £200.

(10) An English waste collection authority to whom a fixed penalty is payable pursuant to a notice under this section may make provision for treating the fixed penalty as having been paid if a lesser amount of not less than £120 is paid before the end of the period of 10 days following the date of the notice

5.15 The Council's Constitution (Clause 15A, Responsibility for Functions, Annex A) sets out the terms of reference of the Environment Committee. This includes

- Commissioning refuse and recycling, waste minimisation and street cleaning,
- Approve any non-statutory plan or strategy within the remit of the Committee that is not reserved to Full Council or Policy and Resources Committee.
- Approve fees and charges for those areas under the remit of the Committee

5.16 This matter is not reserved to Full Council or to the Policy and Resources Committee as the Constitution specifically allocates matters of this type to the Environment Committee.

5.17 Adoption of the Barnet Waste Regulations 2017, following consultation, will need to be approved by Full Council.

### **Risk Management**

5.18 All project risks are managed using the risk management procedure, as set out by the Corporate Risk Management Framework. The current key risk areas are regarding:

## **Equalities and Diversity**

5.19 The 2010 Equality Act outlines the provisions of the Public Sector Equalities Duty which requires Public Bodies to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010.
- Advance equality of opportunity between people from different groups.
- Foster good relations between people from different groups.

5.20 The broad purpose of this duty is to integrate considerations of equality into day business and keep them under review in decision making, the design of policies, and the delivery of services. The nine protected characteristics are:

- Age
- Disability
- Gender reassignment
- Pregnancy and maternity
- Ethnicity
- Religion or belief
- Gender
- Sexual orientation
- Marriage or civil partnership

5.21 The Corporate Plan 2015-2020 sets the Strategic Equalities Objective, which is: that citizens will be treated equally, with understanding and respect, and will have equal access to quality services which provide value to the tax payer. Changes to policies and services are analysed in order to assess the potential equalities impacts and risks and identify any mitigating action possible before final decisions are made.

5.22 An EQIA for the trial and potential on going Streetscene enforcement can be seen in Appendix B.

## **Consultation and Engagement**

5.23 A public consultation on the Barnet Waste Regulation 2017 will take place between week commencing 20<sup>th</sup> March 2017 and week commencing 1<sup>st</sup> May 2017.

5.24 The consultation will be available on Open Barnet and promoted to residents of Barnet and Local Businesses and waste companies.

## **6. BACKGROUND PAPERS**

6.1 The Environment strategies and frameworks set out the strategic vision and future demand management for Recycling and Waste, Parks and Open Spaces, Street Cleansing and Enforcement.

6.2 [Environment Committee March 2016 Papers](#) – including Commercial Waste Transformation and Street scene enforcement

- 6.3 [Environment Committee May 2016 Papers](#) – including Municipal Recycling and Waste Management Strategy
- 6.4 [Environment Committee July 2016 Papers](#) – including Street Cleansing Framework