

<b>Report for:</b>	<b>Overview and Scrutiny Committee</b>
<b>Date of meeting:</b>	<b>23<sup>rd</sup> March 2021</b>
<b>Part:</b>	<b>1</b>
If Part II, reason:	

Title of report:	<b>Portfolio Holder decision call in - Littering and PSPO enforcement private contractor pilot scheme</b>
Contact:	Cllr Julie Banks, Portfolio Holder for Community & Regulatory Services Emma Walker – Group Manager ECP Dawn Rhoden – Team Leader Operations Ben Stevens – Lead Officer Environmental Enforcement / Responsible Officer
Purpose of report:	To respond to call in of a decision to formally approve the decision to use a private contractor to strengthen the Council's enforcement of Littering and various Public Space Protection Orders (Town Centre, Dog Control, & Alcohol DPPO's) across the borough.
Recommendations	
Corporate objectives:	
Implications:	
'Value for money' implications	
Risk implications	
Community Impact Assessment	
Health and safety Implications	
Consultees:	
Background	

papers:	
Historical background <i>(please give a brief background to this report to enable it to be considered in the right context).</i>	
Glossary of acronyms and any other abbreviations used in this report:	EEO – Environmental Enforcement Officer PCO – Pest Control Officer ECP – Environmental & Community Protection OP's – Operations Team PSPO – Public Space Protection Order FPN – Fixed penalty notice LA – Local authority

## 1. Purpose of Report

To respond to call in of a decision to formally approve the decision to use a private contractor to strengthen the Council's enforcement of Littering and various Public Space Protection Orders (Town Centre, Dog Control, & Alcohol DPPO's) across the borough.

## 2. Call in Requests

**Cllr Uttley** - It seems that incentivising a private contractor to generate revenue from residents is unreasonable and disproportionate, as well as committing the council far beyond what our stated objectives are. (If a problem is so irregular that we need to bring in a private contractor to locate it, then we should always have the option to cease the contract once we feel the problem doesn't affect us anymore.) Privatising enforcement, especially when we incentivise the enforcers, risks leading to corruptions and falsified allegations of infringement against our residents.

Per the constitution, and in particular the principals of decision making, this action directly contravenes part a) (reasonableness), d) (proportionate), and h) (the goals and objectives of this decision are unclear and contentious).

**Cllr Cloughton** - In my view, incentivising a private contractor to generate revenue from residents is unreasonable and disproportionate, as well as committing the Council far beyond its stated objectives. Privatising enforcement, especially when we incentivise the enforcers, will undoubtedly risk the danger of false allegations of infringement being made against our residents.

This action directly contravenes the following parts of Article 12, "Principles of Decision Making": (a) reasonableness, (d) proportionality and (h) the goals and objectives of this decision being unclear and contentious.

**Cllr Barry** - I want to call-in this decision, on the basis of Article 12 "Principles of decision making", d) and h). I am calling this in due to the fact that it is entirely unreasonable and therefore disproportionate to incentivise a private contractor to generate revenue from residents.

**Cllr Allen** - I would like to call in this decision because I feel it is unacceptable to incentivise private profit through enforcement. As such, the proposal is in breach of the constitution's principles of decision-making part a) (reasonableness), d) (proportionate), and h) (the goals and objectives of this decision are unclear and contentious).

Moreover, there is a history of Dacorum PSPO's being ineffective because of difficulty of enforcement (incentivised or otherwise).

**Cllr England** - I want to call-in this decision, on the basis of Article 12 "Principles of decision making", a), d) and h).

The activity of the council on enforcement of the PSPO has, hitherto, been minimal, and much of that minimal action has been challenged successfully. There is little evidence of a large-scale problem causing real danger to most residents, because if there were, a responsible council would already have incrementally stepped-up its own operations, following the initial action days.

Incentivising a private contractor to generate revenue from residents is disproportionate. Privatising enforcement, especially when we incentivise the enforcers, will undoubtedly lead to over-sold or falsified allegations of infringement by our residents.

What is needed is behaviour-change. This is essentially a public order policing challenge, where a positive behaviour-focused presence can encourage sustained behaviour-change. But relying on FPNs – because they provide an income-stream to a third-party provider - will establish a conflict of operational interest, as achieved behaviour-change will not be profitable, instead the behaviour will be farmed for income.

**Cllr Freedman** - I feel incentivising a private contractor to generate revenue from residents is unreasonable and disproportionate, as well as committing the council far beyond what our stated objectives are. (If a problem is so irregular that we need to bring in a private contractor to locate it, then we should always have the option to cease the contract once we feel the problem doesn't affect us anymore.) Privatising enforcement, especially when we incentivise the enforcers, will undoubtedly lead to corruptions and falsified allegations of infringement against our residents.

Per the constitution, and in particular the principals of decision making, this action directly contravenes part a) (reasonableness), d) (proportionate), and h) (the goals and objectives of this decision are unclear and contentious).

### 3. Call in Responses

**(a) the decision must be reasonable within the common meaning of the word, i.e. it must be a rational decision based on sound judgement;**

- The decision to enter into a partnership with a private contractor is based on sound research and engagement with other local authorities into options for alternative methods of enforcing against littering, dog fouling and other PSPO breaches. Due process has been followed in regard to this decision and unbiased information and options have been provided. This has been supported by the Chief Officer Group and Corporate Management Team before the decision was made.

- The decision is to enter into a zero cost 12-month pilot not a long-term contract, so an evaluation can rightly be made post pilot on whether it is appropriate or beneficial to commit to any long-term decision.

- Numerous other Local Authorities are turning to partnership working with private contractors to support certain enforcement provisions where problems have been identified. To date there are over 20 LAs whom are currently in long term contract or pilot scheme partnership with private enforcement contractors and this is increasing all the time.

- The 12-month pilot will be a zero cost to the council with the operational expense and risk incurred by the contractor. The council will not pay for this service and will receive a guaranteed percentage (5%-10%) of income. The pilot is based on four officers to provide 7-day borough wide coverage and that the vast majority of FPNs issued will be for littering offences with approximately 30% made up of other offences.

- The Pilot will facilitate a number of value-added extra benefits including Environmental Awareness, Education, Supporting Community Projects, Litter picking days in the community, free distribution of leaflets, Stubbi Pouches, Bio-Degradable Dog Bags and participation in neighbourhood action and parish council meetings.

**(d) the decision must be proportionate (i.e. the action should be proportionate to the desired outcome);**

- It is clear through public consultation in 2019 that there was majority support for the implementation of the PSPOs and its enforcement. The misapprehension is that the pilot will incentivise a private company to concentrate on issuing FPNs to cyclists in the town centre where as this is not the case. Of course there will be voices who will not be in favour of increasing the level of enforcement around littering and the PSPOs, but rather than an increase in public resentment this will largely be the individuals penalised for committing offences. The authority is expected to retain the overall approval of the residents and businesses of Dacorum.

- The existing service does not have the in house capacity or resources to undertake this type of enforcement on a consistent basis, even though there are identified litter and dog fouling problems within the borough. It is therefore appropriate to consider options/partners from the private sector to support this enforcement. Data collected and analysed from this pilot will be considered prior to any permanent solution being implemented.

- Similarly, it would be reputationally harmful to introduce PSPOs if they are not going to be effectively enforced. It is important to remember, the pilot will only generate an income from a person who has committed a criminal offence i.e. by dropping litter. Therefore, to not engage in a pilot could be considered unreasonable and disproportionate, by way of making those individuals within the borough who do not drop litter and pick up after their dogs pay for cleaning up after those that do without suitable efforts being made to address the issue.

- The quality of the service will be closely monitored by ECP and any spurious fines issued would be quickly addressed. There will be a service level agreement and an officer code of conduct in place to ensure fairness and consistency. There will also be an appeals process for recipients of FPN's, which will be managed and controlled by the authority.. The overarching aim is for the pilot to be intelligence led to tackle identified problem areas and make a difference where we receive a high volume of complaints.

- According to industry experience, a 70% minimum payment rate will be achieved. Non-payments will be pursued through the courts via the single justice procedure to send a strong message and effect a positive behavioural change.

- When a problem is identified and is having a detrimental effect, the council's purpose and duty should be to take appropriate effective action to remedy, protect and safeguard its residents, members of the public, community and economy by working with other bodies or alone to do so.

**(h) when making decisions a presumption in favour of openness must be applied and a clarity of aims and desired outcomes must be displayed;**

- Due process has been followed. Reports have been produced regarding possible options for littering and PSPO enforcement at various decision making groups including, Corporate Management Team (September 2020), Portfolio Holder (November 2020) and SPAE Overview & Scrutiny Committee (November 2020).

- The process of making this decision has been open and unambiguous in demonstrating that the overarching aim and desired outcome is to bring a reduction in littering, dog fouling, PSPO and other related complaints with the Borough. The decision to implement a 12-month trial to deliver a visible consistent deterrent to environmental crime and antisocial behaviour is the most appropriate of the various options available to the authority in achieving this aim.

As the Portfolio Holder, there is a need for the authority to address littering, dog fouling and other PSPO compliance within our communities. The process of behavioural change not only requires the elements of education, public awareness but an element of enforcement. Without enforcement, there is no deterrent for those members of society that portray unacceptable behaviour and

will not change their behaviour for the greater good. The pilot for using an external contractor undertaking enforcement is not incentivising profit but a means of evaluating an option over 12 months to enable Members to make informed decisions for a future service policy. There will be checks and balances within the contractual arrangements including monitoring and appeals to safeguard and prevent any overzealous enforcement or excessive income generation through fines. As mentioned in the report, other local authorities have followed this approach and continue today.

Cllr Julie Banks  
Community and Regulatory Services

### **Monitoring Officer comment's:**

The Scrutiny Committee's powers as set out in the constitution are set out below in full.

In summary, there are two routes, which the Committee can recommend if it is not happy with the decision following the call-in process. The Committee can either refer the matter back to the Portfolio Holder setting out the nature of its concerns for reconsideration by the Portfolio Holder or it may refer the matter to full Council for consideration.

(a) If, having considered the decision, the Overview and Scrutiny Committee is still concerned about it, it may refer it back to the decision making person or body for reconsideration, setting out in writing the nature of its concerns or refer the matter to full Council. The decision maker shall then reconsider the decision within 4 weeks amending the decision or not, before adopting a final decision.

(b) If following an objection to the decision, the Overview and Scrutiny Committee does not refer the matter back to the decision-making person or body, the decision shall take effect on the date of the Overview and Scrutiny Committee meeting.

(c) If the matter was referred by an Overview and Scrutiny Committee to full Council and the Council does not object to the decision, which has been made, then no further action is necessary and the decision will be effective in accordance with the provisions below. However, if the Council does object, it has no power to overturn or change a Cabinet decision unless it is contrary to the policy framework, or contrary to or not wholly consistent with the budget. Unless that is the case, the Council will refer any decision to which it objects back to the decision-making person or body, together with the Council's views on the decision. That decision-making body or person shall choose whether or not to amend the decision before reaching a final decision and implementing it. Where the decision was taken by the Cabinet as a whole or a committee of it, the decision will be reconsidered at its next meeting. Where the decision was made by an individual, the individual will reconsider within 4 weeks of the Council request.

(d) If the Council does not refer the decision back to the decision making body or person, the decision will become effective on the date of the Council meeting.

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