





# Cabinet



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<b>Report for:</b>	Cabinet
<b>Title of report:</b>	PSPO and littering pilot contract review
<b>Date:</b>	15 <sup>th</sup> November 2022
<b>Report on behalf of:</b>	Councillor Julie Banks, Portfolio Holder for Communities
<b>Part:</b>	I
<b>If Part II, reason:</b>	N/A
<b>Appendices:</b>	Appendix 1 - Pilot Contract - Community Impact Assessment  Appendix 2 - In house set up and running costs  Appendix 3 – Breakdown of Court Outcomes  Appendix 4 – In House Costs  Appendix 5 – Stakeholder consultation responses
<b>Background papers:</b>	Review of the first year of PSPO enforcement and its effectiveness 2019-20 – Strategic Planning & Overview OSC – 10 Nov 2020  Portfolio Holder decision call in - Littering and PSPO enforcement private contractor Pilot Scheme – Strategic Planning & Environment OSC 23 March 2021
<b>Glossary of acronyms and any other abbreviations used in this report:</b>	EEO – Environmental Enforcement Officer  FPN – Fixed Penalty Notice  PSPO – Public Space Protection Order  DE – District Enforcement Ltd
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<b>Corporate Priorities</b>	A clean, safe and enjoyable environment  Ensuring efficient, effective and modern service delivery
<b>Wards affected</b>	All wards
<b>Purpose of the report:</b>	<ol style="list-style-type: none"> <li>1. The purpose of this report is to give members a general summary of the performance and work carried out by District Enforcement Ltd in relation to the PSPOs &amp; littering during the 12 month pilot contract.</li> <li>2. The report sets out recommendations in relation to extending the contract for enforcing against littering and the Council's PSPOs .</li> </ol>
<b>Recommendation to the decision makers:</b>	That Cabinet agrees to extend the contract with District Enforcement Limited for the enforcement of the Council's PSPO and littering offences for a further 48 months.
<b>Period for post policy/project review:</b>	The performance of the contract will be reported to Scrutiny Committee at least annually

## 1 Introduction/Background:

- 1.1 During 2021/22, the Council's Environmental Enforcement Team dealt with over 3140 reported environmental crime issues. This included 1587 fly-tipping reports, 1553 abandoned vehicles and other investigations, such as commercial waste issues and illegal disposal by burning. Current resources comprise of a Lead Officer, 1.83 Full Time Environmental Enforcement Officers (EEO's) and 1 temporary member of staff to deal with reported environmental enforcement activities. This does not allow for any proactive patrols for low level enviro-crime such as litter and dog fouling offences which are some of the primary causes of customer complaints to the Council.
- 1.2 The Council is empowered, under the Environmental Protection Act 1990 (and associated legislation), to deal with low level environmental crime quickly and effectively through the issue of Fixed Penalty Notices (FPN's). The issue of FPN's can act as a deterrent and have a positive effect on anti-social behaviours thus reducing the demand on Council's services.
- 1.3 The delivery of environmental services and issuing of FPN's by external providers is a service that many Councils are procuring externally as a cost effective way of delivering the service. There are a number of councils undertaking similar trials and delivering long term services across the country using external providers.

- 1.4 Dacorum advertised, in liaison with the procurement team in April 2021, the potential for offering a contract for the delivery of Environment Enforcement Activities for a trial period of 12 months with the potential to extend the contract for up to a further 48 months.
- 1.5 The contract was advertised with specific clauses to ensure that there was minimal financial risk to the authority, no enforcement targets and was designed to be flexible, with the activities enforced to be determined by the Council.
- 1.6 Following a procurement exercise, on 1<sup>st</sup> November 2021, a twelve month trial was established with a company called District Enforcement to undertake low level environmental enforcement and issue Fixed Penalty Notices (FPN's) for predominantly littering, and Public Space Protection Order enforcement including borough-wide dog control, town centre prohibitions and restrictions on alcohol consumption.

**2 Review of 12 month pilot:**

\* note there is only 10 months pilot data included (Nov 21 – Aug 22) due to the deadline of this report.

**2.1 Fixed Penalty Notices**

A total of 3159 FPNs have been issued, of which 3149 were issued successfully, (10 were cancelled at source by District Enforcement).

2321 FPNs been paid, 643 have been cancelled or written off after issuance and 195 remain unpaid.

Of the 195 unpaid FPNs, 153 have been processed through Court with 42 cases currently being processed by Legal Services and Regulatory Services and they will be heard in single justice procedure (SJP) court sessions.

All concluded non-payment cases, to date, that have been heard before SJP at Court, or have gone to trial, have been found guilty.

For a breakdown of FPNs, please see appendix 2.

**2.2 Breakdown of Single Justice Procedure (SJP) & trial prosecutions, fines and costs awarded**

All non-paid FPNs, with no representations made or upheld, have been referred to Regulatory Services (RS) where they have been checked against the evidential and public interest tests by a minimum of two Council Officers. The cases meeting the threshold were passed to Legal Services to process through the single justice procedure. The single justice procedure applies to cases involving adults charged with summary-only non-imprisonable offences. It allows cases to be dealt with by a single magistrate, on the basis of the papers alone, without either party having to attend court for a hearing. 129 cases have been found guilty for littering and 24 for Breach of PSPOs. Total fines are £22,141.00 and the details in appendix 3.

**2.3 Breakdown of Challenges & representations**

In line with the established contract protocol, representations are made to District Enforcement, in cases where an individual has an issue with the conduct of the Enforcement Officer, or where the individual would like to express their reasons as to why a FPN should not have been issued. Representations can be referred to the Council if not satisfactorily resolved for a final decision.

Total Representations made to District Enforcement	414
Number accepted	106
Number declined	308

General reasons for acceptance;

- 1) *Medical representations (mental health or medical reason for behaviour)*
- 2) *Did not walk away or leave the litter*
- 3) *Underage*
- 4) *Officer conduct.*

General reasons for Declines;

- 1) *Did not know it was an offence*
- 2) *No signs*
- 3) *Not enough Bins*
- 4) *Complaint about officer's conduct*
- 5) *I picked it up and put it in the bin (after the officer approached)*

Number of referrals to the Council (declined – unsubstantiated allegation of harassment)

#### **2.4 Education, targeted operations and engagement carried out;**

A public awareness and educational campaign was run prior to the commencement of the pilot starting through the Council's communications team and there were educational patrols around the borough. Regular communications have been released throughout the pilot to reinforce various key messages to members of the public through the general media, social media platforms as well as leaflet drops and slides shown on the Hemel Hempstead town centre screen.

District Enforcement have produced an environmental educational package for delivery to primary school children which has assisted and complimented the educational activity carried out by the Council's Environmental Awareness Team. District Enforcement are also working on another package which will be aimed at the lower secondary school age where we do have a link between secondary school pupils and littering at nearby newsagents and shops. This should be ready for delivery from October 2022.

District Enforcement have been active in all wards engaging with members of the public, delivering leaflets to residents, meeting with residents to discuss their concerns and handing out dog poo bags and stubby pouches. District Enforcement joined up with the Environmental Awareness Team and took part in the Great British Spring Clean. The team litter picked a large stretch of The Nickey Line and managed to collect 22 bags of rubbish (10 recycling & 12 refuse).

District Enforcement targeted the borough's most popular sports fields & pitches at weekends in March due to reports of associated littering being left after fixtures. They attended areas in Hemel Hempstead, Berkhamsted & Tring. Although no FPN's were issued, they engaged with clubs, teams and spectators and provided the public with leaflets, dog bags, and stubby pouches. They also posted leaflets to the surrounding houses to make the public aware that have been in that area.

District Enforcement have been working closely with Boxmoor Trust who have asked for assistance during the pilot in dealing with issues of littering, dog fouling, dog control and dogs worrying livestock. Upon request, DE have regularly patrolled these open spaces and engaged with dog walkers advising on responsible dog control and challenging irresponsible owners and behaviour.

Other activities include delivering educational packages to a number of secondary schools in the borough, targeted activities at parks and open spaces in the summer to promote the responsible use of these spaces and spending time in rural wards to engage with members of the public and patrol for offences in smaller

villages and communities. Over the next couple of months DE planto hold an educational stall at Berkhamsted Market and a Good Citizen Prize Draw.

## **2.5 Contract income share and payment rate achieved**

Total received which is a 22% share of all paid FPNs: £37, 272

Q1 (Nov-Jan): £14,774.40

Q2 (Feb-Apr): £11,104

Q3 (May-Jul): £11,393.60

Q4 (Aug-Oct): not included

FPN payment rate = 73%

## **2.6 Any other relevant qualitative or quantitative data**

Regulatory Services contract monitoring officers noted during the start of the pilot that some DE officers were recording some of the wards incorrectly for when FPNs were issued. This was manually corrected by DE and all officers have been retrained in inputting FPNs correctly on their handheld devices. As part of this the Regulatory Services department have requested that further checks are made at the end of each working day by the DE Team Leader. All figures provided in this report are now accurate.

## **3.0 Post pilot considerations**

### **3.1 Amount of FPNs set for offences**

Currently all Fixed Penalty Notices are set at £80 with no early payment discount offered. During the contract procurement process, it was clear from the private enforcement contractors that submitted bids that they were generally reluctant to tender for specifications with a Fixed Penalty Notice set lower than £80 as this was not commercially viable.

### **3.2 Littering FPNs statutory ranges (Environmental Protection Act 1990 S.87&88);**

Under the above legislation, no proceedings shall be instituted for that offence before the expiration of fourteen days following the date of the notice If no amount is so specified, is (in England), £100.

The Environmental Offences (Fixed Penalties) (England) Regulations 2017 states the amount of a fixed penalty capable of being specified by any of the following under the corresponding section is not less than £50 and not more than £150.

(a) a principal litter authority under section 88(6A)(a) of the Environmental Protection Act 1990(8);

\* This does not include 'Littering from vehicles' which comes under the civil penalty regime.

### **3.3 PSPO prohibition FPNs statutory guidance (Antisocial Behaviour, Crime & Policing Act 2014 S63, 67 & 68);**

Under the above legislation, an amount specified under subsection (5)(c) must not be more than £100.

### **3.4 Additional PSPO prohibitions and areas**

The pilot has highlighted a number of other issues not currently listed as prohibitions of our PSPOs or being enforced such as bird feeding in certain areas, numbers of dogs being walked by an individual, littering from vehicles (other than the driver) and non-inclusion of the National Trust (NT) areas within the Borough not being included due to a request by the National Trust. However, please note Regulatory Services have since been approached by National Trust's area management and are currently in consultation regarding an expression of interest for inclusion.

### **3.5 Processing Juvenile offenders**

The pilot has shown that there should be consideration for a more robust process to deal with a small minority of juvenile offenders other than engagement and education which has worked in the most part, but where we have seen repeat offenders particularly between the ages of 12 to 17 years of age where behavioural change has not been successful.

As a result, clear operational guidance shall be put in place around actions to be taken concerning this age range, which takes into account:

- Notification to a parent, legal guardian or school in writing, as soon as practicable, which will act as a formal warning. School notification will take place when the individual is clearly identified by wearing of a school uniform
- Notification to relevant statutory parties, such as the local Youth Offending Team, if the nature of the offences witnessed are persistent and serious to indicate action is required
- Careful consideration of any learning disability, or sign of vulnerability that impairs their understanding of the actions
- Approaches adopted by other Councils around fining 16-18 year olds

### **3.6 Future signage/awareness**

A review of the current signage erected to inform members of the public of the various PSPO prohibitions and littering has been undertaken, with new signs ordered.

### **3.7 Encompassing enforcing of byelaws**

Dacorum's numerous byelaws for pleasure grounds, public walks & open spaces are currently not enforced and it may be an option to consider how this could be incorporated in a longer term enforcement contract.

## **4 Options and alternatives considered after pilot contract**

The contract agreement in place, through the previous procurement process, set out that following the one year pilot scheme that the agreement would either be terminated or extended for a 4 year period. No further procurement process is needed to take forward the extension. Therefore the options are set out below following the one year pilot:

### **4.1 Option 1. Do not extend the contract**

Do not award a longer term contract, and end the agreement with District Enforcement. This option would mean that there will be increased pressure on the Environmental Enforcement Team to undertake this type of enforcement that the external provider could no longer undertake. The service provision would decrease. There is no capacity to issue FPN's across Dacorum for the offences highlighted hence Dacorum could be seen as a 'soft touch'. The consequences therefore of not continuing to use the additional resource by using an external provider would be a return to increased anti-social behaviour and low level environmental crime

including increases in fly tipping, litter and dog fouling offences having a negative impact on Dacorum's environment and community and an increase in related complaints.

## **4.2 Option 2. In house delivery of service**

This would end the agreement with District Enforcement. The option to deliver additional enforcement to include issuing of FPN's for litter and PSPO offences in-house has also been considered. This option would however, have considerable resource implications as this requires the creation of a whole new sub-team of officers within the Operations team to deliver this type of service. This would include recruitment of 4 additional enforcement officers, 1 Team Leader, 1 Lead Officer and technical support staff. Also set up of weekend and evening working.

- 4.2.1 The estimated set up and ongoing annual costs to manage and deliver the service in house based on the staffing level of the pilot contract has been provided by Finance and is £524,850. A breakdown of these costs is provided as an appendix 4.
- 4.2.2 There is a significant risk that in-house delivery would not generate enough income from the fixed penalty notice receipts to cover the actual delivery costs. Mobilisation of an in-house team would be lengthy with staff training and retention issues, alongside issues of the administration of a large number of fixed penalty notices and associated challenges.
- 4.2.3 All costs associated with the delivery of this in-house service would have to be met by income generated from receipts for fixed penalty notices. This income is not guaranteed and may reduce over time with increased compliance as the public become more aware of the enforcement presence. The current income share rate stands at 22% based on the trial with FPNs set at £80. This would mean based on the same model, the service would have to achieve over 6560 paid fixed penalty notices to cover service delivery costs, which is approximately 3251 more than the expected number of paid FPNs (3309) to be received by DE over the 12 month trial period.
- 4.2.4 As highlighted whilst the costs of having enforcement officers issuing FPN's in house would likely be prohibitive there are benefits to having the contract managed by and run alongside the existing in-house team. The existing team will be able to extend their role in the management of any future contracts, improve behaviours through education and campaigns and raising awareness that reduce offences further.

## **4.3 Option 3 Continue to offer contract for external enforcement**

- 4.3.1 Continue to deliver a zero cost full service to the Council with the operational expense and associated risk incurred by the contractor whilst receiving a guaranteed percentage of income for reinvestment into regulatory services and education. Based on the same model as the pilot, for a further 48 months, four full time officers to provide 7-day borough wide coverage will facilitate the continued enforcement of PSPOs and littering offences and a number of value-added 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 related neighbourhood action events. It should be noted alongside the zero cost for operational expense there are resource implications on Dacorum's Lead Officer and Team Leader in the RS Operations team as they manage the contract, investigate stage 2 complaints and review cases files for the SJP procedure. At the end of the current contract, the contract will be examined again under procurement rules and offered out to full tender.

## **5 Consultation**

- 5.1 The proposal to continue the enforcement contract has been discussed with key stakeholders, including Hertfordshire Constabulary, the Boxmoor Trust, Hemel Hempstead Business Improvement District and the Council's Parks and Open Spaces Team, and all stakeholders are supportive of the continuation of the enforcement contract. The full text of their comments are set out in Appendix 5.
- 5.2 To keep residents and businesses informed and to minimise the potential adverse impacts of enforcement we would continue with our proactive campaign aimed at raising awareness of the enforcement activities during the delivery of the contract. Members will also be updated at regular intervals during the delivery of the contract either by annual performance review through OSC committee or Head of Service OSC quarterly update

## **6 Financial and value for money implications:**

- 6.1 Of the 3149 FPN's successfully issued during the trial, (November 2021 to August 2022 only), 2321 fixed penalty notices have been paid giving a 73% payment rate on fines issued.
- 6.2 All unpaid FPNs will be prosecuted through the Magistrates' Court in line with ECP's enforcement policy. So far, the average court fines handed down to offenders is £155, the average costs awarded is £163 & the average victim surcharge is £34. Court prosecutions and fines act as a deterrent to other potential offenders and any reoffending when publicised. Full costs have been awarded on the majority of these cases.
- 6.3 All the costs associated with the delivery of enforcement during the contract, including issuing fixed penalty notices for litter and PSPO offences, will be met by the external provider. An overseeing Client function for the contract will be carried out by the Regulatory Services Department.
- 6.4 External provider costs for delivery of the service during the contract will be covered by receipts from fixed penalty notices with no financial risk to the Council.
- 6.5 It must be highlighted that, in no circumstances, should any enforcement activity be considered a means to raise revenue and any income generated to continue to be used to manage the service and promote educational messages.

## **7 Legal Implications**

- 7.1 The Legal Team continue to process FPNs that have not been paid through the Courts via the Single Justice Procedure. This has an ongoing resource implication for the team which will be kept under review to ensure that adequate resource is provided to support the contract.

## **8 Risk implications:**

The potential risk for not undertaking continued enforcement runs the risk of the Council being seen as an easy target area for getting away with environmental crime and could see an increase in illegal activity and the costs associated with clearing up more litter and dog waste. In criminology, the broken windows theory states that visible signs of crime, anti-social behaviour and civil disorder create an urban environment that encourages further crime and disorder, including more serious crimes.

## **9 Equalities, Community Impact and Human Rights:**

Community Impact Assessment carried out, reviewed and annexed, appendix 1. There are no negative impacts that need to be mitigated



Human Rights – There are no Human Rights Implications arising from this report.

## **10 Sustainability implications (including climate change, health and wellbeing, community safety)**

District Enforcement aims to be carbon neutral by 2030 and is working towards ISO14001. In conjunction with foot patrols, low-emission vehicles (e.g. electric Hyundai IONIQ) are also provided to be able to patrol further-out areas. Intelligence-led patrolling and route planning will reduce mileage. Many officers use their phones to record daily steps to increase their fitness levels; this also creates healthy motivational 'competition' with colleagues. District Enforcement has analysed its current carbon impact, (at 14.81 Tonnes per annum), and has populated a plan to reduce this impact yearly by at least 75% via a range of carbon reductions such as recycling, travel plans and sustainable procurement. Where reductions cannot be made effectively, District Enforcement has pledged to offset its impact via a range of options such as the VCS Tree Planting Project. This initiative will benefit Dacorum through reduced CO2 in the Borough.

District Enforcement employs Dacorum Borough residents in its Local Enforcement Team. This provides social value through creating local employment and training opportunities. It also helps reduce commuting mileage, congestion and emission in the Borough as the team will have short journeys to work. Staff will be encouraged to commute by public transport and/or cycles to further help the local environment.

## **11 Council infrastructure (including Health and Safety, HR/OD, assets and other resources)**

District Enforcement is an approved Safe Contractor. This certification underpins exceptional levels of safety. The company's health and safety management systems are externally audited for compliance. All members of the team are trained to work safely to protect themselves and those they interact with.

## **12 Statutory Comments**

### **12.1 Monitoring Officer:**

The Council has a lawful basis for issuing fixed penalty notices pursuant to the powers highlighted in the report. Utilising a private contractor to enforce environmental offences has proven to be an effective means to enforce and prevent the reoccurrence of anti-social behaviour in the relevant areas and it is therefore appropriate that the contract be extended.

### **12.2 S151:**

The proposal to award a longer term contract to an external contractor to facilitate the enforcement of the Council's PSPOs and littering offences, would be the most cost-effective option to maintain the current service provision. The proposal to fund the PSPO enforcement through utilising the FPN income is sustainable and in line with the medium term financial planning for this service.

## **13 Conclusions:**

13.1 Costs to deliver the issue of FPNs and wider on site environmental enforcement services in house present significant financial risk to the Council and have an adverse pressure on service delivery standard.

13.2 Environmental enforcement services contribute to corporate priorities of the Council and demand for services is high.

13.3 The procurement and delivery of low level environmental crime enforcement and issuing of FPN's externally offers minimal risk to the Council whilst seeking to ensure those committing such crimes are appropriately and consistently challenged.