

 Executive Meeting – 26 July 2017		Agenda Item No. 7
Title	Environmental Enforcement Service Delivery Options	
For further information about this report please contact	Graham Folkes-Skinner Waste Policy and Performance Officer Graham.folkes-skinner@warwickdc.gov.uk 01926 456337	
Wards of the District directly affected	All	
Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006?	No	
Date and meeting when issue was last considered and relevant minute number	N/A	
Background Papers		

Contrary to the policy framework:	No
Contrary to the budgetary framework:	No
Key Decision?	Yes
Included within the Forward Plan? (If yes include reference number)	No
Equality Impact Assessment Undertaken	No (If No state why below)
Not in detail at this point	

Officer/Councillor Approval		
Officer Approval	Date	Name
Chief Executive/Deputy Chief Executive		Chris Elliot
Head of Service	10 th July 2017	Rob Hoof
CMT	10 th July 2017	Chris Elliott Andrew Jones Bill Hunt
Section 151 Officer	10 th July 2017	Mike Snow
Monitoring Officer	10 th July 2017	Andrew Jones
Portfolio Holder(s)	10 th July 2017	Moira-Ann Grainger
Consultation & Community Engagement		
Final Decision?	No	
Suggested next steps (if not final decision please set out below)		

1. Summary

- 1.1 Warwick District Council provides an extensive range of waste collection and street cleansing operations to deliver a high quality environment across the district. This work is delivered through two of the Council's major contracts, and includes both scheduled and responsive operations.
- 1.2 Responsive operations include removal of fly tipping, fly posting, and graffiti, also additional cleansing/waste collections, to address issues that will not wait until the next scheduled visit. Recent increases in the levels of these incidents (as shown in Appendix 1) has prompted a review of the Council's approach, and to consider the use of enforcement powers in addition to education, informal cautions, and the use of operational resources.
- 1.3 Warwick District Council has a wide range of legislative power available to it, ranging from Council Tax to Planning Enforcement and the approach required for its use can be very prescriptive, to allowing a degree of discretion. An example of the legislation available within the different Service Areas can be found in Section 8.
- 1.4 It is clear from a review of the legislation actively used within Warwick District Council that the areas dealing with the waste offences are not presently actively enforced and as highlighted in Para.1.2, circumstances have prompted a review of this position.
- 1.5 The environmental legislation available to Warwick District Council that provides the enforcement tools for incidents of fly-tipping, littering etc. stems from a number of pieces of legislation, including the Environmental Protection Act 1990, the Clean Neighbourhoods and Environmental Act 2005 and more recently the Anti-Social Behaviour, Crime and Policing Act 2014.
- 1.6 This report explores the three environmental enforcement options that have been considered, and sets out the basis on which the recommended course of action has been established.
- 1.7 The option considered were:-
 - Option 1 In-house direct employment of staff
 - Option 2 Shared service with a neighbouring local authority
 - Option 3 Use of external contractors

2. Recommendations

- 2.1 That Option 2 – shared service with a neighbouring local authority, is adopted as the preferred method of managing environmental enforcement, and to investigate this option further.
- 2.2 That subject to agreeing 2.1, the Executive receives a further report in September 2017 which provides full details of the cost, time scale for implementation, and scope of service.

3. Reasons for the Recommendations

- 3.1 Utilising existing resources and expertise from another local authority should enable enforcement activities to commence in a shorter period of time than the other options considered.

- 3.2 The ability to draw down services as and when required makes this the most cost effective option and gives greater flexibility.
- 3.3 This option can be trialled without any long term commitment, and other options are still available should it prove unsuccessful.
- 3.4 Full details of the evaluation of this option are set out in 8.2.

4. Policy Framework

4.1 Fit for the Future

Any potential enforcement work would contribute to this strategy in a number of ways; overall it contributes to the vision of making Warwick District a great place to live work and visit and helping our residents enjoy a good quality of life. It will contribute to helping reduce anti-social behavior.

4.2 Impact Assessments

An appropriate impact assessment will need to be completed on the recommended option to ensure that there is no disproportionate impact on residents of Warwick District.

5. Budgetary Framework

- 5.1 The council does not currently fund any resources associated with this type of environmental enforcement, therefore any adopted proposal would require ongoing additional expenditure.

6. Risks

- 6.1 It cannot be guaranteed that a move towards greater enforcement will significantly reduce operational costs currently incurred to deal with these issues.
- 6.2 If an environmental enforcement function is established, the demands on the service may be greater than can be delivered.
- 6.3 The level of successful prosecutions for enviro crime may not be of the level expected or give the impact anticipated.
- 6.4 Enforcement action can result in negative as well as positive responses from various stakeholders.
- 6.5 To date officers have only be given an informal commitment from another authority that they would be willing to provide this service.

7. Alternative Option(s) considered

- 7.1 Do nothing - Neighbourhood Services could continue to use its street cleansing contractor Veolia to react to issues such as fly-tipping, as the cost is covered within the current contract. These operational teams are within the direct control of the Council, with some of the resources funded by the Housing Revenue Account.
Whilst this is the most viable option from a financial perspective, this approach has been discounted due to the increasing levels of enviro crime, and the

expectation of residents for the council to use the enforcement powers at its disposal.

- 7.2 To employ additional members of staff and provide an in house enforcement function. This has been discounted at this time as it is an expensive option and could take up to 12 months to establish. Full details of the evaluation of this option are set out in 8.1.
- 7.3 To engage an external contractor to carry out enforcement activities on behalf of the WDC – This has been discounted due to the risk of a potentially aggressive enforcement approach around the issuing of fixed penalty notices, rather than concentrating on the Council’s prime requirements of prevention and compliance. Full details of the evaluation of this option are set out in 8.3.

8. **Background**

8.1 **Option 1 – In house direct employment of Staff**

It is estimated that to deal with the current scale of enforcement issues there would need to be a core of 3 Enforcement Officers to allow for leave/sickness and the requirement in certain circumstances to “pair up” for certain types of work. Due to the level of skill and competency required to potentially take prosecution cases to court these Enforcement Officers would need to be employed on Grade E. These Enforcement Officers would need to be managed and coordinated by an existing team leader or manager. The cost of an in-house service would be approximately £150k per annum.

This evaluation is based on a small benchmarking exercise with a couple of neighbouring authorities that undertake environment enforcement.

Rugby Borough Council have 3 FTE’s working full time on Environmental Enforcement, in addition to Environmental Enforcement Wardens who undertake the small scale enforcement i.e. FPN’s for littering, and also gather evidence for the Enforcement Officers for fly-tipping etc.

Solihull Borough Council currently employ 4 Enforcement Officers and solely deal with larger scale enforcement issues and do not deal with smaller scale FPN issues.

Option 1 Pros

- Dedicated and trained team to deal with environmental enforcement issues determined by WDC.
- Surety of service that could be delivered
- Would work with the control of WDC, and reflect the Councils aims and values

Option 1 Cons

- Not a 7 days per week service.
- Not proactively looking for issues or issuing Fixed Penalty Notices (FPN’s)
- Expensive to operate
- May take a long time to establish the service
- Any loss of staff would quickly affect the resilience of the service.

8.2 **Option 2 – Shared service with a neighbouring local authority**

Rugby Borough Council has informally suggested that their enforcement team could provide the investigative resource for infringements within Warwick District's area.

Rugby Borough Council currently works with Harborough District Council for £75 per hour. Harborough DC collects the evidence on any environmental infringements and delivers it to Rugby Borough Council who investigates; produce notices or prosecution case files on behalf of the former.

Warwick District Council staff and/or contractors would need to collect evidence of any infringements and appropriately store and pass on any written or physical evidence to ensure integrity and continuity is maintained.

Option 2 Pros

- Enables service to be drawn down as required
- Enables flexibility on enforcement issues dealt with.
- An existing experienced and trained resource.
- No long term staffing commitments
- Enables enforcement activities to be trialled with minimal risk.

Option 2 Cons

- This is only an informal commitment by Rugby BC at this stage and needs further discussion.
- Would still require a WDC resource to collect evidence on which to base potential prosecutions.
- Not a 7 day a week service

8.3 **Option 3 – Use of external contractors**

There are a number of national companies that offer an environmental enforcement service to local authorities

There are different models of service that are offered by these external suppliers, these are broadly:

- External provider supplies the resource and function on a contractual basis.
- External supplier and Council share any fixed penalty notice income received
- Council pays an hourly rate for the service and receives all the fixed penalty income
- Council receives the service and the external supplier receives all the fixed penalty income.

Pros of Option 3

- Offer a 7 day a week service
- Provide all administrative services, training, absence cover, uniforms and vehicles
- Potentially could offer a low cost solution to the Council, dependant on the external contractor offsetting the cost of operation through Fixed Penalty Notice (FPN) work

Cons of Option 3

- Recent negative national media coverage as these contractors are often seen to be less sympathetic to the public service agenda, and may be focused on an aggressive approach to serving FPNs
- Potentially an expensive option if not underpinned with FPN income.
- Uncertainty at this stage of the likely costs of such a contract.
- Once a contract is in place it would be more difficult to extend or reduce the level or scope of enforcement activities.
- Any early termination of a contract due to change of approach by the council could be expensive
- Use of contractors would still require a client resource to oversee the delivery of the service
- Legal limitations of contractors prosecuting on behalf of WDC would need to be clarified.

General Enforcement Considerations

- 8.4 Fair and effective enforcement is essential to protect the health, safety and economic interests of the public, business and the environment. The decisions about what form of enforcement action to take, and in particular the decision to prosecute has serious implications for all involved. The scope and type of legislation that the Council has the authority to enforce is wide ranging and covers most aspects of the work. The common thread that holds it together is a nationally recognised Regulators' Code issued by the Government and represents expectations where "businesses have the confidence to invest and grow and citizens and communities are properly protected" This is represented in Warwick District Council's Enforcement Policy which sets out the standards by which enforcement is pursued independent of the issue.
- 8.5 It is evident from recent local press coverage and the formation of the Housing in Multiple Occupation (HMO) Task and Finish Group that for key areas of the district low level "nuisance" environmental crime is of concern. Such issues are dealt with by a number of Service Areas across the Council but most of the "waste type" incidents are dealt with by Neighbourhood Services. Traditionally informal advice and guidance has been used, alongside the quick and efficient removal of the problem. Appendix 1 shows the total number of fly-tips reported over recent years and how that relates that to neighbouring authorities.
- 8.6 The Council has a wide range of legislative power available to it, ranging from Council Tax to Planning Enforcement and the approach required for its use can be very prescriptive to allowing a degree of discretion. The environmental legislation available to Local Authorities stems largely from a number of pieces of legislation, including the Environmental Protection Act (EPA) 1990, the Clean Neighbourhoods and Environmental Act 2005 and the Anti-Social Behaviour, Crime and Policing Act 2014. This legislation is delegated mainly to Neighbourhood Services and Health and Community Protection and any proposed enforcement of the legislation needs to be coordinated.
- 8.7 From the information provided in Appendix 1 the main issues for Neighbourhood Services involve dealing with fly-tipping on various scales, ranging from commercial type deposits in lay-bys to smaller one or two refuse sacks placed on the highway. Dog fouling and graffiti incidents occur but are relatively rare or not reported.

- 8.8 It is appropriate to define the meaning of a "Fly-Tip." The term is used in its generic sense in the recording of the incidents dealt with by Neighbourhood Services and represented graphically in Appendix 1. However is it the same offence of fly-tipping, whether it is a lorry-sized load of commercial waste in a lay-by or a couple of refuse sacks placed inappropriately on the footpath, albeit on the wrong collection day, but with the expectation that it will eventually be collected by the collection crew? It is important that this is considered because it isn't appropriate to use the same approach to the different issues that could be loosely defined as "fly-tipping"
- There is the potential of overlap in enforcement between Section 33 EPA (Fly-Tipping) and Section 87 EPA (Litter) and in such circumstances, a local authority must use its discretion to determine which is the most appropriate offence to represent the level of offending

Examples of legislation actively enforced within Warwick District Council

8.9 Development Services

The main legislative tools used are Building Act 1984, Planning (Listed Buildings & Conservation Areas) Act 1990 and the Town and Country Planning (General Permitted Development)(England) Order 2015. This provides the principal legislative framework that sets out the classes for development alongside Building Control requirements and enforcement tools such as notices to require work and improvement on developments

8.10 Health and Community Protection

This service area covers a wide range of functions and the delegated powers reflect this. It includes the Food Safety Act 1990 that allows inspection and seizure of food. The Environmental Protection Act 1990 allows the use of enforcement and prohibition notices for Statutory Nuisance. The Licensing Act 2003 is used to accept or reject club licenses

8.11 Housing and Property Services

The Housing Act 1985 allows the Council to allocate tenancies and fix rents alongside serving notices to seek possession of a property. Whereas the Housing Act 1996 allows the council to investigate and determine homeless applications

8.12 Finance

The Local Government Finance Act 1992 provides Warwick District Council the ability to levy and collect council tax.

Houses in Multiple Occupation (HMO) Task and Finish Group

- 8.13 On 1 June 2017, an Executive Paper, presented to the Council's Overview and Scrutiny Committee by the above group highlighting a number of recommendations. This was agreed by the Committee and subsequently a sub-group has been set up to coordinate these actions.
- 8.14 The group had a wide remit but it did include the issue of waste and anti-social behaviour and a number of the recommendations reflected that and they were:-
- Recommendation 2.2: Ask officers to work with its existing waste contractors, and others, to develop a scheme for waste/recycling collection from HMO properties at peak end-of-lease times, for use by landlords and tenants; in particular working with local charities and student organisations, as seen in other areas of the country.*

Recommendation 2.9: Endorses the work by the Deputy Chief Executive and Monitoring Officer to review enforcement work across the Council and recommends that co-ordination across the relevant departments is improved to make full use of HMO licensing and regulatory powers