

 Executive Meeting – 27 September 2017		Agenda Item No. <h1 style="text-align: center;">6</h1>
Title	Shared Environmental Enforcement with Rugby Borough Council (RBC)	
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Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006?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	Executive report - 26 th July 2017. Item 07	
Background Papers	Executive Report – 26 July 2017: Environmental Enforcement Service Delivery Options	

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)	Yes 893
Equality Impact Assessment Undertaken	Yes

Officer/Councillor Approval		
Officer Approval	Date	Name
Chief Executive/Deputy Chief Executive	07/09/17	Chris Elliot/Bill Hunt
Head of Service	07/09/17	Rob Hoof
CMT	07/09/17	Bill Hunt, Andrew Jones, Chris Elliot
Section 151 Officer	07/09/17	Mike Snow
Monitoring Officer	07/09/17	Andrew Jones
Finance	07/09/17	Mike Snow
Portfolio Holder(s)	07/09/17	Moira-Ann Grainger
Consultation & Community Engagement		
Final Decision?	Yes	
Suggested next steps (if not final decision please set out below)		

1. **Summary**

- 1.1 A report entitled "Environmental Enforcement Service Delivery Options" was presented to the July 2017 Executive Committee. The report stated that it was clear, that following a review of the legislation actively used within Warwick District Council, the areas dealing with waste offences are not presently actively enforced and recent increases in the levels of these incidents has prompted a review of this position.
- 1.2 The Executive agreed that the preferred option to be pursued was a shared service with a neighbouring local authority.
- 1.3 This report sets out the details of a shared service approach, the indicative cost, the time scale, and the scope of the enforcement activities.
- 1.4 The shared service will effectively be a trial for 18 months up until April 2019, with a further report provided to Executive in October 2018, providing an update on actions, costs etc. alongside a proposed way forward.
- 1.5 The proposal allows for the shared service to start almost immediately pending approval.

2. **Recommendations**

- 2.1 That Executive agrees to the Council entering into an agreement with Rugby Borough Council (RBC) for an 18 month period to undertake a range of enforcement activities, with the power to undertake investigations delegated to that Council. Under the terms of section 1 of Local Authorities (Goods and Services) Act 1970 RBC can contract with WDC to provide, among other things, administrative, professional or technical services
- 2.2 That Executive agrees the adoption of fines for the appropriate Fixed Penalty Notices (FPN's) as set out in Table 2 of Appendix A.
- 2.3 That Executive notes the cost of the shared service will be £62,000 for the 18 month period which can be accommodated within existing budgets for the remainder of 2017/18 and would be built into an increased base budget for 2018/19 as set out in paragraph 5.5.
- 2.4 That Executive notes that a further report will be presented in October 2018 to review effectiveness of shared service to date and making recommendations as to future arrangements from April 2019 when it is due to end.

3. **Reasons for the Recommendation**

- 3.1 The option of a shared service with RBC will enable enforcement activities within WDC to commence in a shorter period of time and is cost effective as it enables services to be called upon when required. The shared service can be trialled without any long term commitment to allow other options to be considered if it is unsuccessful. The collaborative approach between WDC and RBC will be formalised through a signed Service Level Agreement (SLA).
- 3.2 The legislation allows WDC to arrange for functions to be discharged by another authority, therefore with this delegation RBC will have the ability to undertake environmental enforcement within Warwick District. Through this delegation RBC would enforce on behalf of WDC and make recommendations in line with

the "Regulators Code." This code is referred to by both RBC's and WDC's Enforcement Policy and allows for consistency of approach across both Councils.

- 3.3 A Fixed Penalty Notice (FPN) is a means to give a person who has committed a relevant offence the opportunity to pay a fine and in so doing discharge their liability to conviction. The FPN legislation gives local authorities the flexibility to set the level of a fixed penalty charge. RBC already has agreed penalty charges for FPN's and for clarity and consistency it is appropriate that Warwick District Council approves the same level of charges for the relevant FPN's. This allows RBC to issue the same notices and payment options without developing a bespoke process for WDC that would come at a cost.
- 3.4 If the above recommendations are approved, there is an expectation that the shared service with RBC will start immediately. The requested budget is an estimate based on discussions with RBC, their hourly rate and an anticipation of the potential workload. It also includes an amount for set up costs and legal fees. Every investigation that RBC carries out will be different and the approach is to monitor the value of money that WDC are receiving and report back to the Executive committee in October 2018. The payment of fines associated with FPN's will be managed by RBC and payments will be deducted from the charge for delegation, which is £75 per hour.
- 3.5 Guidance by DEFRA, entitled "Fixed Penalty Notices – Guidance on the Fixed Penalty Notice Provisions of the Environmental Protection Act 1990, the Clean Neighbourhoods and Environment Act 2005 and other legislation", recommends that "authorities considering issuing fixed penalty notices for the first time allow a well-publicised lead-in period before any notices are issued. This should help ensure public support for fixed penalties. During this time, when an offence is committed, enforcement officers should not issue any fixed penalties; if the offence is serious they should report the offender with a view to prosecution; in other cases they should issue a warning that in future similar offences may lead to fixed penalty notices (or prosecution) This will help raise awareness within the community and should help to manage the public perception" This approach will be reflected in the proposed Communication Strategy.
- 3.6 The resource available from RBC will be limited and therefore any enforcement will need to be targeted and intelligence led. There will be regular liaison meetings between the two authorities to agree the way forward.
- 3.7 The issue of fly-tipping and untidy alleyways/front yards have been identified as the priority for the delegated enforcement to RBC and this will be led by the number of complaints received by Neighbourhood Services. The approach to these issues is detailed in section 7 of Appendix A. Although these are the priorities, the nature of such infringements can also include other offences, such as breaches of the waste duty of care. Table 2 in Appendix A reflects this possibility in covering other FPN's that potentially could be served during this trial period.
- 3.8 The confidence to delegate the appropriate enforcement powers to RBC is based on the fact that the enforcement policies of both authorities are based on the Regulators Code and as such any investigation and/or enforcement on issues is based on nationally recognised standards. Approval is sought on reflecting the same level of Fixed Penalty Notice (FPN's) that RBC has into the WDC statute and this again provides continuity in enforcement and allows the same levels of fines and notices to be issued.

3.9 Any charges raised as a result of FPN's will be deducted from the routine delegation payments.

4. Policy Framework

4.1 Fit for the Future (FFF)

The Council's FFF Strategy is designed to deliver the Vision for the District of making it a Great Place to Live, Work and Visit. To that end amongst other things the FFF Strategy contains several Key projects.

The FFF Strategy has 3 strands – People, Services and Money and each has an external and internal element to it. The table below illustrates the impact of this proposal if any in relation to the Council's FFF Strategy.

FFF Strands		
People	Services	Money
External		
Health, Homes, Communities	Green, Clean, Safe	Infrastructure, Enterprise, Employment
<u>Intended outcomes:</u> Improved health for all Housing needs for all met Impressive cultural and sports activities Cohesive and active communities	<u>Intended outcomes:</u> Area has well looked after public spaces All communities have access to decent open space Improved air quality Low levels of crime and ASB	<u>Intended outcomes:</u> Dynamic and diverse local economy Vibrant town centres Improved performance/productivity of local economy Increased employment and income levels
Impacts of Proposal		
Local neighbourhoods may benefit from an improved environment	Residents, visitors and local businesses may benefit from an improved environment	Local businesses may benefit from an improved environment
Internal		
Effective Staff	Maintain or Improve Services	Firm Financial Footing over the Longer Term
<u>Intended outcomes:</u> All staff are properly trained All staff have the appropriate tools All staff are engaged, empowered and supported The right people are in the right job with the right skills and right behaviours	<u>Intended outcomes:</u> Focusing on our customers' needs Continuously improve our processes Increase the digital provision of services	<u>Intended outcomes:</u> Better return/use of our assets Full Cost accounting Continued cost management Maximise income earning opportunities Seek best value for money
Impacts of Proposal		
There will be training/awareness training for staff and	The enforcement will be intelligence led and locally focused.	Utilising existing resources and expertise from another authority

contractors alongside job shadowing as part of the shared service		and the ability to draw down services when required will make this the most cost effective option
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4.2 Supporting Strategies

There are a number of supporting strategies that are relevant to this proposal and they are:-

Communication Strategy

The proposed shared enforcement service will need to be communicated to various stakeholders and any communications around this proposal will follow the principles of the Communication Strategy.

Equality Objectives 2016-2020

This proposal is in line with these objectives and can be seen highlighted in the Equality Impact Assessments.

WDC Enforcement Policy

This is fundamental to the proposal and will be used as a reference document for the shared service with RBC

4.3 Changes to Existing Policies

There are no changes to existing policies as a result of this proposal.

4.4 Impact Assessments

Please see Appendix B

5. Budgetary Framework

- 5.1 The cost of the service is estimated to be £21K for the first 6 months (October 2017 – April 2018) and then a further £41K for the 2018/19 financial year. This is based on an hourly rate of £75 per hour from RBC and an expected resource availability of approximately 1 day/week. (See Table 3 of Appendix A.)
- 5.2 The legal costs are an estimate based on their hourly rate and there will be initial set up costs for equipment etc. Mallard Consultancy is a recognised local authority regulatory support network in England and is also used by RBC. It provides a source of legal expertise and training alongside active email support, network support and web based resources.
- 5.3 The initial proposal of financial backing for 18 months is based on the potential that given the appropriate resources, training etc. the enforcement role could potentially be delivered by WDC
- 5.4 Whilst it is expected that there will be some income raised from the penalties that will be enforced, these are not expected to be significant. However this will ultimately depend on the type and number of incidents. The proposed FPN fines are highlighted in Table 2 of Appendix A.
- 5.5 For 2017/18 it is proposed that the cost can be met out of the savings currently forecast for the year, as reported to within the Quarter 1 Budget Report to Executive in August. For future years, the cost will need to be factored into the Medium Term Financial Strategy. This will serve to increase the level of savings

needed to be found by the Council, estimated at over £0.5m within the August report.

- 5.6 As part of the update report proposed in Para 2.4 above, a financial summary will be produced as part of the Executive Report in October 2018.

6. Risks

- 6.1 The expectations of residents and other stakeholders cannot be delivered within the resources available.
- 6.2 RBC is not able to deliver the level of service agreed within the Service Level Agreement.
- 6.3 An investigation/evidence collected may not lead to a successful prosecution
- 6.4 Residents, businesses and visitors are unhappy about the enforcement activities or about receiving a fine.
- 6.5 Members of the public continue to commit environmental offences regardless of enforcement and associated fines.

The mitigations to the risks identified above are covered either directly or indirectly within Appendix A.

7. Alternative Option(s) considered

- 7.1 Alternative options considered were set out in the previous Executive Report entitled "Environmental Enforcement Service Delivery Options" dated 26 July 2017.

8. Background

Legislation

- 8.1 Paragraph 3.7 highlights the enforcement priorities identified by the proposed shared service and paragraphs 8.2 – 8.5 below illustrates the main legislation that is directly or indirectly associated with the issues. Local authorities are responsible for clearing waste from public land only and it may investigate incidents on private land but they have no obligation to clear the waste from private land. This will depend on the discretion of the local authority.
- 8.2 Fly-Tipping is the illegal deposit of waste on land. The offence of fly-tipping and the additional offences of "knowingly causing" or "knowingly permitting" fly-tipping are set out in Section 33(1)(a) of the Environmental Protection Act 1990. Section 33 is enforceable by both the Environment Agency and local authorities. It is not an offence under this Act to treat, keep or dispose of household waste from a domestic property within the curtilage of that property. This means that the Environmental Protection Act 1990 cannot be used to deal with waste from property left in front gardens or yards.
- 8.3 Community Protection Notices (CPNs) were introduced by the Anti-Social Behaviour Crime and Policing Act 2014 and are intended to stop individuals, businesses or organisations from committing anti-social behaviour which spoils the quality of life of the local community. The CPN is intended to deal with particular, ongoing problems or nuisances which negatively affect the

community's quality of life by targeting those responsible. A CPN can be issued by a council if it is satisfied on reasonable grounds that the conduct of the individual, business or organisation:

- Is having a detrimental effect on the quality of life of those in the locality;
- Is persistent or continuing in nature; and
- Is unreasonable

A person issued with a CPN has a right of appeal to the Magistrates Court within 21 days of issue.

- 8.4 Decisions on whether the anti-social behaviour is persistent should be taken on a case by case basis by officers. With untidy front yards for example, where an individual is storing rubbish on their property inappropriately for many months, proving persistence may be simple, but there may be examples where a behaviour is continuing over a short period but has been warned about it, but refused to stop behaviour and this could be considered continuing in nature.
- 8.5 The powers to issue Fixed Penalty Notices are in the Environmental Protection Act 1990; Anti-Social Behaviour Act 2003; the Clean Neighbourhoods and Environment Act 2005 and other relevant legislation.
- 8.6 The intention is to use the shared enforcement service on public land alongside private front yards and alleyways. As mentioned in Para 8.1 above local authorities have the discretion to enforce on private land and would be in line with the Regulators Code.
- 8.7 This shared service will not have the necessary resources to enforce in every case and therefore where there is more appropriate legislation used by other regulatory services then liaison with those functions will occur.

General

- 8.8 There are various components that need to come together to move this proposal of a shared service forward and the following table hopefully demonstrates the proposed timeline.

No.	Issue	Deadline	Comments
Democratic deadlines			
1.	Agreement to shared environmental enforcement proposals with RBC	Executive Committee 27 September 2017	
2.	Agreement to setting Fixed Penalty Notices in line with RBC's Inclusion of proposed FPN fines within Fees and Charges Executive Report.	Executive Committee 27 September 2017 Executive Committee 27 September 2017	Dependant on approval of report.
3.	Production of Executive Report summarising the work to date and the proposed way forward.	Executive Committee October 2018	Dependant on approval of report.
Operational deadlines			
4.	Production of Section 46/advice letters to identified areas of concern	Sep/Oct 2017	Within the proposed shared service WDC

			will produce the initial education /warning/Section 46 correspondence to areas of concern
5.	Enforcement activities start	Sep/Oct 2017	The Regulators Code sets out guidance on the approach to enforcement and the initial information type letter is the first step in that approach. Para 3.5 summarises national guidance around a "lead-in" period for issuing FPN's and that needs to be followed
6.	Communication Strategy	Oct 2017	
7.	Awareness training of contractors	Oct 2017	
8.	Service Level Agreement (SLA)	Oct/Nov 2017	Final version dependant on decision on September Executive
9.	Production of Information Sharing Protocol with RBC	Oct/Nov 2017	Final version dependant on decision on September Executive

- 8.9 The Communications Strategy will be completed in conjunction with the WDC Media Team and will involve consultation with various stakeholders, including Warwick University, the local Landlords forum and internal service areas. There is also national guidance from DEFRA about the implementation of Fixed Penalty Notices and a lead in period for their implementation that will need to be accounted for.