

Agenda Item No: 7
Report To: Cabinet
Date of Meeting: 19 December 2019
Report Title: In-house Environmental Crime Team
Report Author & Job Title: Tracey Butler, Head of Environment & Land Management.
Mark Goodman, Environmental Contracts & Enforcement Manager
Portfolio Holder Cllr. Andrew Buchanan
Portfolio Holder for: Environment and Land Management



Summary: The Government have introduced legislation and enforcement tools that enable Local Authorities to take action towards those who commit certain environmental crimes. These include investigative powers and fixed penalty notices.

This report explores the development of an in-house environmental crime enforcement team. The team would build on and utilise those powers and existing experience within the council to target offenders of more serious environmental crimes, and litter enforcement.

Developing this new team will bring Ashford in line with neighbouring districts in Kent, and will meet public expectation that we robustly address environmental crime including fly tipping. This report sets out the activities that would be covered by the team and how it will function.

Key Decision: YES
Significantly Affected Wards: All wards in Ashford

Recommendations: **The Cabinet is recommended to:-**

- I. Approve implementation of an In-house Environmental Crime Team for a 2 year period;**
- II. Consider a progress and future proposal report which will come back to Cabinet at the appropriate time.**
- III. Agree to “ring fence” the income from fines to support the service.**

Policy Overview: Ashford, as an authority in enforcement of environmental offences, has the principal responsibility for enforcement of environmental crime. Currently this includes the Fly Tipping Policy adopted 16/02/17 which will be amended subsequent to this decision.

Financial Implications:

The Cabinet is asked to approve implementing a permanent team. Funding for this resource is with the approved budget.

The structure for this team consists of one Enforcement Team Leader and one Enforcement Officer with estimation of salaries, equipment and on costs to the amount of £80k per annum.

The Council is permitted to retain any revenue from fixed penalty notices which will be ring-fenced for use in delivering environmental crime enforcement. Estimated annual revenues from fines based on results of neighbouring districts and our issuances for litter and other offences is at least £53,350 with a view to the team being self-funding within a 2 year period.

A Service specific reserve can be allocated to cover funding gaps during the trial period to manage the risk to the budget.

Legal Implications:

Officers will be delegated and authorised to conduct enforcement and investigations, and will issue legal notices and fixed penalty notices in accordance with legislation.

Fraud Investigation Services will provide investigative support in complex matters.

Prosecutions will be conducted through the in-house Legal Services.

Equalities Impact Assessment:

An Equalities Impact Assessment is not required for this report.

Exempt from Publication:

Contact:

mark.goodman@ashford.gov.uk – Tel: (01233) 330897

Report Title: In-house Environmental Crime Team

Introduction

1. Enforcement of environmental crime is one of the priorities of Government. In particular enforcement of commercial disposal of waste, known as fly tipping. A number of tools have been provided to local authorities so that education and enforcement can be improved. The latest tool is a change to legislation that sees the ability of a Local Authority to enforce 'Duty of Care' upon householders in a bid to reduce fly tipping (as supported by Cabinet on 11 July 2019) whereby residents need to ensure they engage licenced waste carriers, and that it is disposed of correctly otherwise they face a £400 fixed penalty notice. There is also tighter regulation and enforcement of waste carriers. Our latest resident survey identified fly tipping and littering as key concerns.
2. Currently, our surrounding districts have a varying level of environmental crime enforcement. Whilst some have contracted litter enforcement, the more serious environmental crime of fly tipping and other enforcement (such as duty of care), are conducted in-house by a specific team. While other neighbouring Local Authorities are allocating resources for environmental crime enforcement (specifically fly tipping) and we do not, we are at risk of becoming a target area for fly tipping.
3. From September 2016, Ashford Borough Council utilised contracted services for enforcement of littering and dog fouling. Contracted enforcement commenced with an initial trial contract with Kingdom which commenced in September 2016 and ended in September 2017. After competitive tender evaluation a new contract was formed with 3gs UK Ltd, and this commenced in September 2017. 3gs ceased operations with the contract terminated in mid-December 2018.
4. Consideration was given as to whether the contractors remit could expand to enforcement of fly tipping. However; these companies have been found lacking in the higher level of investigative skill set required for offences more serious than littering.

Background

5. Currently, fly-tipping "on site" investigations are carried out by our contract management staff (2 FTE). These initial "on site" investigations are supported by the Investigation and enforcement team for ongoing case investigation and legal for forward prosecution. Additionally, in Housing, area managers will investigate where evidence and resources are available.
6. We have, on average, 120 reported fly tips a month in the borough. Under our street cleansing contract, Biffa will "clear" any fly-tips under 2m³ without

recourse to the council. They should report all fly-tips the street cleansing crews come across, especially where evidence of involvement in the tip is apparent. However, based upon an exercise with Biffa in recent years this is not always the case. This does not necessarily capture the fly-tipping that occurs on private land.

7. The Biffa contract cost of providing sufficient capacity to clear 120 fly-tips per month is approx. £100k per year. This excludes disposal costs which are met by KCC. In addition, the clearance of fly tips over 2m³ are chargeable. In 2018 / 19 this cost the council £3,360 (34 fly tips). To date (July 2019) this financial year this is £2,340 (only 11 fly-tips). In addition Biffa clear fly-tipping in alleyways etc. in the HRA (not on the Biffa contract) once every 2 weeks at a cost of £16,000 per annum. Therefore, just clearance of fly-tips costs the council on average £120,000 per year.
8. Currently our staff have the capacity to only investigate reported fly-tips when they are not engaged in contract monitoring issues, or in housing on management issues. In reality, this means we investigate 5 – 10% of fly-tips reported.
9. The use of mobile cameras in Environment and Land Management to date have proved to be a deterrent in further fly-tips but have not provided evidence for prosecution. The team will lead to more effective utilisation of the camera assets.
10. In the last 2 years to end of June 2019, we have had 2867 reported fly-tips. The reported numbers are increasing but some of that is as a result of better data capture across the whole council and increased reporting opportunities. Of that we have issued 84 formal notices in services. 52 cases were put through to the investigations team for full investigation, resulting in 19 cases with insufficient evidence to proceed, 10 cases of formal action and the remainder lacking resources to pursue sufficiently. It must be remembered that not all fly-tips will have evidence linking the perpetrator to the fly-tip but without investigating more this is impossible to quantify.
11. On another aspect of waste, Environment and Land Management, last financial year saw our recycling rate drop from 56 to 53% (official figures will be released in Nov 2019). Our recycling tonnages are not varying considerably but we are seeing higher tonnages of residual waste being produced by householders and the same levels of contamination of recyclate. Therefore, as a percentage of total waste produced by householders, our recycling rate dropped. The team will be used to support behaviour change of residents by supporting anti-contamination checks and campaigns.
12. In June 2019, the HWRC (Household Waste Recycling Centre) started charging for rubble and building waste in an effort to deter commercial waste generators (businesses) from using the HWRC for commercial waste disposal. However, this does mean that residents undertaking household DIY renovation projects will be affected by this charging regime. Although other such schemes in neighbouring counties have not seen a considerable local increase in fly tipping as a result of increased charging, it is suggested that

residual waste tonnages have increased as the now “chargeable” waste at the HWRC is periodically placed in the residual household waste bin.

13. Finally, we spasmodically find that businesses dispose of their commercial waste in our street litter bins rather than paying for a commercial waste disposal contract. Although we do send communications to local businesses on their obligations with regards to their waste, we do not have a resource to actively ensure compliance. When asked, a waste consultant explained they have been asked to survey businesses in a town on behalf of another local authority in this regard. They established that approximately only a third of local businesses had a commercial waste contract in place.

Proposal

14. The Compliance and Enforcement Board requested options, for this service to be developed, they are detailed in **Appendix 1**.
15. It is proposed that we will recruit staff for front line enforcement and compliance checks, whilst utilising the experience of current investigative staff in the council for progressing investigation management of serious cases. It is proposed that this team will be for a two year trial period (reported and reviewed at that time) and will be funded from existing environmental reserves and revenues from paid fines. It will be the aim of the service to be financially self-supporting at the 2 year operational review.
16. Since the beginning of the current waste contract (2013) and up until last financial year, Environment and Land Management have been setting aside part of our budget for a planned street litter bin replacement programme. The bins have been procured by the street scene service. In the course of this work it has been identified that the revenue reserve that our service has set aside will not all be required to fulfil this piece of work. Therefore, it is our intention that we will use some of the reserve we have set aside so manage the budget risk of this initiative.
17. In the longer term it is envisaged that the team will generate income from fines sufficient to cover all costs.
18. In addition, Lucy Miller, from KCC Intelligence has also been consulted. Her post is paid for by all Local Authorities in Kent (through the Kent Resource Partnership) to support investigations and prosecution of environmental crime. She has confirmed she has capacity to support us in this venture.
19. We have developed networking with neighbouring districts through two forums. Currently officers attend and participate (where resources allow) the Kent Environmental Crime Practitioners Working Group. Officers have established an East Kent Districts Working Group, and this is leading to partnering and awareness of cross border fly-tipping and waste crime issues with Dover, Folkestone & Hythe, Canterbury and Thanet Districts. Each of those districts have a dedicated team. The introduction of the team will have the objective of further networking and improved outcomes with sharing of intelligence, and joint prosecutions.

Team Objectives

20. The Team objectives will be
- Drive down fly-tipping (10%) and increase number of cases investigated (10%).
 - Aim to provide a cost neutral environmental enforcement service inside two years
 - Reduce street cleansing clearing costs and KCC disposal costs
 - Address duty of care with commercial business owners and residents
 - Drive down commercial waste generation
 - Drive down residual waste generation, reduce contamination and improve recycling rates (currently 53% recycle and expect increase)
 - Improve engagement from Registered Social Landlords (RSL) on kerbside separation of recycling providing support to the Waste & Recycle Education Officer in driving outcomes.
 - Conduct litter and dog fouling enforcement.

Expected outcomes and benefits

21. The Expected outcomes and benefits to the council of this initiative are:
- Longer-term reduction in the KPIs for driving down fly-tipping – It is expected that in the short term we see a surge in reports rather than a reduction.
 - Support for investigations across the council, including housing.
 - Increase issue of FPNs for fly-tipping and increase cases put forward for prosecution
 - For the service to be cost neutral in two years
 - Increase the amount of commercial waste contracts amongst businesses – aim to have 60% of businesses investigated to be compliant inside 2 years
 - Reduce residual waste tonnages and as a result increase recycling percentages.
 - Improved duty of care for fly-tipping with businesses and householders.
 - Enforcement on communal waste areas with education and attitude change for responsibility with RSLs
 - Reduction of waste overall (and associated processing) will contribute to reduced carbon emissions for the borough. Waste is second only to transport in terms of carbon emissions for the borough.
22. As a whole the service should see a reduction of fly-tipping across the borough with the associated messages that it is not acceptable in Ashford. Our reputation will improve as we will be seen to be taking further action and deterring perpetrators, our residents should see a reduction in fly-tips and our contractor should see a reduction in fly-tip collection pressure which will allow the resources on the contract to be used elsewhere (increase garden waste income). Litter and dog fouling enforcement deters people from littering and allowing their dogs to foul and improves presentation of the borough.

Financial detail

23. As detailed above the intention is to fund with available reserve and revenues from fixed penalty notices.
24. StarTraq (system for issuing FPNs, prosecution file compilation and linked to payment system) has been procured through income generated from the previously contracted out litter enforcement service and will continue to be funded going forwards. This system is for all services across the council to use and not just E&LM.
25. The proposed budget for the team is outlined below.

Senior enforcement officer	£36,000
Enforcement officer	£27,500
Uniform	£1,025
Equipment	£3,000
Training	£1,000
Total	£80,000

26. The previously contracted out litter enforcement officers (2) generated approx. 4 tickets each per day, for 44 weeks per year (to include leave and flexi) and had a 75% payment rate at the start of the contract and this did decrease as compliance increased. However if this was maintained it would generate an income of £99,000.
27. However, this team of two would have a wider remit (not just focused on litter enforcement but includes fly tip investigations, Duty of Care and waste carrier enforcement) but with higher FPNs for other areas of enforcement and a greater chance of successful prosecution based on better trained in house staff. If we were to work on the basis of littering only and 2 tickets per day, per member of staff for 44 weeks a year at a 75% payment rate with the remainder going for prosecution income would be in the region of £49,500 just for littering. If income from fly-tipping FPNs commercial waste offences and increased prosecutions was included, it is believed that this service should cover costs.

Implications and Risk Assessment

28. We are confident the FPN revenue will meet the service cost inside 2 years. In the interim the reserve can be used to manage this risk. After 2 years, if the service is not cost neutral a review will have been undertaken to assess continuance, but intention is that if it is not viable it will not be continued.
29. There is a risk that central government will not allow us to continue to charge for garden waste collection and make it free for every household, which would impact on the use of the garden waste income to fund the enforcement software (see below). However, this was set up outside of this project and costs will need to be covered inside current E & LM service budget even without this project.

30. There is a greater risk to reputation in providing no / low level enforcement for fly-tipping and none for littering than providing a service as suggested that can potentially income generate in excess of covering service costs.

Equalities Impact Assessment

31. The implementation of a team does not impact on any particular equality group in our borough as it applies to all community members.
32. The implementation of this approach to enforcement will be communicated to the community.
33. A full impact assessment is not required for this report.

Consultation Planned or Undertaken

34. The Head of Legal and the manager of the Investigations and enforcement team have been consulted and support this approach.
35. Draft Cabinet report presented to Compliance & Enforcement Board on 7th of October, 2019 for further comment and feedback. This report was supported.
36. Consultation was conducted when litter enforcement was introduced. Feedback from the recent resident survey identifies both fly-tipping and littering as a concern of residents. Implementation of a dedicated team will meet public expectations.

Reasons for Supporting Option Recommended

37. From a financial perspective this is utilising reserves saved due to efficiencies gained in the service, and revenues from fixed penalty notices and court fines. Aim is to achieve cost neutrality by ensuring issuance of fines that generate sufficient revenues.
38. There is an expectation in the community that the local authority will take actions to enforce environmental crime, in particular fly-tipping, and to also address littering and dog fouling to improve the presentation of the borough and protect its heritage.
39. From 2025, local authorities will be measured (currently by percentage recycle) on not only household waste but also some commercial waste streams under the heading of "municipal" waste. Therefore, we will have an obligation to ensure that elements of commercial waste are correctly dealt with and reduced in addition to household waste. Driving down waste will also be important in our carbon emissions commitment as waste is second only to transport according to carbon emissions baseline data in 2019.

Next Steps in Process

40. A Transition Action Plan is completed to ensure effective implementation of team and necessary training, systems and resources.
41. Recruitment begins January 2020
42. Team operational March / April 2020
43. Report to Cabinet on team outcomes April / May 2022

Conclusion

44. Environment and Land Management seek approval to implement an Environmental Crime Enforcement Team. This will be funded from FPN revenue and any funding gap met from reserves. This is proposed as a two year trial with the objective of becoming cost neutral. The team will primarily focus on investigation of fly tipping and use associated legislation to address Duty of Care and unlicensed waste carriers. There will be enforcement of littering but to a lesser extent.

Portfolio Holder's Views

45. The initial consideration that contracted services could be expanded to include investigation of fly tipping, and enforcement of duty of care have been unable to take place due to performance issues. Whilst the community has supported the enforcement of litter, there is also an expectation that we investigate the national problem of fly-tipping. Without a dedicated resource to do this, fly-tipping is likely to increase and litter enforcement will not be achieved meaning criminal behaviour is not being properly addressed.

The funding efficiencies gained by this service combined with revenues from fines aim to deliver a cost neutral service.

Contact and Email

Mark Goodman, Environmental Contracts & Enforcement Manager Tel: 01233 330897

Email: mark.goodman@ashford.gov.uk

Appendix 1 - Options

As the Compliance and Enforcement Board have requested options, the following have been considered;

Do nothing – have no environmental enforcement. This will mean we have very limited fly-tipping investigations as currently is the case (approx. 5 % of fly-tips investigated), there will be no enforcement of commercial waste, very limited householder waste investigations, no littering enforcement and very limited dog fouling enforcement (as is currently the case with one dog warden).

Consideration of use of our parking Civil Enforcement Officers (civil enforcement) to undertake this work (criminal enforcement). Concerns raised on this approach; distraction from core purpose in keeping traffic flowing. An ever growing borough has led to agreement from Cabinet to increase the amount of parking enforcement as costs are covered by income generated. No appetite amongst staff for the dual role (ticketing an empty car on a civil issue is very different to ticketing a person for the criminal offence of fly tipping or littering). Lorry parking enforcement will shortly be increasing and shifts have been adjusted to ensure adequate coverage leaving no spare staffing capacity. Concern raised over staff churn / loss when there is no expectation for a dual role, impacting on team stability and income generation for the parking service (which contributes to base budget). One officer who has tried this at a previous authority just for littering stated that the enforcement was not co-generated. Instead, one day was parking and another littering due to different legislation (pre-printed parking appeal advice, different software systems and printers) and did not work well for the staff or the organisation.

Contracted services. To date, this has not proven to be a reliable option as these are business based and are looking to generate an income from fines leading to allegations that staff “loiter” around high footfall areas waiting to “catch people out” (most often the station). Prosecution files have been poor quality and have involved staff from Environment and Land Management (E&LM), Investigations and Enforcement and legal working to rectify them and in many cases abandoning them as not able to progress. They also did not possess the skill set to conduct more complex investigations. This is unlikely to be a satisfactory solution going forwards.

Partnership with neighbour. The opportunity to partner with neighbouring Local Authorities (using their enforcement staff in this authority on an ad hoc or dedicated basis) has been explored but there has been no appetite from neighbouring authorities to participate in this as enforcement for their own area is of paramount importance.

In-house model. Employ an “in house” team of two staff, one senior to the other as team leader. These could be ex police, will be well versed in criminal enforcement and prosecution processes. They would primarily enforce fly-tipping and to a lesser degree littering and dog fouling enforcement, with programmed enforcement of commercial waste and Duty of Care. We would make use of the StarTraQ system to issue FPNs. Uniform will be required as will body worn video cameras (the same as CEOs and to be downloaded through the same systems). Hand held devices will be required but printers are already available. The anticipated cost of 2 staff and a vehicle will be approx. £80k per year. It is proposed to begin the service with £50k per year from the litter bin reserve set aside by the service to date and £30k per year will need to be generated from fine incomes on the basis of the following FPNs; £75

for littering, £400 for fly-tipping, £300 for waste licence / lack of commercial waste operator offences and £400 for householder duty of care. Research has assessed that a possible revenue of £53,350, and likely to be higher. The most serious cases of fly-tipping, commercial waste fly-tipping and second offence fly-tips would still be considered for prosecution.

After 2 years the cost of the team would need to be entirely covered by income generation to continue (self-sustaining). In the event that additional revenue is generated above the costs of the team, the income would be ring fenced to environmental crime enforcement but its deployment may be in legal for additional prosecution support, or the investigations team to support more work or front line officers to carry out more on site investigation work. This would need to be reviewed and discussed as we move forwards.