

NORTH LINCOLNSHIRE COUNCIL

CABINET

LITTERING AND ENVIRO CRIME ENFORCEMENT PILOT

1. OBJECT AND KEY POINTS IN THIS REPORT

1.1 To seek Cabinet approval to

- a. Commence a pilot with Doncaster Metropolitan Borough Council (DMBC) to enforce a range of littering, dog fouling and enviro crime offences within North Lincolnshire.
- b. Delegate enforcement powers to allow DMBC to carry out enforcement functions within the North Lincolnshire boundary.
- c. Introduce a revised scheme of consequence based fixed penalty tariffs.
- d. Implement a communication strategy prior to the pilot commencing to ensure residents, businesses and visitors to North Lincolnshire are aware of the positive benefits of the scheme and to promote pride in our communities, encourage residents' personal environmental responsibilities, and enforce the consequences of non-compliance.

2. BACKGROUND INFORMATION

- 2.1 The Government published its Litter Strategy in 2017. In September 2019 a published report, 'Litter and littering in England 2017 to 2018' summarised a number of key findings
 - The cost of keeping the streets clean in 2017/18 was £663M or £28 per household.
 - The most commonly found litter types are smoking related litter, confectionary packs and non-alcoholic drinks.
 - 30% of people perceive litter as a problem.
 - 378,300 volunteers are engaged in doing something about litter.
- 2.2 In North Lincolnshire, littering is prevalent in our town centres, car parks, hospital environs, fast-food outlets, out-of-town shopping areas and

other areas of high footfall. There are significant problems with dog fouling and anti-social behaviour. We spend approximately £726,000 on street cleaning each year in North Lincolnshire.

- 2.3 The recent absence of visitors across the UK to beauty spots and areas of high footfall during the pandemic has highlighted the detrimental environmental impact of littering when visitors start to return.
- 2.4 In order to protect our environment and maintain cleaner, safer spaces in North Lincolnshire we have reviewed our current approach to cleansing and enforcement. We want to be more proactive in litter prevention and change attitudes towards littering in order to provide clean, safe spaces and support the significant number of individuals and communities who already take pride in their local areas.
- 2.5 The Code of Practice for litter and refuse Part 1A published in September 2019 provided guidance to council's on effective enforcement. Littering and some other environmental crimes are criminal offences, which may result in prosecution in the magistrates' courts. Alternatively, council's may issue fixed penalties in lieu of prosecution.
- 2.6 Fixed penalties can provide a proportionate, effective and visible way of responding to environmental crimes. An alleged offender may choose not to accept or pay a fixed penalty, and choose instead to defend the case in court.
- 2.7 A number of councils in the region currently engage front line enforcement staff from the private sector either directly, or via a contractual arrangement with Doncaster Metropolitan Borough Council (DMBC).
- 2.8 DMBC already operates this service within their own geographical area and their contract has been procured to enable DMBC to deliver the service across other local authority areas.
- 2.9 The private sector provider recruits and manages enforcement staff to undertake visible patrols and enforcement activity. DMBC staff process the fixed penalty notices and follow up enforcement action through the single justice court system.
- 2.10 It is anticipated that the presence of high visibility enforcement will have a positive impact on levels of cleanliness. The service can be delivered on a cost neutral basis from fixed penalty notice revenue.
- 2.11 The North Lincolnshire Public Space Protection Order (PSPO) was introduced in October 2017 following public and member consultation. The PSPO combined offences previously contained within Dog Control Orders with a number of anti-social behaviour controls. Work is now underway to review this work and create a revised order.

3. OPTIONS FOR CONSIDERATION

- 3.1 Option 1: To commence an enforcement pilot using the DMBC model.
- 3.2 Option 2: To maintain the status quo.

4. ANALYSIS OF OPTIONS

- 4.1 Option 1 is the preferred option and provides an opportunity to raise the profile of littering and other enviro crime. The pilot presents the opportunity to have additional staff resources focused on delivering high visibility enforcement activities, including littering, dog fouling and contraventions of the PSPO at no additional cost to the council.
- 4.2 The pilot will operate on a full cost recovery model through the service and recovery of FPNs. This model successfully operates in a number of neighbouring council areas.
- 4.3 DMBC has indicated that they will consider entering into a pilot arrangement with North Lincolnshire subject to a term of between 12 and 18 months. This will enable sufficient time for both parties to review the impact and sustainability of the pilot. It is possible that the precise length of the pilot will be subject to further negotiation and some discretion is therefore required on this matter.
- 4.4 Fixed penalty notices are issued as an alternative to prosecution. FPN's provide an opportunity for individuals who litter or commit other enviro crime to discharge liability for an offence. Enforcement officers must still obtain sufficient evidence, which is both reliable and credible to prove the offender's guilt beyond reasonable doubt. This is to ensure that if an alleged offender does not pay a fixed penalty, a prosecution for the original offence can be taken to ensure that the scheme is not undermined.
- 4.5 There is no legal right of appeal against the issue of a fixed penalty notice, however DMBC do allow those served with an FPN to dispute their liability for the offence. A review of the circumstances and evidence, including bodycam footage by DMBC is undertaken and the FPN may be withdrawn at this point.
- 4.6 Individuals may also submit a formal complaint in respect of being served an FPN. Stage 1 complaints are considered by DMBC in consultation with North Lincolnshire Council. A complaint which progresses to Stage 2 is dealt with by North Lincolnshire Council officers.
- 4.7 Where a fixed penalty notice remains unpaid DMBC will recover the fine via the single justice procedure. Individuals who do not accept the FPN

and wish to plead not guilty to the alleged offence in the magistrates' court will be dealt with by NLC Legal Services team.

- 4.8 Doncaster MBC carry out their functions in accordance with the enforcement guidance issued under the Code of Practice for litter and refuse. The guidance states that there are a number of instances where it is not appropriate to issue a fixed penalty notice, these are summarised below:
- a. Where there is no criminal liability e.g. if the offender is a child under the age of 10.
 - b. Where enforcement action is inappropriate or would be disproportionate for the offence e.g. if the offender is vulnerable.
 - c. Prosecution is more suitable e.g. if the offence is committed by a persistent offender or the offender is violent or aggressive.
 - d. If a littering offence is accidental e.g. if something falls from someone's pocket.
- 4.9 In order to maintain public trust in the legitimacy of enforcement action against littering, enforcement action will only be taken where there is evidence of an intent to drop and leave litter.
- 4.10 Guidance also sets out how enforcement in respect of young people should be carried out. It is proposed that young people in North Lincolnshire will be dealt with as follows.
- Children under the age of 12 will not receive any sanction.
 - For juveniles aged 12 to 17 years contact will be made with a parent or guardian to make them aware of the offence.
- 4.11 During the pilot further consideration will be given to the potential use of restorative justice practices in lieu of fixed penalty notices as way to influence the behaviour of a small minority of young people aged 12 – 17 years who may be caught littering.
- 4.12 Schedule 1 sets out the contraventions for delegation to DMBC, and details the proposed FPN tariff. Schedule 2 sets out this information for offences which will be retained by us for local enforcement. We will continue to enforce the powers listed in Schedule 1 alongside DMBC, where appropriate to do so. In order to deter littering and facilitate the success of the pilot, FPN tariffs will be reviewed in line with the statutory maximums with discount for early payment on some FPNs.
- 4.13 Initial discussions with DMBC indicate that four full time staff will be allocated to the contract if approval to progress is confirmed. The content of the service level agreement with DMBC will then need to be finalised by the Head of Waste, Fleet & Public Protection and the Head of Legal and Democracy.
- 4.14 In advance of the enforcement pilot a positive and proactive media strategy will be prepared and implemented. This will seek to advise people about the environmental and financial consequences of littering

and enviro crime and compel people to make positive behaviour changes in advance of the pilot.

4.15 Option 2 retains the status quo and does not support our values of integrity and self-responsibility where the actions of a minority impact on the people and place of North Lincolnshire.

5. FINANCIAL AND OTHER RESOURCE IMPLICATIONS (e.g. LEGAL, HR, PROPERTY, IT, COMMUNICATIONS etc.)

5.1 The service will operate on a full cost recovery model. The service level agreement with DMBC will provide legal support and enforcement staff funded through the issue of fixed penalty notices. The model requires not guilty pleas, which progress to the Magistrates Court to revert to North Lincolnshire Legal Services.

5.2 The power to delegate these executive functions to DMBC is set out in the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012, which enables arrangements to be made for the discharge of functions, which are the responsibility of a local authority executive, by another local authority or an executive of another local authority.

5.3 DMBC's Constitution allows their Cabinet to accept the delegation of executive functions from another Local Authority and a report will need to be presented to their Cabinet in order to accept our delegation of these functions.

6. OTHER RELEVANT IMPLICATIONS (e.g. CRIME AND DISORDER, EQUALITIES, COUNCIL PLAN, ENVIRONMENTAL, RISK etc.)

6.1 This is an opportunity to tackle high profile anti-social behaviour and criminal behaviour such as littering and dog fouling, resulting in a positive impact on the local environment and directly contributing to the council's outcomes and priorities.

7. OUTCOMES OF INTEGRATED IMPACT ASSESSMENT (IF APPLICABLE)

7.1 A Stage one Integrated Impact Assessment (IIA) has been completed for this decision which confirmed a full IIA was not required.

8. OUTCOMES OF CONSULTATION AND CONFLICTS OF INTERESTS DECLARED

8.1 There are no known conflicts of interest to highlight.

9. RECOMMENDATIONS

- 9.1 That Cabinet approve entering into a Service Level Agreement with DMBC for the delivery of an enforcement pilot relating to littering, dog fouling and other high profile anti-social behaviour offences.
- 9.2 That the Head of Waste, Fleet & Public Protection be authorised to complete negotiations with DMBC on the terms and duration of the Service Level Agreement.
- 9.3 That Cabinet delegates the necessary enforcement powers set out in Schedule 1 to Doncaster Metropolitan Borough Council for the purposes, and duration, of the enforcement pilot as detailed in the Service Level Agreement.
- 9.4 That Cabinet approve the revised fixed penalty tariffs, detailed in both Schedule 1 and Schedule 2.
- 9.5 That the Deputy Chief Executive & Director of Commercial be authorised to revise the powers delegated to DMBC within the SLA and update tariffs for any new or revised powers during the period of the pilot subject to consultation with the relevant Cabinet Member.
- 9.6 That the Deputy Chief Executive & Director of Commercial be authorised to approve a communication strategy in consultation with the Cabinet Member.

DEPUTY CHIEF EXECUTIVE & DIRECTOR OF COMMERCIAL

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Background Papers used in the preparation of this report - Nil

Schedule 1 - Delegate to DMBC

Legislation	Description	Penalty Amount	North Lincolnshire Proposed fee tariffs
Clean Neighbourhoods and Environment Act 2005 sections 18 and 19 amended section 86,87 and 88 EPA 1990 Part 1V	Extended offence of littering to all open spaces and allows for the issuing of Fixed Penalty Notices	Amount to be specified by principle litter authority but no more than £150 or less than £65 or £100 where not specified. Facility to make a reduced early payment not less than £50	£150 - Reduced to £100 if paid within 28 Days
The Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018	Littering from Vehicles - Civil Penalty which carries no Criminal liability as it is a civil debt recovery system	Amount as specified by litter authority as above re section 88 6A (a) but if not stated £100 with early payment not less than £50	£150 - Reduced to £100 if paid within 28 Days
Anti-social Behaviour Crime and Policing Act 2014: Section 63, 64, 67, 68	Fixed Penalty Notice for Breach of a Public Space Protection Order including Dog Fouling	Below £100 and a facility to offer reduced early payment charges	£100 - No reduced fee
Health Act 2006 Section 5 and 7 The Smoke-free (Vehicle Operators and Penalty Notices) Regulations 2007	Section 7 Smoking in a smoke free premise or vehicle	£200 reduced to £150 for early payment.	£50 reduced to £30 if paid within 15 days
Health Act 2006 Section 5 and 7 The Smoke-free (Vehicle Operators and Penalty Notices) Regulations 2007	Section 6 Failure to display smoking signs in a premise or vehicle	£50 discounted to £30	£200 reduced to £150 if paid within 15 days

Schedule 2 Retained by NLC

Legislation	Description	Penalty Amount	North Lincolnshire Proposed fee tariffs
EPA 1990 Part II Section 34 (2A) and ZA Household Duty of Care	Fixed Penalty Notice for Breach of Household Duty of Care	Legal Maximum no more than £400 and no less than £150 and if not specified £200. Early payment not below £120.	£400 reduced to £300 if paid within specified time period.
Environmental Protection Act 1990 Part II Offences Waste on Land Section 33 and 33ZA	Fixed Penalty Notices for Unauthorised deposits of Waste Offences (Flytipping)	No less than £150 and no more than £400 if not specified £200. Reduced early payment not below £120	£400 reduced to £300 if paid within specified time period.
Environmental Protection Act 1990 Part II Offences Waste on Land Section 34 (5) offences as Amended by Clean Neighbourhood and Environment Act 2005 section 45	Fixed Penalty Notice for Failure to Produce Waste Documentation	No more than £300 with facility to offer reduced early payment fee.	£300 - No reduced fee
Control of Pollution (Amendment) Act 1989 Section 5	Fixed Penalty Notice for Failure to Produce Authority to Transport Waste	Below £300 and a facility to offer reduced early payment charges not less than £120	£300 - No reduced fee
Environmental Protection Act 1990 Part II Offences Waste on Land Section 46 as amended by the Deregulation Act 2015 section 58	Fixed Penalty Notice for Failure to use receptacles. Recoverable as a Civil Debt	As specified by authority but not more than £110 and not less than £75	£110 - No reduced fee
Anti Social Behaviour Act 2003 Section 43	Fixed Penalty Notices Fly Posting and Graffiti	Amount to be specified by principle litter authority but no more than £150 or less than £65 or £100 where not specified. Facility to make reduced early payment not less than £50	£150 - No reduced fee
Clean Neighbourhoods and Environment Act 2005 Section 8.4 Schedule 3A	Unauthorised distribution of free printed matter	Stated maximum £100	£100
Clean Neighbourhoods and Environment Act 2005: Section 3, 4 and 6	Fixed Penalty Notice for Nuisance Parking Offences	£100 or amount as so specified with a facility to make a reduced early payment not less than £60	£100 - No reduced fee
Refuse Disposal Amenity Act 1978 section 2A as amended by Clean Neighbourhoods and Environment Act 2005	Fixed Penalty Notice for Abandoned Vehicles	£200 or amount so specified with a facility to make a reduced early payment not less than £120	£200 - No reduced fee
Anti-social Behaviour Crime and Policing Act 2014: Section 48,52	Fixed Penalty Notice for Non Compliance with a Community Protection Notice Offence	Below £100 and a facility to offer reduced early payment charges	£100 - No reduced fee