

13 July 2016		ITEM: 13 (Decision 01104375)
Cabinet		
Environmental Enforcement		
Wards and communities affected: All	Key Decision: Key decision.	
Report of: Cllr Pauline Tolson, Portfolio Holder for the Environment		
Accountable Head of Service: Lucy Magill, Head of Residents Services		
Accountable Director: Steve Cox, Corporate Director, Environment and Place		
This report is Public		

Executive Summary

The physical appearance of the Borough is a top priority for the Council. The Council is committed to implementing measures to address and improve Thurrock's appearance through a 'zero tolerance' campaign to 'Clean it; Cut it; Fill it'. Taken as a combination this top priority will see immediate and longer term measures to tidy the Borough of litter and fly tipping, to increase the frequency of grass cutting, and to fill more pot holes more quickly.

Persistent problems of littering and fly tipping in particular are creating a negative perception of the Borough for residents, businesses and visitors. Enforcement has an important role to play in addressing these problems and this report addresses three matters relating to environmental enforcement. They are the introduction of a fixed penalty for small scale fly tipping, enforcing against businesses without waste disposal contracts and setting out options for enhancing the Council's environmental enforcement capability. It also sets out plans for a campaign to reduce littering.

1. Recommendations:

That Cabinet:

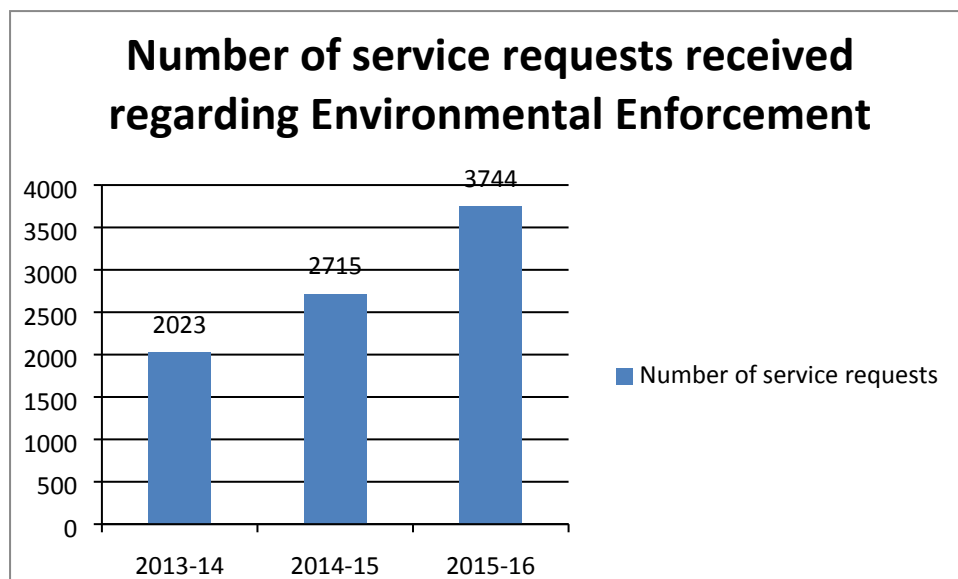
- 1.1 agrees to implement a scheme for the issuing of fixed penalty notices for the unauthorised disposal of waste, sets the fixed penalty amount at £400 and does not set a reduced amount for prompt payment.**
- 1.2 agrees that the environmental enforcement resource be enhanced, requests that costed business cases be prepared for the options set out in the report and that Cleaner, Greener, Safer Overview and Scrutiny**

consider those options at its October 2016 meeting before being brought back to Cabinet.

- 1.3 notes that £20,000 has been identified from in year back office savings to enhance the environmental enforcement resource in 2016/2017.**
- 1.4 agrees to implement a scheme for the issuing of fixed penalty notices for businesses who do not provide on request to the Local Authority, copies of Waste Transfer Notes for the previous 24 months or, in the case of a newer business, from the date the business commenced trading. The amount for the fixed penalty notice as laid out in the legislation is £300.**
- 1.5 agrees to a reduced amount of £180 for the prompt payment, within 14 days of the fixed penalty notice for inability to provide a trade waste contract**
- 1.6 notes that a campaign against littering in Thurrock will begin during Summer 2016 and will include publicity relating to the issuing of FPNs.**

2. Introduction and Background

- 2.1 The physical appearance of the borough must be improved. It has suffered and continues to suffer from persistent fly tipping and littering across our town centres, open spaces, country lanes and roadsides. As Thurrock develops a sense of place and pride improving the appearance is a top priority for residents, businesses and visitors.
- 2.2 Environmental enforcement is one of the mechanisms the Council can deploy to address this. It covers action against fly tipping, littering, abandoned vehicles, waste carrier offences, fly posting, dog fouling, littering from vehicles and graffiti.
- 2.3 The environmental enforcement team at Thurrock consists of two officers and is managed through the environmental health, environmental protection team.
- 2.4 Environmental enforcement service requests can be made, via the Thurrock website or via the report it app. There has been a significant increase in the number of service requests for environment enforcement over the last three years. In the first two months of the financial year 16/17 the team received 783 service requests.



2.5 Environmental enforcement is enforced through various pieces of legislation including the Environmental Protection Act 1990 and the Clean Neighbourhoods and Environment Act 2005. More recently the Anti-Social Behaviour, Crime and Policing Act 2014 gives the ability for Councils to use community protection notices to deal with some instances of environmental crime.

2.6 Fixed Penalty Notices can be issued for certain offences. It is the offenders opportunity to discharge their liability. If the fixed penalty notice is not paid then court action may be taken.

3. Issues, Options and Analysis of Options

A focused campaign around litter and fly tipping

3.1 A detailed marketing campaign is being developed to support the implementation of these changes. It will focus on encouraging behaviour change to reduce littering and fly tipping including promotion of successful enforcement activity and prosecutions.

3.2 The campaign will use a number of communication channels including printed materials, outdoor advertising e.g. bus shelters, information on bin stickers and our vehicle fleet, press releases and social media. The campaign will include work with the community, businesses and partners to build pride in Thurrock. It is likely to cost approximately £10,000 which will be funded from the existing central communication budget.

Fly Tipping

3.3 Fly tipping is defined as the unauthorised depositing of waste on land.

The Environmental Protection Act 1990 Section 33 deals with fly tipping and provides a maximum penalty on conviction of an unlimited fine and/ or five years imprisonment.

- 3.4 On 9th May 2016 the Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 came into force. The regulations introduce a new fixed penalty notice for fly tipping of waste offences under Section 33 of the Environmental Protection Act 1990. The fixed penalty notices are intended to be considered as an option for dealing with small scale fly tipping incidents.
- 3.5 For individual fly tipping offences the decision to issue a fixed penalty notice or take an alternative form of action will continue to be determined with reference to the Councils Public Protection Enforcement Policy. Decisions on legal proceedings resulting from fly tipping offences will continue to be determined by relevant managers and approved by the Head of Legal Services.
- 3.6 Through this new legislation local authorities can set the level of the fixed penalty locally and when an authority does so the level must be between £150 and £400. Where this option is not taken by a Local Authority the level remains at the default level of £200.
- 3.7 Fixed penalty notices have to be paid within 14 days of being issued. Local Authorities can agree to reduced penalties locally for prompt payment (within 10 days of the notice being issued). Where a local authority exercises this option the reduced penalty must be between £120 and £399.
- 3.8 Failure to pay the fixed penalty notice renders the offender liable for prosecution for the original fly tipping offence. This paper is proposing that in Thurrock the fixed penalty is set at £400 with no reduced penalty for prompt payment.
- 3.9 With regard to littering officers already have the ability to issue fixed penalty notices for environmental crime such as littering and dog fouling where the amount of the penalty is £75. If the fixed penalty is not paid the offender could be taken to court and fined up to £2500. The use of these powers depends on the resources available, a matter addressed under the enforcement resource section below.
- 3.10 A further cause of littering is unsheeted or poorly sheeted lorries on Thurrock's roads that deposit rubbish along our roadsides. We are continuing to work with Essex Police and Highways England to address this. A recent operation by Essex and Police and Connect Plus Services (for Highways England) resulted in 13 lorry drivers receiving £100 fines for incorrect or no sheeting. We will work with both partners to ensure more enforcement operations take place and with local businesses to raise awareness of the issue and its impact.

- 3.11 The Council is obliged to remove fly tipping from its own land but not from land in private ownership, that is the responsibility of the landowner, for example those responsible for private flats. The Council is considering the introduction of a 'pay to clear' scheme whereby the Council will clear rubbish tipped on private land for a fee. This work will also consider an approach on land that is unregistered or in complex ownership, such as alleyways.

Trade Waste

- 3.12 Some of the fly tipped waste we are seeing within the borough can be categorised as trade waste, where it may be being fly tipped in streets or businesses are using public litter bins to dispose of their waste.
- 3.13 The Council has now employed a trade waste enforcement officer who will ensure that businesses in Thurrock are complying with the requirements of the Environmental Protection Act with regards to the disposal of their waste.
- 3.14 Any business not able to provide, on request, evidence of a waste disposal contract for the previous 24 months, or since beginning trading if less than 24 months, will be issued a fixed penalty notice for the amount of £300, as set by the legislation.
- 3.15 If the fixed penalty notice is paid within 14 days this amount will be discounted to £180.

Environment Enforcement Resources

- 3.16 There are several ways that the environmental resourcing can be enhanced in Thurrock as set out below. It is proposed that costed business cases be prepared for each option and that Cleaner, Greener, Safer Overview & Scrutiny Committee be asked to review those options and make recommendations back to Cabinet. The options initially identified include:
- Continue as is
 - Fund an increase in enforcement officers either temporarily or permanently
 - Increase the back office resource to free up officer time to investigate service requests
 - Instruct a private enforcement company

In the short term it is proposed that £20,000 of in year back office savings be used to enhance the environmental enforcement function to address immediate issues of fly tipping, littering and addressing the backlog of service requests.

Continue as is

- 3.17 There is an increasing number of service requests in relation to environmental enforcement. As can be seen from the figures earlier in this report there is a year on year increase in the number of service requests being received.

Fund an increase in enforcement officers either temporarily or permanently

- 3.18 By increasing the number of enforcement officers within the environmental enforcement team it would lead to service requests being dealt with in a more timely manner, investigation of offences continuing whilst work out in Thurrock continued and hopefully further prosecutions or issuing of fixed penalty notices which can act as a deterrent to people considering committing environmental crime. Enlarging the team would hopefully also give some capacity for some proactive work around areas such as littering being carried out. An additional £300,000 would create an additional 5 enforcement officer posts, a supervisor and give financial capacity for transport, supplies and legal costs.

Increase the back office resource to investigate service requests

- 3.19 When a service request is received it is allocated to one of the enforcement officers to go out and investigate.
- 3.20 If having been to the site of a fly tip evidence is found the officer then has to carry out a full investigation, including writing to the alleged perpetrator, gaining witness statements, interviewing the alleged perpetrator, putting together a case file and submitting the case file to legal. All of this work means that the enforcement officer is in the office not out in Thurrock investigating other environmental crimes.
- 3.21 In the case of an abandoned vehicle administration work has to be carried out to identify the owner of the vehicle, write to them with regards to the situation, deal with getting the vehicle removed if appropriate and released back to the owner if appropriate.
- 3.22 One way of dealing with this matter could be to put additional resource in to create a back office function. This could be in terms of some basic administration to help with items such as DVLA checks for registered keepers of vehicles, closing duplicate service requests etc. Alternatively a trained investigator could be employed to carry out the investigation once the enforcement officer has gathered the initial evidence in a case. This person or persons could carry out the investigations for the enforcement officers leaving the two enforcement officers to deal with service requests as they come in and possibly carry out some proactive work, particularly with regards to littering.

Instruct a private enforcement company

- 3.23 There are several companies in the market providing services in relation to littering and dog fouling enforcement.
- 3.24 The predominant financial model operated in respect of arrangements for private companies issuing fixed penalty notices for littering and dog fouling on

behalf of councils anticipates that companies will be funded to undertake this activity through the proceeds of tickets issues and paid.

- 3.25 There are a number of caveats which appear in agreements between companies and authorities that complicate the assessment of financial implications associated with these arrangements, these include:
- Some arrangements seen by officers specify the provision of administration services by the company issuing the notices for which charges are made. This clearly adds a cost to the local authority
 - All arrangements check rely on the achievement of a specified level of collection of penalty charges by the company to pay for the contract. Where this collection level is not achieved charges accrue to the local authority.
 - All arrangements checked anticipate that where none payment arises the legal services of the local authority involved in the contract will pursue offenders at the expense of the authority.
- 3.26 In light of the above factors if the council consider entering into a contract for these services it would be prudent to estimate the level of financial provision to made to cover the contract cost in the event of levels of collection falling below the breakeven point.
- 3.27 The costs of officer time compiling the prosecution case if the fixed penalty notice were not paid and the legal costs attributable to the Council should also be factored into a financial assessment.
- 3.28 There has been some adverse publicity associated with instances of fixed penalty issue by private companies that they have been deemed to be over zealous. This publicity cites the local authority on whose behalf the companies were operating and inevitably has the capacity to impact on the reputation of the authority concerned.

4. Reasons for Recommendation

- 4.1 There are several options for the future with regards to environmental enforcement which would need to be fully costed including possible income generation.
- 4.2 Fly tipping is a serious problem for Thurrock and gives rise to a drain on the resources of the authority when fly tips have to be cleared from public land. It is also burdensome for private land owners who are unfortunate enough to have their land targeted by fly tippers.
- 4.3 The imposition of a £400 fixed penalty for fly tipping would allow the enforcement officers charged with investigating these offences, where sufficient evidence was available, to deal with smaller scale fly tips by way of a fixed penalty notice and in some cases avoid the need for lengthy and

expensive court proceedings which could be reserved for the larger scale offences which occur.

4.4 Lack of proper disposal of their waste by business can lead to increase fly tipping and incorrect use of public amenities such as litter bins.

4.5 The ability to issue fixed penalty notices for non-compliance with regards to documentation for disposal of trade waste will lead to increased compliance within Thurrock and hopefully a reduction in fly tipping.

5. Consultation (including Overview and Scrutiny, if applicable)

5.1 This report has been to Cleaner, Greener, Safer Overview and Scrutiny and a verbal update from that meeting will be given at Cabinet.

6. Impact on corporate policies, priorities, performance and community impact

6.1 The recommendations in this report will positively impact the realisation of the Councils strategic priority to 'Promote and protect our clean and green environment'.

6.2 The recommendations in this report also contribute to building pride, respect and responsibility.

7. Implications

7.1 Financial

Implications verified by: **Carl Tomlinson**
Finance Manager

The level of service requests has increased year on year putting greater pressure on the Environmental Protection budget. The report recommends developing an options appraisal reviewing possible options for environmental enforcement. Each option will need to be understood in terms of income and expenditure implications as well as available funding.

The introduction of Fixed Penalty Notice's as set out in the report should contribute towards managing budget pressure by either acting as a deterrent or contributing funding to the service.

The detailed marketing campaign costing £10k will be funded from the central communications budget. The in-year savings of £20k relate to proposed back office management savings which are expected to be implemented by the end of September 2016.

7.2 Legal

Implications verified by: **Adam Rulewski**
Lawyer, Prosecutions

The Local Authority has the power to issue fixed penalty notices for small scale fly tipping events. This power has been available since 9 May 2016 and is therefore relatively new (see the *Unauthorised Deposit of Waste (Fixed Penalty) Regulations 2016*).

The minimum fine the Local Authority can set is £150.00 and the maximum is £400.00. The LA may set an early payment fee of not less than £120.00 if the penalty is paid within 10 days of the notice. The early repayment is discretionary.

The Local Authority also has power to issue Fixed Penalty Notices where a person fails to provide Waste Transfer Notes upon request to the Local Authority. The offence is not for failing to prove evidence of a trade waste contract, rather, for failing to provide copies of Waste Transfer Notes covering the disposal of all waste for the previous 2 years (or sooner if it is a business less than 2 years old). This must be set at £300.00 and the Local Authority may set an early repayment of no less than £180.00. (see – *Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007, Reg. 3(4)*)

7.3 Diversity and Equality

Implications verified by: **Rebecca Price**
Community Development Officer

Feedback from the Fairness Commission's (FC) community consultation in 2015 recorded significant concerns from residents on the state of the environment in Thurrock and the detrimental impact on pride and perceptions of the borough caused by littering. The options outlined in this proposal would help to address some of these concerns with a view to increasing responsible behaviour to reduce instances of fly-tipping across the borough in the future

There are no diversity or equality implications associated with the recommendations in this report

7.4 Other implications (where significant) – i.e. Staff, Health, Sustainability, Crime and Disorder)

8. Background papers used in preparing the report (including their location on the Council's website or identification whether any are exempt or protected by copyright):

9. Appendices to the report

None

Report Author:

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