

# **TONBRIDGE & MALLING BOROUGH COUNCIL**

## **COMMUNITY AND ENVIRONMENT SCRUTINY SELECT COMMITTEE**

**14 June 2023**

### **Report of the Director of Street Scene, Leisure & Technical Services**

#### **Part 1- Public**

#### **Matters for Recommendation to Cabinet**

#### **1 LITTER & FLY TIPPING ENFORCEMENT PILOT – SIX MONTH REVIEW**

**To report on the performance of the Litter & Fly Tipping Enforcement pilot with National Enforcement Solutions after the first six months. The report identifies options for the future and asks the Committee to make recommendations to Cabinet.**

##### **1.1 Background**

- 1.1.1 The Council does not currently have a dedicated enforcement team to deal with offences such as littering & fly tipping. Enforcement duties have previously been incorporated into the roles of officers with broader remits, primarily the three Waste & Enforcement Officers (WEOs) and the Senior WEO. However, following the introduction of new waste collection services in 2019, greater focus has been required on monitoring & management of the Waste & Street Cleaning contract; health & safety inspections; dealing with service requests & complaints; liaising with third parties such as Housing Associations, Kent Highways, Parish Councils, etc. This has resulted in a reduction in litter & fly tipping enforcement activity.
- 1.1.2 In order to maintain levels of cleanliness standards expected by residents, the Council has adopted a range of approaches that include physical cleansing to an agreed schedule, education & promotional initiatives, and the investigation & enforcement of littering & fly tipping offences. It has been acknowledged that the latter could not be sufficiently delivered within existing resources. External assistance with enforcement has been an approach widely adopted by councils, to varying degrees of success. In order to assess the feasibility of long-term success with such enforcement activities, a 12-month pilot was agreed to be undertaken taken with an experienced enforcement third-party, National Enforcement Solutions (NES).
- 1.1.3 The Cabinet Member for Technical & Waste Services endorsed this pilot on 10 August 2022. Officers subsequently engaged with NES to establish a service level agreement for the pilot, and to put the necessary measures in place for reporting incidents, establishing agreed procedures, staffing support requirements, etc. The pilot started on 17 October 2022, with an initial training & induction week for NES

staff. Officers committed to updating Members on the performance of the pilot at an appropriate point, so that Members could consider future options.

## **1.2 Review of pilot**

- 1.2.1 For the pilot, NES aimed to provide at least two Enforcement Officers, ideally four, plus a team leader and additional Operational Support to administer the FPN issuing & case management system, take payments, deal with enquiries, challenges and complaints and manage the pilot. The working hours of the Enforcement Officers for the pilot are from 08:00 to 18:00 on a 5-day working week. Their duties are to patrol and issue FPNs for littering (up to a single rubbish sack) and inspect & investigate fly tips. This has meant that the Council's own WEOs could focus their enforcement activities on more complex areas such as abandoned vehicles, waste carrier offences, waste accumulations, joint operations with the Police to disrupt illegal waste activities, cross-boundary investigations, and liaison with the Community Safety Unit, Kent County Council's (KCC) Intelligence Unit and other third parties such as the housing associations, the Police, British Transport Police, Environment Agency, etc.
- 1.2.2 NES' Enforcement Officers have been authorised individually by the Council to issue FPNs and carry out investigations only once NES have provided evidence that appropriate training in the relevant legislation and working practices have been provided. This training consists of four weeks in total, with an initial two days of office-based training, eight days shadowing an on-site trainer, and a further two weeks under the team leader's supervision. The training modules include:
- Relevant legislation & guidance
  - Local enforcement policies & procedures
  - Litter & fly tipping FPN guidance
  - Safeguarding
  - Health & safety
  - Conflict management
  - Customer service
  - Obstructive offenders
  - Data Protection & GDPR
  - Scenario training
- 1.2.3 NES' litter foot patrols focus on 'hot spot' areas within the Borough, generally high streets, shopping areas, areas around fast-food outlets, commuter hubs, etc. They are tasked with covering all suitable areas within the Borough, and during the reporting period, 49% of FPNs were issued in Tonbridge wards and 51% in the remainder of the Borough. The level for littering FPNs is set at £150 reducing to £100 if paid within 10 days of issue.
- 1.2.4 Regarding fly tips, NES are sent any reports of fly tips where it is considered that there may be evidence available. Their officers attend and go through the dumped rubbish to try to find any evidence relating to where the waste has come from or who may have disposed of it. They then notify Waste Services that the fly tip can

be cleared. Any evidence they find is then followed up by NES so that appropriate enforcement action may be taken. The level for fly tipping FPNs is set at £400 with no early payment reduction.

- 1.2.5 As this is a pilot project, no income is currently received by the Council from the FPNs issued. Where companies such as NES enter into formal contracts with councils, the usual arrangement is for them to provide the council with an agreed percentage of income generated by FPNs. However, should Members wish to continue with such third-party support, the Council would be required to go through a formal procurement process to comply with financial procedures and mitigate the risk of challenge from other service providers.
- 1.2.6 From October 2022 to the end of April 2023, NES Enforcement Officers have issued 1,519 Fixed Penalty Notices (FPNs). Of those, 55 have been written off for a variety of reasons including being cancelled at the request of the Council; incorrect details being given; medical issue or vulnerable individual; replaced by formal warning.
- 1.2.7 Of the remaining 1,464 FPNs, 1,139 were paid resulting in a payment rate of 78%. This compares favourably with the level of payment for FPNs issued by the Council when more resource was available for issuing FPNs, as well as with other councils using third part support. This has resulted in income to NES of £131,650 in the first six months of the pilot.
- 1.2.8 Of the 1,519 FPNs issued, 95 were for fly tipping offences and the remainder for littering. Of the littering FPNs, 95% were issued for smoking-related items and 5% for other types of litter including fast food packaging, confectionary wrappers, snack packaging, drinks cans and other packaging. 91% were issued on the spot, with the remainder sent by post, usually when the littering was linked to a vehicle, but the offender failed to give their details. In addition, there were 126 “walk off” offenders whose details could not be obtained.
- 1.2.9 Staff retention and continuity has proven to be an issue for NES, with sixteen Enforcement Officers having been employed for varying lengths of time on the pilot in the first six months (including some training staff). When this issue has been raised with NES, they have emphasised their policy of only employing the right people on this pilot and not risk filling vacancies with the wrong people.
- 1.2.10 At the start of the pilot, NES’ officers experienced an amount of hostility from members of the public and from a small number of local businesses. The Council helped overcome the inaccurate perceptions that NES were not authorised to act on behalf of the Council and that their staff were on a bonus scheme or subject to target setting for the number of FPNs issued. The situation has subsequently improved.
- 1.2.11 There was also an issue early on in the pilot where NES officers brought in from other council areas started issuing FPNs for bins & boxes being presented outside of the usual collection day. This was due to them having this policy in the area

they normally worked in. This was quickly brought to our attention, NES Officers advised and any FPNs issued rescinded, as this is not a policy that this Council has adopted.

- 1.2.12 All representation and challenges to FPNs issued are made to NES by the alleged offender. Where they remain unhappy with NES' response, complaints are dealt with through the Council's Corporate Complaints Procedure. A number of complaints were received via local MPs. So far, any complaints received by the Council were investigated and resolved with the assistance of NES' Operational Support team. Where Council officers felt that an FPN should be rescinded, NES acted promptly and made refunds where necessary, the latter being in five cases so far.
- 1.2.13 Given the adverse publicity that such third-party activities have generated elsewhere, it is worth noting that only one case so far has resulted in adverse media coverage for the Council, when a new NES officer issued an FPN for throwing bread for ducks. NES immediately rescinded the FPN.

### **1.3 Summary**

- 1.3.1 In general officers consider that the pilot has gone well so far, in terms of both the expectations of the Council and those of NES. Following various visits to the Borough to assess the size and nature of the areas within it and levels of littering at identified 'hot spots', and comparisons of their experience in other council areas, NES indicated that they anticipated issuing around 3,000 FPNs for litter & fly tipping offences within the twelve-month pilot period. As such the first six months have proved the pilot to be financially viable for NES' business model.
- 1.3.2 There has been no cost to the Council from implementing the pilot except for the provision of some office space at the Council's Kings Hill offices to act as a base for NES' officers. It is important to note that there has been significant Officer time required to support the pilot which has included regular liaison with NES' team leader and management throughout; managing the pilot to ensure that the service is being delivered as agreed; dealing with enquiries from NES' Operational Support team to clarify the Council's position on certain cases; running DVLA checks on behalf of NES in cases relating to litter from vehicles; authorising NES Enforcement Officers, issuing ID & authorisation cards, and getting them returned as NES officers start & leave; referring representations & challenges to NES; responding to complaints; and dealing with enquiries from offenders, landowners & other third parties. This is an additional duty of the Senior WEO and will need to be considered carefully within any future review.
- 1.3.3 The pilot has proved to be effective in terms of the results experienced through the use of a third-party resource to deal with many more litter & fly tipping offences than could be tackled within the Council's current resources. The pilot has also freed up more time for the Waste Services team to develop more effective working relationships with internal & external partners such as the

Tonbridge & Malling Community Safety Unit, the Police and KCC's Intelligence Unit, as well as other Kent districts.

- 1.3.4 The pilot generated £131,650 in the first six months from the FPNs issued and paid. Should a third-party enforcement solution be continued, a formal procurement exercise would be undertaken, which in itself would 'cost' Council staff time. However, in other council areas, such a contract has resulted in some form of 'shared income' arrangement whereby the council would either receive a percentage from each FPN paid or a payment over and above an agreed income.
- 1.3.5 The levels of complaints and adverse publicity have been lower than originally expected – given the experience of other councils using similar service providers - particularly once the causes of the issues experienced within the first few weeks of the pilot had been identified & resolved. NES staff & management have proven to be pragmatic in their approach to representations from offenders and prompt & efficient in their response to any complaints and the Council's enquiries & requests for information.

## **1.4 Future options**

- 1.4.1 Having considered the outcome of the pilot there are a number of options available to Members:
- 1) Wait until the pilot has progressed further before any decision is taken.
  - 2) Not to continue with the third-party provision of litter & fly tipping enforcement once the pilot ends in October 2023 and use the existing staffing resources within Waste Services to deliver some enforcement albeit at a greatly reduced level.
  - 3) Procure a contract for the third-party provision of litter & fly tipping enforcement through a formal tender procedure.
  - 4) Increase the staffing resource levels within the Council in order to maintain a similar level of activity as the current pilot arrangements.
  - 5) Not continue with litter & fly tipping enforcement.
- 1.4.2 Taking into account the success of the pilot to date it is the view of Officers that option 3 should be pursued with the introduction of an income share arrangement within the contract. If the Committee supports this view a further report will be submitted to Cabinet on the procurement exercise.
- 1.4.3 As part of any procurement exercise, Members may also wish to consider extending the scope of the services being tendered to include enforcement of complementary elements of the adopted public space protection order e.g., no unauthorised barbeques, fishing etc.

## **1.5 Legal Implications**

- 1.5.1 Legal advice was sought prior to the current pilot agreement being entered into and the Director of Central Services endorsed the terms of the 12-month pilot agreement. It was highlighted that the pilot would allow the Council to obtain statistical data and evidence to then determine the level of any future tender and route of procurement.
- 1.5.2 If Members wish officers to formally procure a contract for the provision of the services currently received from the pilot, a formal tender process would need to be undertaken in compliance with the Council's adopted contract procedure rules. In order to allow sufficient time for the decision-making process and the tender process to take place, it is likely that the current end date of the pilot would need to be extended by a few months. NES have indicated that this would be acceptable to them without any change to the current service level agreement.

## **1.6 Financial and Value for Money Considerations**

- 1.6.1 The 12-month pilot is being undertaken at no cost to the Council and will allow the Council to assess any potential options for income through a future procurement process.

## **1.7 Risk Assessment**

- 1.7.1 Any potential options for future enforcement provision will need to be fully risk assessed.
- 1.7.2 The current pilot is for a fixed period of 12 months which could be extended if a formal procurement process is adopted as the way forward. The terms of the current agreement allow either party to terminate with one month's notice.
- 1.7.3 The procurement of a contract for third-party enforcement could offer options for expanding the remit of the contractor to include other types of enforcement, such as investigating breaches of Public Space Protection Orders; commercial waste offences; duty of care waste offences; scrap metal licensing enforcement; etc. However, the current business modelling for companies such as NES may not be suitable for taking on these additional activities, so the market may be limited and/or additional costs may be incurred by the Council.

## **1.8 Policy Considerations**

- 1.8.1 Community, Procurement and Crime & Disorder Reduction.
- 1.8.2 The activities carried out by NES, and their associated procedures are compliant with the Council's Corporate Enforcement Policy and with the Waste & Street Scene Enforcement Policy, as well as with Government guidance on litter & fly tipping investigation & enforcement.

## **1.9 Recommendations**

- 1.9.1 The Committee is requested to consider the outcome of the pilot outlined in the report and make recommendations to Cabinet on the options for the future.

Background papers:

Nil

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