COMMUNITIES SCRUTINY PANEL

DATE
14th December 2017

REPORT OF
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SUBJECT
Approach to Dog Fouling and Littering

STATUS
Open

CONTRIBUTION TO OUR AIMS
The matters for consideration within this report contribute to the strategic priorities of the Council to promote a Stronger Economy and Stronger Communities. Providing attractive clean public open spaces free from litter and detritus directly supports the North East Lincolnshire Outcomes Framework, namely that People in North East Lincolnshire:

- Feel Safe and are Safe
- Enjoy Good Health and Well Being
- Benefit from Sustainable Communities
- Enjoy and benefit from a strong economy

EXECUTIVE SUMMARY
This report builds upon the work undertaken as part of the Smarter Neighbourhood Services Programme to support the development of sustainable communities by encouraging residents to keep their local environment and neighbourhoods clean and tidy by reducing incidence of environmental anti-social behaviour such as littering and dog fouling.

Adopting a place based approach, targeting areas of demand, the Smarter Neighbourhood Services Programme will deliver under three key themes of work:

- Changing behaviour through smarter communications and key messages to prevent unacceptable behaviour
- Smarter intelligence led activity, targeting areas of concern
- Robust enforcement to further support changes in behaviour

This report explores a number of options around an approach to dog fouling and litter enforcement and asks the Communities Scrutiny Panel to make a recommendation to Cabinet in order that a revised approach can be implemented.

1. BACKGROUND AND ISSUES
1.1 LEGISLATION – Litter

1.2 The principal legislation regarding the regulation of litter is found in ‘The Environmental Protection Act 1990’, the ‘Clean Neighbourhoods and Environment Act 2005’ and more recently the ‘Anti-Social Behaviour Crime and Policing Act 2014’.

1.3 North East Lincolnshire Council is a Principal Litter Authority and has a statutory duty to keep land and highways free from litter. This obligation is discharged by the cleansing section of Neighbourhood Services. The legislation provides an offence of littering and a mechanism for local authorities to take action against those found to be littering but there is no statutory requirement for local authorities to investigate or take action. There are provisions which allow a local authority to require other duty holders to clean or maintain areas for which they are responsible but there is no requirement for the local authority to use these powers.

1.4 LEGISLATION - Dog Fouling


1.6 In January 2000 NELC made an order under The Dogs Fouling of Land Act 1996 designating land to which the 1996 Act applies. The Act has since been repealed by the Clean Neighbourhoods and Environment Act 2005, with the section relating to Dog Control Orders also repealed by the Anti-Social Behaviour Crime and Policing Act 2014. The 2014 Act makes provision for the use of Community Protection Notices and Public Space Protection Orders in dealing with irresponsible dog ownership, however government guidance indicates that land specified in the January 2000 Order remains designated until such time as alternative control measures are implemented.

1.7 In broad terms the January 2000 order makes it an offence for the person in charge of a dog to fail to clear up when the animal fouls in a public space. The offence is punishable by means of a fixed penalty fine known as a Penalty Charge Notice (PCN) or prosecution. The current tariff is a £50 fine with no early payment reduction. The Act and Order provide a discretionary power for authorised officers to act. There is no statutory responsibility to enforce the provisions of the Act or Order.

1.8 HISTORICAL CONTEXT

1.9 Historically, all enforcement action around dog fouling and litter was undertaken by the Council’s Community Pride Team. When initially implemented as the Neighbourhood Safety Scheme in 2006 the provision had 49 full time members of staff and was able to undertake regular proactive patrols 7 days per week and as a result regularly issued Penalty Charge
Notices (PCNs) for dog fouling and litter offences which in turn generated income to support the delivery of the service.

1.10 Since 2006 a number of Service Reviews and changes to the structure have been implemented which significantly reduced the overall size and capability of the provision. The reduced capacity of the Community Pride Team and the wide remit of their commitments and increasing pull on their time meant that the amount of pro-active enforcement on littering and dog fouling carried out and the number of PCNs issued significantly decreased.

1.11 The following table illustrates the number of PCNs issued for dog fouling and litter:

<table>
<thead>
<tr>
<th>Year</th>
<th>Litter</th>
<th>Dog Fouling</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012/12</td>
<td>26</td>
<td>1</td>
<td>27</td>
</tr>
<tr>
<td>2013/14</td>
<td>16</td>
<td>3</td>
<td>19</td>
</tr>
<tr>
<td>2014/15</td>
<td>5</td>
<td>10</td>
<td>15</td>
</tr>
<tr>
<td>2015/16</td>
<td>2</td>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td>2016/17</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>2017/18</td>
<td>0</td>
<td>2</td>
<td>2</td>
</tr>
</tbody>
</table>

1.12 In addition to the 2 PCNs issued during 2017/18, a number of additional targeted patrols were undertaken during the summer around dog fouling, however all dog owners were found to be compliant.

1.13 **CURRENT POSITION**

1.14 Community Pride has recently been part of a Service Review incorporating Trading Standards and the Waste & Recycling Team as part of the Smarter Neighbourhood Services Programme. The functions of the Team now sit within a new Community Protection & Compliance Team with additional responsibilities around enforcement around side waste to support the Council’s approach to alternate weekly collections.

1.15 Whilst the current review has reshaped the function of the Council’s enforcement capability, it is evident that the capacity to enforce and deliver all of the Council’s statutory duties and responsibilities will require skilful and intelligence led coordination. It is therefore prudent at the same time to explore alternative enforcement delivery models around dog fouling and littering to support the mainstream resource moving forward. This in turn will allow the new provision to focus on education & awareness raising and wider enforcement and compliance activity around waste presentation & fly tipping, statutory nuisance in addition to wider Trading Standards regulatory duties.

1.16 Initial research has been undertaken to determine the feasibility and viability of commissioning a private sector provider to undertake litter and dog fouling enforcement on behalf of the Council as part of a cost neutral/profit share arrangement. This has indicated that other local authorities have entered into
arrangements with private sector enforcement companies and have had positive results.

1.17 **OPTIONS CONSIDERED**

1.18 **Option 1 – Provide Dog Fouling & Littering Enforcement Provision as part of the Community Protection & Compliance Team**

1.19 As mentioned above, to further support the Smarter Neighbourhood Services review and the move to fortnightly waste collections a new provision has been established. The team will be responsible for encouraging behaviour change and investigating and enforcing non-compliance of recycling and waste presentation. In addition, the team will have wider responsibilities in relation to enforcement around statutory nuisance and wider environmental issues which will include fly tipping, litter and dog fouling.

1.20 Whilst the new Community Protection and Compliance Team will retain powers to enforce litter and dog fouling, and will be required to do so, it is evident that the capacity of the team and the wider responsibilities incumbent on the provision will continue to limit the amount of regular and proactive patrols required to effectively enforce dog fouling and litter.

1.21 The Smarter Neighbourhood Services Programme has been set challenging savings targets which means any increase in service provision in this area to enable more regular targeted patrols would need to be considered carefully set against any alternative lower cost/no cost options.

1.22 It is the view of managers that incorporating dog fouling and litter enforcement solely within a wider Community Protection and Compliance Team will not provide regular and sustainable patrols in order for enforcement activity to be effective.

1.23 **Option 2 – Create dedicated NELC Team**

1.24 This option explored the costs involved in principal for creating a specific “self-funding” dedicated dog fouling and litter enforcement provision utilising and redeploying existing staff within North East Lincolnshire Council as an addition to the wider Community Protection and Compliance Team. It is also prudent to note that where PCNs were challenged, additional legal costs would be incurred due to a need to be present evidence in Court.

1.25 The estimated cost of the provision has been calculated as follows:

- 3 Enforcement Officers £77,000
- Administrative & Legal support £7,000
- Total £84,000 pa
In order for this resource to be sustainable, the team would need to receive payment for 35 PCN’s per week 52 weeks of the year. Anecdotally 50% of PCN’s issued do not get paid, any PCN’s paid over this level would generate a surplus revenue.

Careful consideration around the legal costs incurred and the capacity of the Council’s legal department for pursuance of non-payment of PCNs would need to be considered. Any fines issued by the Courts go directly to the Ministry Of Justice and not the Council thereby the pursuit via the court process for a PCN fine may amount to a loss to the Council who can only recover basic costs.

Option 3 – Commissioning of a Private Sector Provider

Private providers are undertaking dog fouling and litter enforcement on behalf of a number of authorities around the country including large metropolitan areas such as Leeds, Wigan, Portsmouth, Doncaster, Bournemouth, Barnsley and Swansea.

Whilst no formal pre-market engagement has been undertaken to date, initial research indicates that one option offered by private companies is a cost neutral service with their income being generated from the returns from the Penalty Charge Notices (PCN) issued. Certain companies also offer an annual profit share scheme with the local authority, although the amount would need to be agreed at the time of negotiating the contract.

The enforcement process would be undertaken by the provider with no NELC staff involvement other than agreed contract management requirements and the administration of monies generated by the provider. A private provider is likely to require touch down space within local authority premises so appropriate accommodation would need to be provided.

Staff cover can be a 7-day rota with indicated working hours between 0730 – 1930 with additional cover for special projects or events by prior arrangement.

The prosecution of offenders who fail to pay a PCNs would fall to the Local Authority with the evidence to prosecute being provided by the private provider. Reasonable court costs for each case would be applied for but any fine imposed would go to the Ministry of Justice.

Other Local Authorities have commissioned short term pilot trials ranging from 12 to 18 months. This has the benefit of allowing a fair and accurate assessment of the enforcement approach and activity provided to ensure it is complementary to the local area.

2. RISKS AND OPPORTUNITIES
2.1 **Option 1 – Provide Enforcement Provision as part of wider Community Protection & Compliance Team**

2.2 The main risk associated with this option is the ability to deliver effective enforcement of dog fouling and litter within a wider Community Protection & Compliance Team which will have much wider responsibilities and quite demanding priorities. This also highlights the potential lack of ability to undertake sustainable targeted patrols.

2.3 Whilst this option does provide opportunity to generate income, revenue gains may be inconsistent if patrols are not constant in nature.

2.4 **Option 2 – Create dedicated NELC Team**

2.5 Option 2 would involve a level of financial and operational risk for the Council. The effectiveness of the provision would be dependent on the effectiveness of the wider Compliance Team. As statutory responsibilities and other duties increase there is a risk that this provision could be deployed temporarily to fulfill wider compliance duties resulting in less CPNs issued resulting in a reduction in revenue to cover operating costs.

2.6 To cover the operating costs it is estimated that 70-80 PCN’s will need to be issued each week to ensure that 35 PCN’s are paid to cover any shortfall. This could have a reputational risk to the Council as it could be seen by the media and the public as income generation not cost recovery, resulting in negative publicity directed at the Council.

2.7 Resilience issues would need to be considered carefully within this option to cover any period of long term sickness with any shortfall having to be picked up by other team members. The target number of PCN’s to be issued would also need to allow for staff absences such as annual leave periods.

2.8 Should non-payment of PCN’s increase further than the already experienced 50% it would entail additional staff time to try and recover the money through payment plans or similar. It would be necessary to prosecute offenders in court for non-payment otherwise an even greater number of people would ignore the PCN.

2.9 As mentioned previously, careful consideration would need to be taken around the cost incurred and the capacity required by the Council’s legal department for pursuance of non-payment of PCNs. Any fines issued by the Courts go directly to the Ministry Of Justice and not the Council thereby the pursuit via the court process for a PCN fine may amount to a loss to the Council who can only recover reasonable costs.

2.10 The main opportunity with regard to this option would be that NELC could be seen to be taking positive action. This would also allow NELC to utilise
existing staff from within the Council while reducing the staff budget as the scheme would aim to be self-funding.

2.11 **Option 3 – Commissioning a Private Sector Provider**

2.12 Perhaps the most significant risk associated with option 3 is the public and media perception of an overzealous enforcement activity across the area. Private companies are rigid in issuing fines for offences due to the loss of revenue. It can be seen as zero tolerance with no compromise as they normally do not operate an in house appeal process with any dispute being referred to the Court and this may lead to some criticism of NELC. That said research indicates that when effective communications is aligned to a zero tolerance enforcement approach, it has been welcomed in other areas by the public. It is essential that a positive and proactive media strategy is prepared in advance of launching this type of scheme.

2.13 Any appeal process regarding the issue of PCN’s is owned by the private provider and will need to be clarified with the provider prior to them being engaged by the Council to ensure it is fair and impartial or accept that an appeal is heard in the magistrates court.

2.14 There is a risk that on occasion’s members of the public will complain to and request Council elected members take forward their case to get a PCN cancelled. Members will need to have confidence in the process and be aware that the decision to enforce will be down to the private provider and not the Council.

2.15 The most significant opportunity associated with this option is the opportunity to provide a greatly enhanced 7 day a week service at little or no cost to NELC. The costs would be borne by the private provider who would recoup their overheads from the revenue raised from enforcement action. There is also the potential for an annual profit share, the level of this might not be significantly high and is subject to negotiation but does provide the opportunity to generate some revenue for NELC.

3 **REPUTATION AND COMMUNICATIONS CONSIDERATIONS**

3.1 The risk of reputational damage to NELC and the North East Lincolnshire area has been identified already with regard to each option. An agreed communications strategy will be required tailored to the option chosen.

3.2 Any of the options can attract negative publicity and this subject is likely to attract significant media interest, so a carefully thought out response would be required to mitigate negative publicity and to ensure that the positive aspects of any chosen option are highlighted.

4 **FINANCIAL CONSIDERATIONS**
4.1 It is evident that Option 2 would carry the most financial risk and any decision taken to implement this option would need effective governance and financial monitoring to highlight any financial pressures as early as possible so as mitigating action can be deployed. Options 1 and 3 carry less financial risk but do need to consider the potential costs associated with Legal representation as highlighted earlier in the report.

5. **FINANCIAL IMPLICATIONS**

5.1 Option 1 would only result in additional costs to the Council if the outlined duties couldn’t be managed within existing team resources.

5.2 Option 2 would result in an estimated additional budget requirement of £84,000 per annum and savings would need to be identified from other Environment Services to meet this additional cost and help the service manage within its budget envelope.

5.3 Option 3 could, subject to a successful commissioning exercise, result in a private sector provider of the service at no cost to the Council.

6. **LEGAL IMPLICATIONS**

6.1 The report outlines a number of options to implement a revised approach to dog fouling and litter enforcement and asks Scrutiny to make recommendations to Cabinet as per the governance arrangements.

6.2 The issuing of FPN’S and PCN’s is not intended to be an income generation exercise and the recovery of payments levied is required by law to remain within the service area and for the benefit of the services provided.

6.3 Any contract with a private sector provider will include clear guidelines which will specify the principles on which the contract will be managed and operated. It can be tendered on the basis of a ‘no fee’ financial model, with all costs associated with provision of the service met from the income generated by the issuing and collection of FPN's/PCN's. The contract may provide an opportunity for the provider to provide the Council with a fixed percentage of the money raised and income provided may be used to fund the client role and in house enforcement team responsible for managing the contract on behalf of the Council.

6.4 The most significant risk to the Council is likely to be public perceptions resulting from a more proactive approach to enforcement, which can be mitigated by an appropriate communications strategy.

7. **HUMAN RESOURCE IMPLICATIONS**
7.1 With Option 1 the duties can be absorbed within the team rather than creating a separate dedicated team as the role profile accounts for this activity already and would not require any changes.

7.2 Option 2 would require additional resource requirements to be recruited to for this activity unless a trading arm could be established with the existing role profile.

7.3 Option 3 may present potential TUPE implications depending on the nature of the commissioning activity and the level of this type of work depending on how the new compliance team will operate in practice.

8. WARD IMPLICATIONS

8.1 Affects all wards

9. BACKGROUND PAPERS

9.1 None

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