



Democratic and Member Support

Chief Executive's Department Plymouth City Council Ballard House Plymouth PLI 3BJ

Please ask for Helen Wright T 01752 304022 E Democratic Adviser www.plymouth.gov.uk/democracy Published 28 November 2017

PLACE AND CORPORATE OVERVIEW AND SCRUTINY COMMITTEE: CALL-IN

Wednesday 6 December 2017 2pm Warspite Room, Council House

Members:

Councillor Bowie, Chair
Councillor Ball, Vice Chair
Councillors Carson, Churchill, Sam Davey, Fletcher, Fry, Mavin, Penberthy and Storer.

Members are invited to attend the above meeting to consider the items of business overleaf.

This meeting will be broadcast live to the internet and will be capable of subsequent repeated viewing. By entering the Warspite Room and during the course of the meeting, Councillors are consenting to being filmed and to the use of those recordings for webcasting.

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Tracey Lee
Chief Executive

Place and Corporate Overview and Scrutiny Committee

Agenda

1. Apologies

To receive apologies for non-attendance submitted by Members.

2. Declarations of Interest

Members will be asked to make any declarations of interest in respect of items on this agenda.

3. Chair's Urgent Business

To receive reports on business, which in the opinion of the chair, should be brought forward for urgent consideration.

4. Call-In: Increasing Environmental Enforcement in Plymouth (Pages I - 18)

The Committee will consider the decision called in by Councillors Morris, Dann and Smith.

5. Exempt Business

To consider passing a resolution under Section 100A (4) of the Local Government Act 1972, to exclude the press and public from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 3 of Part I of Schedule 12A of the Act, as amended by the Freedom of Information Act 2000.

Part II (Private Meeting)

AGENDA

Members of the Public to Note;

that under the law, the Committee is entitled to consider certain items in private. Members of the public will be asked to leave the meeting when such items are discussed.

6. Call In: Increasing Environmental Enforcement in Plymouth (Pages 19 - 22)

The Committee will consider the decision called in by Councillors Morris, Dann and Smith.

CALL-IN REQUEST FORM



Decision to be called in	Increasing Environmental Enforcement L33 17/18	
Decision made by: (Delete the choices which do not apply)	□ The Cabinet or □ A Cabinet Member or □ Executive decision made under joint arrangements	
Date decision was made	20 November 2017	
Are you calling the decision in because you believe it to be outside of the Budget or Policy Framework	No (If Yes, state the reasons why you believe it to be outside the Budget or Policy Framework in the reason section below)	
Reasons for the Call-In The decision maker failed to consider alternative courses of action	The decision maker failed to consider alternative courses of action There is no indication of the impact outsourcing this work will have on the current staff engaged in activities in this area, or the future of the rest of the service. There are other courses of action not considered by the report. For instance the decision is offered as a choice of either in-house or private provision, with no consideration given to other models, such as that used by CaterEd, as an example.	

To be valid **THREE** Councillors must support the request. All three Councillors should sign the form *OR* all three Councillors should e mail the Democratic Support Section (democratic.support@plymouth.gov.uk) expressing their support for the call-in. In this case, the form should be completed and attached to all of the e-mails.

cont

VI 21/11/17 Official

Signatures of THREE Councillors:

Name	Signature
I. Cllr Jonny Morris	Via Email
2. Cllr Sue Dann	Via Email
3. Cllr Pete Smith	Via Email

Contact Details:	
Councillor Jonny Morris	
Email: jonny.morris@plymouth.gov.uk	

Notice of call-in for non-urgent decisions -

- (i) must be received in the Democratic Support Unit by 4.30 p.m. on the fifth working day after Councillors have been notified that the decision has been made;
- (ii) can be submitted to the Democratic Support Unit or by using the on-line form which should be e-mailed to democratic.support@plymouth.gov.uk

VI 21/11/17 Official

Scrutiny Call-In

Call In – Procedure to be Followed in the Meeting



I. Once the Chair has opened the meeting and any previous business on the agenda been dealt with, the Members who called in the decision will be asked to explain why they have done so and what they feel should be reviewed.

The Members making the call-in shall be allowed up to 15 minutes in total to present their case. It shall be up to them to determine how they wish to use their time, they may ask one speaker to speak or share the time among members who made the call in as they see fit.

- 2. **I5** minutes shall be allowed to respond on behalf of the decision maker(s). It shall be up to them to decide how to use this allocation. The relevant Cabinet Member, or a senior officer, may make the presentation or dividing the time as they see fit.
- 3. After each presentation, Members of the Committee may ask questions to clarify any points made by the speakers (although the speakers will not have an opportunity to cross-examine one another).
- 4. The Committee will then discuss the matter. Members may ask further questions of the Members making the call in or the decision maker(s) during the debate. The Members making the call in and the decision maker will not normally speak during the debate, except to answer questions.
- 5. When the Chair considers that the matter has been debated for a reasonable length of time, the decision maker will be offered the opportunity to make any final comments on the matter. One of the Members making the call in will also be offered the opportunity to sum up. Each side will be allowed five minutes for this purpose.
- 6. The matter will then move to the vote -
- 6.1 The first issue to consider is whether to confirm that the decision should be implemented (the decision can then be acted on immediately)
 - If Members vote YES at this stage, the call in is ended (the matter will not be referred back).
- 6.2 The second issue to consider is whether the matter is within or outside of the budget
 - If the decision is not outside of the budget, the Committee can decide to -
 - recommend that the decision maker should reconsider the decision in light of the comments expressed by the Committee; or
 - refer the decision to Council to consider the call-in; or
 - send comments to Council on any decision that recommends changing the policy framework and budget;

6.3 If Members vote in favour of referring the matter for reconsideration, they must vote on the following matters –

Where to refer the matter -

Members must decide whether the decision should be referred back for reconsideration directly to the original decision maker (ie Cabinet), or to refer the matter to City Council to consider the call in.

The Chair will ask Members to vote in favour of either -

 Refer the matter directly back to the original decision maker member or Cabinet

OR

Refer to the City Council to consider the call-in

If referred back to the decision maker(s), the Chair will confirm the Committee's comments for the referral back to Cabinet.

EXECUTIVE DECISION

made by a Cabinet Member



REPORT OF ACTION TAKEN UNDER DELEGATED AUTHORITY BY AN INDIVIDUAL CABINET MEMBER

Executive Decision Reference Number - L33 17/18

Dec	ision						
ı	Title of decision: Increasing Environmental Enforcement in Plymouth						
2	Decision maker (Cabinet Member): Cllr lan Bowyer, having taken responsibility for this decision.						
3	Report author and contact details: Dr Ruth Harrell, Director of Public Health						
4	Decision to be taken:						
	 To increase the available capacity for environmental enforcement as set out in the Briefing Paper for a trial period of 12 months (with a 6 month break option should this be delivered externally) 						
	To approve the business case and authorise commencement of the procurement process detailed in the business case						
	 To delegate the evaluation and comparison of the most favourable tender received with the alternative option of in-house provision to Andrew Hardingham, Interim Joint Strategic Director of Transformation and Change in accordance with the published procurement process 						
	 To delegate the award of a contract, following the required procurement process, to Ruth Harrell, Director of Public Health, in consultation and agreement with Councillor lan Bowyer, should the option to deliver the additional service through external provision be more favourable than undertaking it in-house which will be determined by applying the procurement's published evaluation criteria. 						
	 To request the involvement of Place and Corporate Overview and Scrutiny Committee in the evaluation of the pilot after 6 months of implementation. 						
5	Reasons for decision:						
	The Corporate Plan sets out a clear aim to ensure that Plymouth is a green and pleasant city. Unfortunately, there is evidence that achievement towards this is affected by a small proportion of people breaking the law, through activities such as littering and fly tipping. The enforcement of laws around environmental protection is therefore a necessary step to meet this aim.						
	There is a recognition that the current enforcement capacity for environmental protection is insufficient to address these issues in full and that there is a requirement for additional capacity.						
6	Alternative options considered and rejected:						
	Failing to increase capacity will not enable a step-up in enforcement around these issues. Redeployment of current staff would divert them from other required tasks.						

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7	Financial implications:						
	Increasing capacity, whether through company, can be supported through		_	3 1			
8	Is the decision a Key Decision?	Yes	No				
	(Contact Ross Jago, Democratic Support, 304494 for further advice)		×	results in the Council spending or raising annual income by more than £500,000 (or more than £2,000,000 if that is the total cost of a contract award)?			
			x	results in the Council saving more than $£1,000,000$?			
			x	results in the Council saving less than £1,000,000 and the saving will have a material impact upon service provision such as a significant change or a cessation of service delivery and associated staff redundancies or a significant impact on customers?			
			x	has a significant impact on communities living or working in two or more wards?			
	date of publication of the notice in orward Plan	N/A					
9	Please specify how this decision is linked to the Council's corporate plan 2013/14 to 2016/17 and/or the policy framework and/or the revenue/capital budget:	Plymouth increase	n is a gr the res	Plan sets out a clear aim to ensure that een and pleasant city; this decision will ources for enforcement against those of people who are putting this aim at risk.			
Urge	nt decisions						
10	Is the decision urgent and to be implemented immediately in the interests of the Council or the public?	Yes	Yes (If yes, the Lead Scrutiny Officer consulted before approaching the Overview and Scrutiny Con Ensure that the Chair signs the section 11a and that section 11b completed after the sign off cod Section 17 are completed)				
		No	x	(If no, go to section 12)			
Ha	Signature		Date	e			
	Print Name						
Hb	Reason for urgency:						

Cons	ultation					
12	Are any other Cabinet members' portfolios affected by the decision?	Yes	x	(If yes, go to section	ons 13 and 14)	
	,	No				
13	Which other Cabinet member's portfolio is affected by the decision?	Councillor Stronger C		Downie, Cabinet memb nities	er for Safer and	
14	Please confirm that you have consulted this Cabinet member	Yes (No is not an option		n)		
15	Has any Cabinet member declared a conflict of interest?			Need a note of dis		
		No	x		J	
16	Which Corporate Management Team member has been consulted?	Name and title	Dr Ruth Harrell, Director of Public Health			
17	Please include the sign off codes	Democra	tic Sup	DSo56 17/18		
	from the relevant departments consulted:	Finance (manda	djn1718.133		
			andato	MS/28832 29397DVS		
		Human R	esour			
		Assets				
		IT				
		Procuren	nent			
Othe	r Information					
18	An Equalities Impact Assessment should be attached to the report	Yes	X	(Please attach the	EIA to this report)	
Briefi	ing report			_		
19	Is the briefing report attached?	Yes	X	(No is not an option	on)	
	List (and include a hyper link to) published work/information used to prepare the report.					
	Do you need to include any confidential/exempt information?	If yes, prepare a second, Part II, report and indicate why it is not for publication by virtue of Part 1 of Schedule 12A of the Local Government Act 1972 by ticking the relevant box.				
				ep as much information at will be in the public o		

	Exemption Paragraph Number						
	ı	2	3	4	5	6	7
Confidential/exempt briefing report title							

Background Papers

Please list all background papers relevant to the decision in the table below.

Background papers are <u>unpublished</u> works, relied on to a material extent in preparing the report, which disclose facts or matters on which the report or an important part of the work is based. A folder or a file should not be cited as a background paper, though individual items within the folder or file may be. If some/all of the information is confidential, you must indicate why it is not for publication by virtue of Part I of Schedule I2A of the Local Government Act 1972 by ticking the relevant box.

Title	Part I	Part II		Exemption Paragraph Number					
			I	2	3	4	5	6	7
Increasing Environmental Enforcement in Plymouth	x								
Business Case - Environmental Enforcement - PART II		x			x				

Cabinet Member Signature

I agree the decision and confirm that it is not contrary to the Council's policy and budget framework, Corporate Plan or Budget.

Signature	Ian Bonger	Date of decision	17th November 2017
Print Name	Councillor Ian Bowyer		

INCREASING ENVIRONMENTAL ENFORCEMENT WITHIN PLYMOUTH

ODPH



I INTRODUCTION

The Corporate Plan sets out a clear aim to ensure that Plymouth is a green and pleasant city. Unfortunately, there is evidence that achievement towards this is affected by a small proportion of people breaking the law, through activities such as littering and fly tipping. The enforcement of laws around environmental protection is therefore a necessary step to meet this aim.

This paper describes the need to increase environmental enforcement, and the potential approaches to increasing environmental enforcement activity across Plymouth.

I.I Scope

This paper concentrates on environmental enforcement for issues such as;

- Dog Control (Fouling, exclusion and use of leads)
- Flyposting and Outdoor Advertisement
- Littering
- Fly tipping (simple and complex)
- Enforcement of domestic waste or recycling collection

This policy does not cover enforcement requiring specialist skills such as;

- Parking enforcement
- Dog Microchipping and dog attacks
- Tasks carried out through Planning, Parking and/or Housing enforcement

2 PRINCIPLES FOR ENFORCEMENT

Environmental enforcement must be carried out under the appropriate legal frameworks and in line with national guidance.

2.1 Legal frameworks

There is a range of legislation which provides options for the enforcement of environmental protection such as;

- Environmental Protection Act 1990
- Anti-social Behaviour Act 2003
- Anti-social Behaviour Crime and Policing Act 2014

The penalties for environmental crime can range from fixed penalty notices (FPNs) up to and including prison sentences. The type of penalty that is appropriate for offences within the scope of this paper would be FPNs.

If an FPN is not paid, offenders should be taken to court, giving at least 14 days after issue of the FPN, but within 6 month of the offence. There is no requirement for an appeals process.

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2.2 Age of the offender

It is possible to issue an FPN to someone over the age of 10. However, specific guidance has to be followed https://www.gov.uk/guidance/enforcement-officers-issuing-fixed-penalty-notices#juveniles

For 10 to 15 year olds there are considerable challenges in issuing FPNs, which includes the requirement to notify the offender's parents or legal guardian at the same time. For 16 and 17 year olds, there is a requirement to share information with their local youth offending team.

2.3 Exceptions

It is clear that considerable litter is produced during major tourist events; this is anticipated by additional provision of bins, and additional services being in place to clean up. Whilst littering is never acceptable, the Council will want to pause enforcement activities in specific areas of the city for specific events.

3 ENFORCEMENT CAPACITY

3.1 Overview of current environmental enforcement

The Environmental Protection Service currently have 5 Enforcement Officers. These Officers carry out a wide range of activities which includes pest control and management of stray dogs, as well as enforcement activities. As described in the role profile (extract below), this is a flexible definition and allows the staff to be focussed on particular areas of work as and when required.

To assist with the discharge and enforcement of the functions of the Public Protection Service by;

- investigating complaints
- undertaking compliance audit
- conducting investigations and taking relevant enforcement action
- issuing any relevant authorisations, permits, notices and licenses
- providing advice and assistance to the public and businesses

With this small number of staff, there is limited presence on the streets; instead the service delivery model is responsive to requests and collated information from the public and other departments / organisations.

Environmental Enforcement Officers workload around these types of issues tends to be focussed on the more complex scale of fly tipping, where detailed and time consuming investigations may need to be carried out, often with the aim of identifying and enforcing against repeat offenders.

Other staff have been trained in the gathering and reporting of evidence which is used in investigations of offences such as fly tipping, which provides some compensation for this. As an example, Street Services staff have had training in identifying and preliminary investigation of a fly tip, which is then passed to the Environmental Protection Officers for more in depth investigation.

3.2 Benefits of increasing environmental enforcement capacity

There is a significant quantity of work that can be carried out in environmental protection at any given time. As highlighted above, there is a strategic aim for Plymouth to be a 'Clean and Pleasant City', along with a commitment to tackle litter as indicated by the Plymouth Conservative Manifesto of 2016, written for the election of May 2016.

The current available capacity has been targeted into specific areas which are important and should not be stopped and therefore there is a recommendation to increase the Environmental Enforcement capacity.

4 IMPLEMENTATION MODELS

There are two potential delivery models to expand the environmental enforcement capacity across the city; to employ additional staff within the current team, or to consider procuring an external company. Each is briefly described (with more information provided in Part 2 papers).

For both models, increased enforcement activity will lead to an improvement in the environment of Plymouth; and this is achieved at negligible cost to the Council by use of the income from FPNs issued to offset the operational costs.

4.1 Model I; Internal expansion of EP Enforcement capacity

Through employing temporary staff, the capability and capacity of the environmental protection team could be significantly increased. This option would allow targeted enforcement activity in areas of greatest need, run in conjunction with a local focused educational campaign.

Risks and Opportunities

Risks

Some of the technological solutions (e.g. for issuing fines on the spot) are not currently in place within the Council and setting these up requires an initial outlay and delay in time.

There may be less interest from the media in this approach, which may reduce potential communications to the public.

Opportunities

Full ability to flex the workforce, the type of intervention being carried out, and areas being targeted therefore more responsive to other internal work being undertaken and sensitive to public opinion.

4.2 Model 2; External Company

An external company would be licensed to operate within the Local Authority, under certain conditions specified in the service level agreement. The income from any FPNs issued (and costs awarded for any subsequent prosecution for non-payment) is then used to offset the operational costs. For any additional in excess of costs, a profit share agreement can be agreed.

Risks and Opportunities

Risks

Councillors should be aware that enforcement companies have created adverse press in the past where they have been used. This appears to be due to the lack of flexibility in the method of intervention; issuing an FPN is the default position, rather than advice and information.

Opportunities

This is likely to generate media interest which gives opportunities to reinforce the messages that littering is illegal and will not be tolerated.

Companies might be expected to demonstrate expertise and proven track record of successful implementation and achievement of outcomes.

4.3 Suitability of types enforcement by a private company

In both models, staff would be similarly trained in the relevant legislation and the issuing of FPNs.

The differences between these two models primarily relate to;

- the extent that judgement is required on whether to enforce
- the amount of information that is required to take the most appropriate action.

For example, there may be specific extenuating circumstances which may mean that a lower level of enforcement such as warning and advice is given rather than an FPN. Or the offence may be connected to other offences already under investigation, meaning that a higher level of enforcement such as prosecution may be more appropriate.

Further detail around each area of environmental enforcement is set out below, along with a recommendation of whether this might be appropriate for an external company to enforce.

Dog Control (Fouling, exclusion and use of leads)

Currently evidence is collated from the public, enforcement is carried where sufficient intelligence is gained, but this is not a focus of current PPS activities. New procedures have been introduced asking for residents to provide evidence which will be investigated.

It should be noted that is rare for owners to fail to pick up after their dogs when uniformed officers are present.

This is a potentially suitable area of work for an external enforcement company.

Flyposting and Outdoor Advertisement

Evidence is collated from the public, enforcement is carried where sufficient intelligence is gained, but this is not a focus of current PPS activities.

This is a potentially suitable area of work for an external enforcement company.

Littering

Current litter enforcement focusses on cigarette butts (particularly from cars) and bags of waste (below the threshold used for fly tipping).

Dropping litter in the street is not currently a focus of enforcement through PPS, and there is evidence of scope to enforce this city-wide.

This is a potentially suitable area of work for an external enforcement company.

Fly tipping

Fly-tipping is defined as the 'illegal deposit of any waste onto land that does not have a licence to accept it'. This definition can cover a wide range of different offences from a single bag of rubbish to truckloads of construction and demolition waste. PCC have a 'working definition' that guides decisions around whether an FPN for littering or fly tipping is issued and this would form part of any contractual agreement with an external company.

Side waste is connected closely to domestic waste and recycling collections and it is therefore recommended that side waste be retained in house (see next section 'Enforcement around domestic waste and recycling collections').

There may be ongoing cases of complex fly tipping, which are under active investigation by the PCC Enforcement team. These should be retained in-house to enable detailed investigation to take place.

Fly tipping, with the exclusion of waste associated with domestic waste or recycling collections and the exclusion of ongoing cases, is a potentially suitable area of work for an external enforcement company.

Enforcement around domestic waste and recycling collections

Whilst the principles and legislation used are the same as for other environmental offences, the enforcement around domestic waste and recycling collections has been highlighted as a specific issue due to the recent changes in arrangements within Plymouth.

Any enforcement actions taken on or around the day of collection should only be taken through close working with Waste and Street Scene and therefore it is recommended that enforcement around AWC is retained in house.

Litter associated with domestic waste or recycling collections is NOT a suitable area of work for an external enforcement company.

5 BUSINESS CASE

A business case is provided in Part II paper.

Appendix I

Key Features of a contract for enforcement activity

- Enforcement would be carried out in line with legal frameworks
- Age range issuing FPNs to young people has additional complexity; through the procurement process, the approach to this would be assessed and agreed
- National Living Wage should be used
- Branding employees issuing FPNs should be in a company uniform (not PCC provided or branded)
- Delivery model –the times / days of operation would be open to the enforcer to decide
- Prosecutions Failure to pay the FPN would (usually) result in prosecution since there is no right of appeal (for individuals, or for Councillors on behalf of residents).
- Court location for prosecutions individuals are able to ask for a hearing in a local court; the location of the base of the provider is not relevant
- This would place no restriction on the ability of PCC to issue FPNs
- There will a considerable requirement for the sharing of information, particularly around fly tipping where information may be required daily

EQUALITY IMPACT ASSESSMENT

Public Protection Services, ODPH



STAGE I: WHAT IS BEING ASSESSED AND BY WHOM?

What is being assessed - including a brief description of aims and objectives?	The Corporate Plan sets out a clear aim to ensure that Plymouth is a green and pleasant city. Unfortunately, there is evidence that achievement towards this is affected by a small proportion of people breaking the law, through activities such as littering and fly tipping. The enforcement of laws around environmental protection is therefore a necessary step to meet this aim.
	There is a recognition that the current enforcement capacity for environmental protection is insufficient to address these issues in full; this EIA assesses the decision to increase capacity for environmental enforcement either through increasing internal capacity or procuring an external company.
	The impact of this decision will be to increase the cleanliness of the city, improving areas that are currently experienced as untidy through activities such as fly tipping, littering and dog fouling. This will therefore have a positive impact on the vast majority of people; those people who are currently acting unlawfully will be fined for this activity and therefore strongly dissuaded from doing so in future.
Author	Ruth Harrell
Department and service	Public Protection Service, ODPH
Date of assessment	14/11/2017

STAGE 2: EVIDENCE AND IMPACT

Protected characteristics (Equality Act)	Evidence and information (eg data and feedback)	Any adverse impact See guidance on how to make judgement	Actions	Timescale and who is responsible
Age	There is no evidence to suggest a specific group will be differentially impacted by this.	None		
Disability	There is no evidence to suggest a specific group will	None		

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	be differentially impacted by this.		
Faith/religion or belief	There is no evidence to suggest a specific group will be differentially impacted by this.	None	
Gender - including marriage, pregnancy and maternity	There is no evidence to suggest a specific group will be differentially impacted by this.	None	
Gender reassignment	There is no evidence to suggest a specific group will be differentially impacted by this.	None	
Race	There is no evidence to suggest a specific group will be differentially impacted by this.	None	
Sexual orientation - including civil partnership	There is no evidence to suggest a specific group will be differentially impacted by this.	None	

STAGE 3: ARE THERE ANY IMPLICATIONS FOR THE FOLLOWING? IF SO, PLEASE RECORD ACTIONS TO BE TAKEN

Local priorities	Implications	Timescale and who is responsible
Reduce the gap in average hourly pay between men and women by 2020.	None	
Increase the number of hate crime incidents reported and maintain good satisfaction rates in dealing with racist, disablist,	None	

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homophobic, transphobic and faith, religion and belief incidents by 2020.		
Good relations between different communities (community cohesion)	None	
Human rights Please refer to guidance	None	

STAGE 4: PUBLICATION

Responsible Officer Ruth Harrell, Director of Public Health

Date 14/11/2017

Director, Assistant Director or Head of Service

EQUALITY IMPACT ASSESSMENT

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Page 19 Agenda Item 6
The following relates to exempt or confidential matters (Para(s) 3 of Part 1, Schedule 12A of the Local Govt Act 1972). Any breach of confidentiality could prejudice the Council/person/body concerned & might amount to a breach of the councillors /employees codes of conduct.

Document is Restricted

