

Report of the Cabinet Member for Environment and Transportation

Cabinet - 18 June 2015

TACKLING ON STREET ENFORCEMENT

Purpose:	To consider the continuance of the provision of a partnership to provide effective enforcement to promote a cleaner, safer Swansea.
Policy Framework:	Clean Neighbourhoods and Environment Act 2005 (CNEA) Environmental Protection Act 1990 (EPA) Anti-social Behaviour, Crime and Policing Act 2014 (ASBCPA)
Reason for Decision:	To approve proposals to continue the partnership provision of on Street enforcement within public areas and open spaces of the City and County of Swansea.
Consultation:	Legal, Finance, Economic Regeneration & Planning, Access to Services.
Recommendation(s):	It is recommended that Cabinet approves:- The proposals as set out in paragraph 8.1 together with the financial implications.
Report Author:	Bob Fenwick
Finance Officer:	Paul Roach
Legal Officer:	Christopher Allingham
Access to Services:	Phil Couch

1.0 Introduction

- 1.1 In April 2013 Cabinet approved a trial to improve enforcement of litter related offences on the streets of Swansea. The trial involved engaging with a private partner to work alongside our internal enforcement team. The partner was to focus on reactive issuing of Fixed Penalty Notices (FPN's) This report details the outcomes of the trial and the plans to continue the partnership in relation to on street enforcement. The trial began in September 2013 and was for a period of one year plus the time required to undertake formal tendering.

2.0 Legislation

- 2.1 An authorised officer of the Council may issue a fixed penalty notice (FPN) for a variety of offenses under the above Acts. The CNEA allows enforcement of open spaces, the legislation used to enforce is listed below.

In relation to littering, FPN's are issued under EPA section 87/88 and the fines are £75 reduced to £50 if paid within 7 working days.

In relation to dog fouling, FPN's are given under Dogs (Fouling of Land) Act 1996. The current charge is set at £75 with no reduction for early payment. Failure to clean up after your dog has fouled may result in a fine of up to £1,000 upon conviction in the Magistrates' court.

The ASBCPA also allows FPNs to be served for in relation to Community Protection Notices and Public Spaces Protection Orders in relation to nuisance.

3.0 Statistics

- 3.1 The statistics for the first year of the trial are shown below. The arrangement is based on a charge of £40 per FPN issued correctly.

Number of FPN's Issued	3,460
Percentage Paid within period	73%
Number of court proceedings	303
Number of court proceedings pending	150 approx.
Percentage of Court proceedings won	99%
Income from payments of penalty notices	£134,315.00
Awarded income from court prosecutions/costs	£62,115.00
Total income from payments and court	£196,430.00
Cost to the Council	£166,380.00
FPN Balance to September 2014	£30,050.00

Total Balance to March 2015 including overheads and assuming non-payment of a proportion of court awarded costs is likely to be in the region of £5k-10k

These statistics cover the whole of the Council but despite approximately 1/3 of the enforcement time being spent outside the City Centre, it is estimated that 98% of the fines issued were within the City Centre core. In relation to the types of offence 98% were littering related and of those approximately 90% involved cigarettes. Only 26 dog fouling FPN's were issued despite weekly dog fouling patrols on reported problem areas.

4.0 Legislation

- 4.1 Trial Feedback

Officers from 3GS have worked well with Swansea Bid and Local Business and despite early teething problems in relation to the authority of officers the majority

of the feedback is positive, with businesses such as McDonald's requesting regular patrols in their parking areas. Swansea Bid had some initial concerns over the enforcement process but this relationship has improved and now the officers are supported with the exception of some traders within Swansea Market.

Cleansing Staff have reported a drop in the amount of litter noted in the city center and although this is not quantifiable it has been noted that the cigarette bins have to be emptied on a more frequent basis and less sweeping/power washing is required.

There are no issues reported by the police, early support was given however it was noted at an early meeting that the police could not support the staff on every instance where offenders were proving difficult however support would be given to identify anyone not providing details and instances where officers were under threat.

Corporate complaints have dealt with less than 20 formal complaints and of these, the vast majority have been not been upheld. The body cameras provided have been essential during this process. Less than 10 tickets have been cancelled due to incorrect issue.

Officers from 3GS have been assaulted on 3 occasions, 2 occasions were serious assault that resulted in the offender being arrested.

3GS have launched a prize draw for those in the city that are using bins correctly, raffle tickets are issued by Bid and Cleansing Staff with a prize being funded by 3GS. This is a new initiative and is only in its infancy.

4.2 Key Issues

- Cigarette litter is by far the greatest quantity of the tickets issued. Cleansing staff report that the cigarette bins in the city center now have to be regularly emptied, there is less cigarette litter on the ground and as a result less tar staining of the natural stone in the city center.
- Dog fouling remains a topic of conversation due to its high impact and whilst a disproportionate amount of time is spent patrols in relation to this topic compared to the number of tickets issued, it should remain a priority. Intelligence lead patrols are far more effective.
- There appears to be strong support for a tough line on enforcement.
- There is a perception that enforcement only takes place within the city centre when in actuality between 25-30% of the time spent patrolling is outside the city centre. This balance allows enforcement of the wider areas outside the city centre that would not be viable in terms of cost/FPN ratio.
- The cases prepared by both the partnership and internal teams are of a high quality with 99% receiving convictions.

- The scheme remains cost neutral with the small surplus return covering staff time and internal overheads.
- A small profit of £5k to £10k is likely in relation to outstanding court fees and pending cases, this element may take up to 3 years to realise with delays in payment of court awards..
- The following FPN's were issued during the trial period: Sept 93, Oct 426, Nov 427, Dec 291, Jan 383, Feb 278, Mar 263, April 242, May 226, June 254, July 201, Aug 139.

5.0 Internal Resources

5.1 The Environment department employs 4 enforcement officers whose hours of work are between 6am to 7pm over 7 days a week on a needs basis. They are all authorised to serve fixed penalty notices, their priorities are:-

- Waste put out on the wrong day
- Compliance with 3 bag limit
- Fly tipping
- Dog fouling
- Contamination of Recycling
- Littering

The engagement of the partnership has allowed these officers to focus on hot spots and work involving investigation, prosecution and education.

6.0 Approaches by other Authorities

6.1 Feedback from a recent Association of Public Service Excellence (APSE) conference suggests that many other Authorities are taking on enhanced enforcement duties largely through external partnerships, this is a growing area and the introduction of the ASBCPA will allow more carefully monitored enforcement in future. [During the trial the Authority has been approached by a number of other Authorities in relation to the partnership.](#) It would therefore appear we are therefore following the best practice model.

7.0 Enforcement of legislation by a third party organisation

7.1 The model used for the trial was a zero cost model for the partnership running separately but alongside an in house team. This has met the original target of 3,000 FPN's annually and remains viable. The mix of in house alongside external staff give advantages as the partnership focus on the routine whilst the in house staff deal with hotspots, education and other issues that would not be viable for the private partner on the current contract. The business model used by 3GS is based on a limited time frame as the number of FPN's issued as time progresses is expected to fall as less littering occurs and at some point it is expected to reduce to the extent that the operation is no-longer viable. This is not expected to occur with the short term or the term of the proposed contract.

8.0 Proposal

8.1 To appoint an external company by formal tender on a contractual basis to take enforcement action under the Council's powers to issue fixed penalty notices for offenses on the street under the above legislation including littering and dog waste. This tender to run for two years with a possible two year extension. This will be based on a nil cost model. The current arrangements with a single supplier were based on a year trial and if successful extended until such time that a formal tender could be put in place. Therefore the existing arrangements are to remain in place until the tender is implemented.

9.0 Equality and Engagement Implications

9.1 Environmental Impact Assessment screening gave mostly low impacts and no requirement for a full impact assessment. The operation will affect all members of society equally. Under 18's will not be issued FPN's in relation to littering.

10.0 Financial Implications

10.1 The financial implication of appointing an external company on a nil cost model is uncertain however based on the trial this is achievable and should have a net gain. The company would charge the Council for each properly issued fixed penalty notice. The Council would then be responsible for collecting this fixed penalty notice. The charge for each FPN would be dependent on the winning Tender.

10.2 Any over recovery of payments of fixed penalty notices levied are required by law to remain within the service area and reinvested to improve the service. The issuing of fixed penalty notices is not meant to be an income generation exercise.

11.0 Legal Implications

11.1 The Director of Place has delegated powers as amended by the CNEA to issue Fixed Penalty Notices for the following offences:-

Offence	Amount of Fine	Early Payment within 7 days
Dogs (Fouling of Land) Act 1996	£75	Not applicable
Sections 87 & 88 Environmental Protection Act 1990 - offences relating to littering	£75	£50
Section 6(1) Clean Neighbourhoods and Environment Act 2005 - Nuisance parking in relation to sale or repair of cars on a road.	£100	£60
Section 2A(1) Refuse Disposal (Amenity) Act 1978 - Abandoning a vehicle.	£200	£120
Section 94A(2) Environmental Protection Act 1990 - Breach of street litter control notice or litter clearing notice.	£100	£75
Section 43 Anti-Social Behaviour Act 2003 -	£75	£50

Graffiti and fly posting		
Section 34A(2) Environmental Protection Act 1990 - Failure to furnish waste transfer documents	£300 fixed	£180
Sections 47ZA & 47ZB Environmental Protection Act 1990 - Offences in relation to waste Receptacle.	£100 residential properties £150 commercial premises	£60 for residential properties £90 for commercial premises

11.2 Based on feedback from legal services there has been an additional burden on the legal team responsible for recovery of unpaid fines. Legal costs are recovered for court proceedings and are excluded in the estimated balance for the service however these costs awarded total approximately £40k since the start of the scheme. Both the Dogs (Fouling of Land) Act 1996 and the CNEA contain provisions allowing the appointment of “authorised officers” who are not employees of this Council. This allows the appointment of an external company to issue fixed penalty notices under the relevant legislation. The appointment of the individual authorised officers will be made by the Director of Place and appropriately recorded.

11.3 The ASBCPA is new legislation and appropriate authorisations will need to be put in place prior to any enforcement being carried out.

11.4 The terms of engagement with the external company will state that the Council is responsible for payment of the company’s fees irrespective of whether or not the fixed penalty is recovered. The risk is therefore with the Council.

11.5 The Transfer of Undertakings (Protection of Employment) Regulations (TUPE) protects the rights of employees in respect of a retendering exercise and there may therefore be employment law related implications if the external company recruits staff to effect this contract and then subsequently the Council retenders or brings the service in house. There are proposed changes to TUPE which may affect this risk but these are not yet in force.

Background Papers:

- Report of the Director of Environment on Tackling the Dog Fouling Nuisance - Cabinet, April 2013
- Clean Neighbourhoods and Environment Act 2005 Report – Council, 4th December 2008.

Appendices: None