

# ENVIRONMENT OVERVIEW AND SCRUTINY COMMITTEE

Tuesday, 17 July 2018

Present: Councillor T Jones (Chair)

Councillors B Berry G Ellis  
S Foulkes B Kenny  
A Brame C Muspratt  
K Cannon T Smith  
T Cottier A Sykes  
T Cox AER Jones (In place of G Wood)

In attendance: Councillors P Cleary, P Gilchrist, M Patrick

Apologies Councillors A Hodson

## 12 MEMBERS' CODE OF CONDUCT - DECLARATIONS OF INTEREST / PARTY WHIP

Members were asked to consider whether they had any disclosable pecuniary interests and/or any other relevant interest in connection with any items on the agenda and, if so, to declare them and state the nature of the interest.

Members were reminded that they should also declare whether they were subject to a party whip in connection with any items to be considered and, if so, to declare it and state the nature of the whipping arrangement.

No such declarations were made.

## 13 CALLED-IN BUSINESS - DELIVERY OF THE ENVIRONMENTAL ENFORCEMENT CONTRACT

The Chair referred to the Cabinet Member, Environment decision of 18 June, 2018 in respect of the approval of appointment for a contract to undertake environmental enforcement services.

The decision had been called-in by Councillors Phil Gilchrist, Allan Brame, Chris Carubia, Stuart Kelly, Dave Mitchell and Pat Cleary, on the following grounds:

"We hereby give notice that we wish to Call-In the Cabinet decision dated 18 June 2018 to approve the appointment of Kingdom Environmental Services for the delivery of the Environmental Enforcement Contract for a period of 3 (three) years with the option to extend the contract (conditional) for a further 3 (three) years.

Call In deadline date: 25 June 2018  
Submitted: 25 June 2018

Reason(s) for Call In:

The process has been concluded so close to the expiry of the current contract that this has presented a very limited opportunity for Members to consider the scope and extent of the contract.

Members have had also had insufficient opportunity to explore the scope and specification of the revised contract so that they can be satisfied the contractor will meet requirements that Members might reasonably expect.

Members need to be satisfied that there is a proper balance between changing the behaviour of the public and the generation and share of income from the fines. In particular, we have concerns about the financial model within the bid being predicated on a “per ticket” share of income.

The published documentation provides little information on the financial arrangements, costs and income generation, the process of setting targets and the spread of activity throughout Wirral. Members wish to be fully apprised of the way in which priorities are set, resources are targeted and employees are directed and supervised.

Members believe that the approach to litter enforcement approved by Council needs to be undertaken in a way that secures public support and understanding. They, therefore, wish to be satisfied that the aim of reducing litter is not undermined by suspicions that the ease of generating cash from some crackdowns and fines leads to the prioritising of some activities rather than others.

Members seek formal recognition that as section 4.2.1 of the ‘invitation to tender’ states that ‘The Service Provider shall deliver the Services in accordance with both overarching Legislation and the standards set by the Council...’ and this includes ‘Operational and Statutory Guidance’, the DEFRA Guidance <https://www.gov.uk/guidance/enforcementofficers-issuing-fixed-penalty-notices> (issued on 23 March 2015 and last updated 15 February 2017) shall be properly followed in all circumstances.”

**Explanation of Call-in by the Lead Signatory – Councillor Phil Gilchrist**

Councillor Gilchrist summarised the reasons for Call-In regarding the Decision taken by the Cabinet Member, Environment in relation to the appointment for a contract to undertake environmental enforcement services. He explained that being part of a ‘Keep Britain Tidy’ generation, raised to take their rubbish home, or dispose of it in a bin, clear and sensible guidelines should in a perfect world be sufficient to educate. He acknowledged that enforcement services were required, but given the volume of anecdotal stories surrounding the contractor, he questioned the contract extension and the decision making processes of the contractor surrounding the current deployment of their

operatives. He further questioned what procedures or guidance was in place for operatives when dealing with vulnerable persons.

The Chair invited questions to the Call-in lead signatory from the Committee and his responses included the following:

- Request for information regarding the various classifications of litter including, but not necessarily be restricted to; food, dog fouling, packaging, cigarettes, and other. He further questioned the availability of information regarding the link between sites, litter classification and numbers of penalty notices issued.
- A request for information regarding the financial cost of the contract and whether office space was also provided.
- Councillor Gilchrist stated that he was not anticipating cancellation of the contract, but would ask that further evaluation take place, perhaps suspending the contract for a year, to enable a tightening of procedures and processes to help raise public confidence, to match an in-house service provision in terms of standards and accountability.
- Councillor Gilchrist pointed out that he felt consideration of the contract extension appeared rushed, and that given work must have started the previous year he felt that the decision had been taken extremely close to the renewal date.

#### **Explanation of the decision taken by the Cabinet – Cabinet Member for Environment, Councillor Matthew Patrick**

Councillor Matthew Patrick re-iterated his reasons for his decision, and stated that Wirral is a beautiful place to live in and work and visit, having a fantastic and unique environment which people love to experience and enjoy. He added that the vast majority of Wirral's residents are proud of the borough and want to do the right thing to cherish and protect the local environment. However there was a sizeable minority of residents and visitors who do not respect Wirral's environment and damage or defile it through irresponsible and illegal actions. Wirral Council had made a commitment through the corporate pledges set out in the Wirral Plan, to drive behaviour change and transform the relationship between residents and their local environment.

Councillor Patrick further stated that the Council had demonstrated during recent years that it was serious about tackling environmental crime through enforcement action. The high profile deterrent created through the enforcement regime of the initial Environmental Enforcement Contract was regarded as a key element that would drive behaviour change over time. The Council's first Environmental Enforcement Contract, which had been in place since the summer of 2015, had proven to be successful in tackling key environment crimes such as littering and dog fouling, with tens of thousands of enforcement actions taken and a number of high profile public awareness campaigns delivered. The first contract had enabled the Council to commence the journey to drive behaviour change with some early signs that it is beginning to happen. The Council wished to build on the initial work of the first enforcement contract by establishing the next contract, recognising that there

was more work to be done over time and, through the deterrent of enforcement action, to achieve the behaviour change being sought.

The Council had also taken the opportunity when preparing the new contract to review environmental enforcement requirements and identify priorities moving forward. Therefore the scope and specifications of the new contract had been revised from those for the original contract to reflect identified priorities and requirements.

In summary, Councillor Patrick added that he was entirely satisfied, and supportive of the Council's awarding of the contract.

The Chair invited questions to the Cabinet Member from the Committee and his responses included the following:

- Statistical evidence showed that the primary offenders in terms of littering were males between the ages of 20 and 59 years.
- Discarded cigarette butts are classed as litter.
- Members of the Public and Councillors are requested to help tackle the problem of littering by providing details of problem locations.
- The contract has been revised to extend the hours of enforcement from 07:00hrs – 20:00hrs, to 06:00hrs – 22:00hrs.
- Contract has been checked to prevent legal challenge, and is accordance with Government guidelines.
- Given there have been in the region of 25 thousand fines issued, only a very small percentage have been challenged. 11 cases have ended up in court, 10 of which have upheld the contractor/Council prosecutions.

The Chair informed that the reasons for the Call-In were stated to be doubts as to whether the proposed contract was a suitable means of achieving the objective of a reduction in littering and other environmental offences in the Borough. The signatories to the Call-In were not maintaining that the successful tendered was an unsuitable contractor and therefore the debate and evidence should concentrate on the suitability of the contract, not that of the successful contractor.

## **Evidence from Call-in Witnesses**

### **1. Sara Murphy – Resident**

Ms Murphy expressed a view that littering should not be condoned, and was supportive of educational work to instil greater local pride. However she had concern over the contractor's actions and targeting of less affluent areas of the borough. Ms Murphy commented that she did not believe that the majority of people were deliberately littering and felt that the actions of the Council's contractor was having a marginal effect on behaviour and was unfair.

## **2. Eileen McKane - Resident**

Ms McKane provided an example of how the Council's contractor had been heavy handed and bullying in its approach to her in respect of a case of dog fouling, that when challenged at several stages, had ultimately been dropped. Ms McKane explained that during the challenge process the contractor's behaviour had further impacted on her health.

## **3. Janet McBryde and Michael King – Residents**

Ms McBryde and Mr King provided a similar example of the contractor's behaviour in respect of another incident of dog fouling where an experienced officer and trainee had followed them home to their property, attending again the following day. Ms McBryde informed that during the course of her challenge to the prosecutions (2 fixed penalty notices issued – because she owned 2 dogs) no video footage of the incident was forthcoming from the contractor and cases were cancelled at appeal as a result.

## **4. June Ormerod – Resident, and Frances Deakin – Scheme Manager, Clifford Grange**

Ms Deakin explained on behalf of Ms Ormerod (a resident at Clifford Grange) that as an elderly, vulnerable and disabled person the contractor had been overzealous in their approach to a charge of littering (a small piece of paper had blown from Ms Ormerod's car boot when loading) She explained that common sense should have prevailed, particularly when dealing with elderly, vulnerable persons.

## **Evidence from Cabinet Member's witness – Andy McCartan, Commissioning Services Manager**

Mr McCartan explained the procedures relating to the award of the contract and how the objective of the evaluation exercise was to identify the bidder having the capability and capacity to meet the Authority's requirements and execute the contract with a view to a contract commencement date of 1 July 2018.

The subsequent report and officer recommendation had been compiled on behalf of the Environmental Enforcement Evaluation Team following the completion of the evaluation of ITT submissions received in relation to OJEU Notice. In seeking to elicit market interest and establish market capacity, an initial Soft Market Testing Exercise had been undertaken in December / January 2017/18 at which 3 bidders presented outline solutions to the Authority. He explained that the Environmental Enforcement market remained immature with only a limited number of specialist providers. Consequently, the Council had not expected a high number of returns for the procurement and the option to operate the service internally was not considered due to an internal lack of capacity, investment and experience following previous unsuccessful attempts.

The Chair invited questions to Mr McCartan from the Committee and his responses included the following comments:

- The need to balance behavioural change within the constraints of a financial model. Wirral Council had utilised a 'per ticket' payment to the contractor - paid only when a valid ticket had been issued – as opposed to an hourly rate payment, with no guarantee of enforcement actions to address the problem of littering.
- Priorities had been set by Council as part of the contract. Details of routes, hotspots, and comprehensive operating programme were all freely available to Councillors.
- Councillors were actively encouraged to have input to the ongoing monitoring of the contract and provide suggestions for locations needing enforcement action.
- Improvements to the new contract included extended / new operating hours.
- The aim of the contract also included the need to secure public support to change behaviours with regard to littering – the contract did not prioritise income generation.
- Dog fouling and littering (including discarded cigarette butts) remained a priority.
- Litter is litter, and leaving litter is an offence.
- The contractor operates under statutory and DEFRA guidance. Terms and conditions of the contract are binding, and the contractor must act lawfully within the contract requirements.
- DEFRA guidance explains that before action is taken to prosecute, the offender has the opportunity to 'pick up'.
- The contractor had done an excellent job over the past 2 years, and had been making progress in tackling poor behaviour as a result.

### **Summary of the Lead Signatory – Councillor Phil Gilchrist**

Councillor Phil Gilchrist thanked the members of the public for their attendance and contributions, which he felt had identified the need for further training of contractor staff. He agreed that a robust approach to tackling of littering was required, but should be balanced by the behaviour of the contractor and clarity about what the contractor can, and cannot, do. He added that there was significant public interest in the proportionate use of powers and clarification over the term 'evidence of intent'.

### **Summary of the Cabinet Member – Councillor Matthew Patrick**

Councillor Matthew Patrick thanked everyone who had attended the meeting, and he too echoed the point raised by Councillor Gilchrist, thanking residents for their attendance and contributions, stating he was sorry that in doing so they had to revisit what had been stressful situations.

Councillor Patrick added that, as mentioned in his opening remarks, there was a definite need to educate people on the damage that littering does to the environment and how enforcement played a key role in raising awareness of

the problem. He stood by his decision to award the contract and was satisfied that the levels of complaint regarding the actions of the contractor were low.

### **Committee debate**

A Member commented that it would be helpful in future for Councillors to have access to performance data, examples of appeals and summary of the numbers of people requesting video footage.

Another Member commented that the contract had been awarded fairly, and the contractor was clearly the right company, demonstrating expertise in all aspects of the contractual requirement.

Members expressed support of efforts in trying to achieve environmental improvements and the need for enforcement as part of that process. It was felt that the Overview and Scrutiny Committee had a role to play in monitoring how the Council manages its contract and ensure that unfair treatment is challenged.

The Committee acknowledged that enforcement of littering was a thankless task and not an easy job, but the Council was making best efforts to set priorities for specific locations and effect behavioural change.

It was moved by Councillor Brian Kenny and seconded by Councillor Adrian Jones, that –

“This Environment Overview and Scrutiny Committee, having listened to the lead signatory, relevant Cabinet Member, all witnesses, and the views of the members of the Overview and Scrutiny Committee, believes that the decision taken by the relevant Cabinet Member, in relation to the delivery of the Environmental Enforcement Contract, be upheld”

The motion moved by Councillor Brian Kenny was put and carried (12:1).

**Resolved (12:1) - This Environment Overview and Scrutiny Committee, having listened to the lead signatory, relevant Cabinet Member, all witnesses, and the views of the members of the Overview and Scrutiny Committee, believes that the decision taken on 18 June 2018 by the Cabinet Member for Environment in relation to the delivery of the Environmental Enforcement Contract, be upheld.**