



# Doncaster Council

## Report

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1<sup>st</sup> September 2020

To the Chair and Members of Cabinet

### SHARED SERVICE AGREEMENT WITH NORTH LINCOLNSHIRE COUNCIL TO DELIVER ENVIRONMENTAL CRIME ENFORCEMENT

Relevant Member(s)	Cabinet	Wards Affected	Key Decision
Councillor Chris McGuinness		All wards in North Lincs and all wards in Doncaster	Yes

#### EXECUTIVE SUMMARY

- 1 The report sets out a proposal to enter into a shared service arrangement with North Lincolnshire Council to the benefit of both Authorities. This is intended to go to Cabinet on the 1 September 2020.

#### EXEMPT REPORT

- 2 This report is not exempt, however there are a number of financial and commercial matters contained within exempt Appendix 1 which are commercially sensitive. The appendix is not for publication because it contains exempt information protected by paragraph 3 of part 1 of schedule 12 (a) of the local government act 1972 (as amended) information relating to the financial or business affairs of any particular person (including the Authority holding that information).

#### RECOMMENDATIONS

- 3 That Cabinet:

Approve entering into a shared service agreement with North Lincolnshire Council to deliver on their behalf an enhanced environmental crime and parking enforcement within North Lincolnshire, and put in place the operational arrangements necessary to efficiently deliver this service.

- 4 Accept the delegation of relevant and appropriate powers contained within the Environmental Protection Act 1990, Traffic Management Act 2004, Road

Traffic Regulation Act 1984, Road Traffic Act 1991, Anti-Social Behaviour, Crime and Policing Act 2014, Clean Neighbourhoods and Environment Act 2005, and Health Act 2006, made by North Lincolnshire Council on the 27<sup>th</sup> July 2020 in order to deliver the required shared service within North Lincolnshire.

- 5 Approve the decision to continue with the contract following the pilot, further decisions relating to the procurement/ contracting is delegated to Director in consultation with the Portfolio Holder lead for Communities, Voluntary Sector and the Environment.
- 6 The pilot would be an 18 month contract with the potential of two x 1 year extensions to ensure it delivers best value.

## **WHAT DOES THIS MEAN FOR THE CITIZENS OF DONCASTER?**

- 7 Environmental crime such as littering, dog fouling and fly tipping have negative impact on the quality of life and environment for the residents of Doncaster and can also damage a vibrant local economy and promotion of Doncaster as a destination to visit. The Government published its Litter Strategy in 2017. In September 2019 a published report, 'Litter and littering in England 2017 to 2018' summarised a number of key findings
  - The cost of keeping the streets clean in 2017/18 was £663M or £28 per household.
  - The most commonly found litter types are smoking related litter, confectionary packs and non-alcoholic drinks.
  - 30% of people perceive litter as a problem.
  - 378,300 volunteers are engaged in doing something about litter.
- 8 Robust enforcement of environmental crime is an essential tool to reduce this type of behaviour, achieve a cleaner environment for all residents and businesses to enjoy and reduce Council clean-up costs. Delivery of such enforcement service in a cost neutral way by the use of private contractor ensures a high level of enforcement without placing further pressure on public resource. Creation of a joint service with North Lincolnshire Council would give further scope to deliver value for money by increasing capacity of the team, creating more efficient working processes through economies of scale. Environmental Crimes do not differ or stop across authority boundaries, but instead travels with nuisance individuals between authority areas. As a result, increasing knowledge and providing an effective deterrent against these offences amongst members of the public in North Lincolnshire is likely to be beneficial for the environment in Doncaster as well.

## **BACKGROUND**

- 9 In January 2016, Doncaster Council signed a contract with LA Support (formally known as Kingdom Security) to provide additional environmental enforcement borough wide in Doncaster. The contract includes incidents being witnessed within Doncaster's boundary for offences relating to littering, smoking in smokefree place/vehicle, fly tipping, enforcement of Public Space Protection Orders including dog fouling and parking enforcement. In March 2018, the Council re-procured the contract and added the option for the contract to be used outside the boundaries of Doncaster and allow the

Council to manage delivery of Environmental Crime Enforcement on behalf of other nearby Local Authorities.

- 10 Doncaster's contract with LA Support Ltd is different from private enforcement contracts existing in many other Local Authorities, as Doncaster has retained the task of evaluating evidence, issuing the fines, hearing appeals and taking any case where the Fixed Penalty Notice (FPN) is not paid to court. The Council also retained the role of tasking LA Support Ltd staff weekly to ensure patrols are spread across the borough and target the areas where complaints from our residents are received. LA Support staff have the same level of training as any Council staff issuing fines and wear joined DMBC/LA Support uniform and body cameras. The close working relationship between staff from LA Support and the Enforcement Team has delivered a high quality, responsive and seamless service with low levels of complaints. This has safeguarded the Council's reputation of fair, proportionate and transparent enforcement and avoided negative media stories that have faced some other Local Authorities who has not managed their contracts in as stringent manner.
- 11 Since January 2016, LA Support staff has patrolled 72 separate areas in the Doncaster ensuring that the whole borough receives area patrols. During this period, LA Support has on behalf of the Council, gathered evidence to enable the Council to issue over 24,371 Fixed Penalty Notices (FPNs) in respect to littering, 222 for dog fouling, 306 for other PSPO contraventions and 7,675 Penalty Charge Notices for parking offences. The contract has been successful in delivering the objectives of increase enforcement resources and additional income earmarked to improve investigation and enforcement outcomes for complex fly tipping within the Enforcement Team.
- 12 Prior to the LA Support contract, Doncaster Council issued approximately 2000 FPNs a year. Processing of these fines, managing payments, dealing with appeals and preparing cases for court was managed by 1 FTE Fixed Penalty Officer (Grade 7) as well as case preparation by 1 FTE Enforcement Officer (Grade 7). As part of the implementation of the LA Support contract, a complete review was conducted of the FPN processing and improvements identified and implemented. This included working with Magistrate Courts to implement Single Justice Procedures, substantially reducing the legal support required for each case. As a result the team is now able to process around 4000 FPNs per 1.5 FTE (Grade 7). Further resources are required to provide effective management and support for these staff members as well as dealing with Corporate Complaints and Freedom of Information requests.
- 13 In September 2019, Doncaster Council presented to North Lincolnshire Council the option of delivery of a shared fixed penalty notice service, using a private contractor for the on street enforcement with processing in-house following the same principles as the contract already successfully implemented in Doncaster.
- 14 On 27 July 2020, the Cabinet at North Lincolnshire Council approved a report detailing future options for enhanced environmental enforcement within North Lincolnshire. The report described the Council's desire to strengthen enforcement activity around environmental crime issues such as littering, dog fouling and fly-tipping. Approximately North Lincolnshire Council spends £726,000 on street cleaning each year.

- 15 North Lincolnshire's Cabinet agreed that North Lincolnshire Council shall enter into a Service Level Agreement with Doncaster Metropolitan Borough Council to deliver enhanced environmental crime and parking enforcement within North Lincolnshire. This includes the delegating of all relevant and appropriate powers contained within the Environmental Protection Act 1990, Traffic Management Act 2004, Road Traffic Regulation Act 1984, Road Traffic Act 1991, Anti-Social Behaviour, Crime and Policing Act 2014, Clean Neighbourhoods and Environment Act 2005, and Health Act 2006, in order to deliver the required shared service within North Lincolnshire.
- 16 To create a shared FPN service under North Lincolnshire's constitution, they are formally delegating appropriate powers to Doncaster Council to allow officers to undertake enforcement activities across boundaries into North Lincolnshire. This will ensure that officers have authorisation to enforce legislation in North Lincolnshire. Doncaster Council would then need to formally accept these delegated powers to progress the arrangements. A further Service Level Agreement will also be required to detail the operational arrangements and payment mechanism between the two authorities.
- 17 If a shared service is implemented it is expected that contractors will issue at least 3,000 fixed penalty notices on behalf of North Lincolnshire Council per year to be processed by staff employed by Doncaster Council. The current staffing levels within the enforcement team is sufficient to process the level of fines expected. At the end of the 18 month pilot, resourcing levels will be reviewed and dependent upon how well the contract has performed and the number of FPN's issued, it may be necessary to recruit additional Grade 7 resource on a temporary basis for the specific purpose of delivering the North Lincolnshire contract. This temporary resource would not be entitled to redundancy pay if the contract ended after this time period.
- 18 Due to contract limitations, it is not possible to utilise the current contract in place between Doncaster Council and LA Support to deliver enforcement in North Lincolnshire. Instead, a new specification and contract documentation has been developed jointly with North Lincolnshire to comply with the requirements of European Procurement Regulations.

## **OPTIONS CONSIDERED**

The recommended option is in paragraph 21.

- 19 Do Nothing – if the Council does nothing we can continue our current contract arrangements with LA Support for duration of the contract including any contract extension at which point full procurement would be required if we wanted to continue using a private contractor.
- 20 Other option considered was to procure a new service for both Doncaster and North Lincolnshire Council allowing the contractor to also process FPNs and prepare case files. This would reduce income for Doncaster Council as we are likely to have to pay the contractor more per FPN issued. This would also remove a safeguard of Doncaster Council having full discretion when to issue FPNs or not. If FPNs were be issued by a contractor in cases where evidence is not sufficient, it would damage the reputation and public perception of the Council. It is important that litter enforcement is conducted in a fair and

transparent manner with the overall aim of improving the local environment and not just seen as a method of income generation. North Lincolnshire Council also favours working with Doncaster Council due to the extra safeguards of fair enforcement created by the Council retaining the processing side of the FPN service.

- 21 To enter in to a shared service agreement with North Lincolnshire Council to deliver on North Lincolnshire’s behalf, enhanced environmental crime and parking enforcement within North Lincolnshire. This would require Doncaster Council to accept the delegation of relevant and appropriate powers contained within the Environmental Protection Act 1990, Traffic Management Act 2004, Road Traffic Regulation Act 1984, Road Traffic Act 1991, Anti-Social Behaviour, Crime and Policing Act 2014, Clean Neighbourhoods and Environment Act 2005, and Health Act 2006, from North Lincolnshire Council in order to deliver the required shared service within North Lincolnshire.

**REASONS FOR RECOMMENDED OPTION**

- 22 The option of a shared enforcement service would safeguard continuation of cost neutral, high quality environmental and ASB enforcement service in Doncaster and deliver equal benefits in North Lincolnshire. Creation of a joint service with North Lincolnshire Council would give further scope to deliver value for money and the potential to increase capacity of the team and creating more efficient working processes through economies of scale. Increasing the size of the service in Doncaster would also contribute to local job opportunities. Increasing knowledge and providing an effective deterrent against these offences amongst members of the public in North Lincolnshire is also likely to be beneficial for the environment in Doncaster as many people actively travel across the two authority areas.
- 23 The option of shared enforcement service would provide a benefit to Doncaster Council in respect of the income generated from the level of work would contribute towards the clearance of littering/waste in the Borough, new technologies for environmental crime (e.g. cameras) or feed into waste related projects in Doncaster.

**IMPACT ON THE COUNCIL’S KEY OUTCOMES**

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	<b>Outcomes</b>	<b>Implications</b>
	<p><b>Doncaster Working:</b> Our vision is for more people to be able to pursue their ambitions through work that gives them and Doncaster a brighter and prosperous future;</p> <ul style="list-style-type: none"> <li>• Better access to good fulfilling work</li> <li>• Doncaster businesses are supported to flourish</li> <li>• Inward Investment</li> </ul>	<p>Environmental crime such as littering, dog fouling and fly tipping have negative impact on a vibrant local economy and promotion of Doncaster as a destination to visit. This proposal would safeguard delivery of an effective environmental crime enforcement service in Doncaster and North Lincolnshire without placing the financial burden of funding such service on either</p>

		Authority. The proposal would also safeguard current jobs in Doncaster processing Fixed Penalty Notices and generate further job opportunities in this area.
	<p><b>Doncaster Living:</b> Our vision is for Doncaster's people to live in a borough that is vibrant and full of opportunity, where people enjoy spending time;</p> <ul style="list-style-type: none"> <li>• The town centres are the beating heart of Doncaster</li> <li>• More people can live in a good quality, affordable home</li> <li>• Healthy and Vibrant Communities through Physical Activity and Sport</li> <li>• Everyone takes responsibility for keeping Doncaster Clean</li> <li>• Building on our cultural, artistic and sporting heritage</li> </ul>	The proposal would safeguard high levels of enforcement for Environmental Crime, Public Space Protection Orders. This will assist in providing safe and healthy lives for our residents. Additional provision of parking enforcement outside schools and other areas away from Town Centre ensures safety of residents and protect independent lives of residents reliant on disabled parking by securing effective blue badge parking enforcement.
	<p><b>Doncaster Learning:</b> Our vision is for learning that prepares all children, young people and adults for a life that is fulfilling;</p> <ul style="list-style-type: none"> <li>• Every child has life-changing learning experiences within and beyond school</li> <li>• Many more great teachers work in Doncaster Schools that are good or better</li> <li>• Learning in Doncaster prepares young people for the world of work</li> </ul>	The current fixed penalty and parking processing team are supporting two entry level Modern Apprentices each year. With a larger team there is further scope to continue supporting school leavers to gain essential skills to secure long term employment.
	<p><b>Doncaster Caring:</b> Our vision is for a borough that cares together for its most vulnerable residents;</p> <ul style="list-style-type: none"> <li>• Children have the best start in life</li> <li>• Vulnerable families and individuals have support from someone they trust</li> <li>• Older people can live well and independently in their own homes</li> </ul>	The proposals include safeguard for young and vulnerable people to ensure we can deliver effective enforcement whilst still supporting all residents.
	<p><b>Connected Council:</b></p> <ul style="list-style-type: none"> <li>• A modern, efficient and flexible workforce</li> <li>• Modern, accessible customer interactions</li> <li>• Operating within our resources and delivering value for money</li> </ul>	Working in partnership with another local authority through a shared service will promote closer working and sharing of excellence in the Regulation & Enforcement Area which is likely to deliver long term

	<ul style="list-style-type: none"> <li>• A co-ordinated, whole person, whole life focus on the needs and aspirations of residents</li> <li>• Building community resilience and self-reliance by connecting community assets and strengths</li> <li>• Working with our partners and residents to provide effective leadership and governance</li> </ul>	benefits.
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## RISKS AND ASSUMPTIONS

- 25 The shared service model is based on Doncaster managing and paying the private contractor for each correctly issued FPN/PCN. It is therefore essential to ensure Doncaster can recover more money through paid FPNs and court fines, than is paid to the contractor and also fund the resources required to manage this process. Based on current figures for the Doncaster contract it is believed that approximately 55% of fines are likely to be paid without further intervention. A further 30% is likely to result in the court action and it is expected that around 15% of cases will have to be closed down as unrecoverable due to inability to trace the individual. As a low payment rate is the largest risk factor from a financial side, it is proposed to pay North Lincolnshire a set price per paid FPN, depending on the level of fine available in North Lincolnshire Council. This is similar to options offered by other private contractors in the market place and will ensure the risk of low payment rates is not carried by Doncaster Council.
- 26 When setting up any shared services, there will always be a risk of service pressure from one area having an impact on resources available in the other area. To ensure that entering into the shared service has a positive impact on services in Doncaster, it is essential that sufficient additional staff resources are made available.

## LEGAL IMPLICATIONS [Officer Initials ND Date 12.08.20]

- 27 North Lincolnshire Council have agreed to delegate certain enforcement functions to Doncaster Council, namely those functions set out in the Environmental Protection Act 1990, Anti-Social Behaviour, Crime and Policing Act 2014, Clean Neighbourhoods and Environment Act 2005 and Health Act 2006. North Lincolnshire Council are able to do this in accordance with the provisions of the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012, which enable arrangements to be made for the discharge of functions, which are the responsibility of a local authority executive, by another local authority or an executive of another local authority.
- 28 Doncaster Council's Constitution allows Cabinet to accept the delegation of Executive Functions from another Local Authority.
- 29 The Public Contracts Regulations 2015 and European case law suggest that such arrangements between public bodies for the sharing of functions which are not wholly commercial in nature are not caught by EU Procurement Regulations. Doncaster Council has in any event be followed a full EU

Procurement process to appoint a contractor to provide the services and thus the guiding principles of EU Procurement – openness, fairness and transparency has been met.

- 30 The contract with LA Support Limited will need to be varied to include North Lincolnshire within its service area.
- 31 S1 of the Localism Act 2011 provides the Council with the general power of competence, meaning that “a local authority has power to do anything that individuals generally may do.”
- 32 S111 of the Local Government Act 1972 provides that a local authority shall have power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.
- 33 S112 of the Local Government Act 1972, allows a Local Authority to appoint such officers as they think necessary for the proper discharge of their functions.
- 34 Further legal advice will be required as this project progresses, particularly considering Employment Law matters arising and in completing a legal agreement between the two Councils.

#### **FINANCIAL IMPLICATIONS [Officer Initials RT Date 12.08.20]**

- 35 There are no initial set up costs, the operating costs to Doncaster Council for processing fines and managing appeals is on average £11 per FPN. This takes into consideration all processing costs including a proportion of cases requiring legal files. The tender for this has delivered a better priced service to what we previously operated in Doncaster and evidence the financial benefit Doncaster of delivering shared services.
- 36 The additional income generated to Doncaster Council through this scheme is expected to be £77k per annum. Further commercially sensitive information regarding the performance of the current contract can be found in Appendix 1.

#### **HUMAN RESOURCES IMPLICATIONS [Officer Initials DK Date 04/08/2020]**

- 37 There are no direct HR Imps in relation to this report. It is expected that current staffing levels can accommodate the increased work levels created by this agreement. If in the future staff are affected and additional resources are required further consultation will need to take place with HR.

#### **TECHNOLOGY IMPLICATIONS [Officer Initials PW Date 31/07/20]**

- 38 There are no anticipated technology implications from implementing the recommendations in this report as processing of the fixed penalty notices will be undertaken at Doncaster using existing systems and staff. It is understood that the existing contract with Chipside for their case management system will be able to adequately cater for any fines issued on behalf of North Lincolnshire Council without additional cost.

#### **HEALTH IMPLICATIONS [Officer Initials CEH Date 31.07.20]**

- 39 In general 20% of what contributes to health is due to clinical care, 30% due to behavioural factors, 40% due to socio-economic factors and 10% due to the built environment. Providing safe and attractive environments can positively affect physical and mental wellbeing but also lead to better community cohesion. These proposals implement measures to more effectively tackle Environmental Crime both in Doncaster and North Lincolnshire which will help reduce the barriers that residents state prevent them from enjoying their community and being more physically active such as pavement parking, dog fouling and littering. Utilising enforcement powers to provide smokefree environments will support Doncaster's work to change social norms to tackle the number of residents that smoke in particular children and young people. In addition, second hand smoke represents a substantial public health hazard and therefore the use of powers to reduce this are important

### **EQUALITY IMPLICATIONS [Officer Initials CBI Date 30.07.20]**

- 40 The decision maker must be aware of their obligations under the public sector equality duty (PSED) in s149 of the Equality Act 2010. It requires public authorities when exercising their functions to have due regard to the need to eliminate discrimination, harassment and victimization; advance equality of opportunity; and foster good relations between people who share relevant protected characteristics and those who do not.
- 41 The relevant protected characteristics under the Equality Act are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The duty also covers marriage and civil partnerships, but only in respect of eliminating unlawful discrimination.
- 42 The decision maker must ensure that they have seen the due regard statement. The duty must be exercised in substance, with rigour, and with an open mind and is not a question of ticking boxes. It is for the decision-maker to decide how much weight should be given to the various factors informing the decision, including how much weight should be given to the PSED itself. The duty is a continuing one and there should be a record/audit trail of how due regard has been shown. It is not sufficient for due regard to be a "rear-guard action" following a concluded decision. The decision maker must also pay regard to any countervailing factors and decide the weight to be given to these, which it is proper and reasonable to consider; budgetary pressures, economics and practical factors will often be important.
- 43 National guidance exists for offences committed under the relevant legislation. The guidance provides effective safeguards to ensure disabilities are considered in any enforcement decisions. In addition absolute legal exclusion exists where appropriate, such as for registered blind individuals.
- 44 Safeguarding children and young people is of the outmost priority for Doncaster Council. Whilst it is important to challenge unlawful behaviours such as environmental crime and Anti-Social Behaviours committed by minors, officers are trained and instructed to follow different procedures when gathering evidence in these cases. Provisions are also in place to ensure we notify parents/guardians as part of any enforcement against a minor. It is also our intention to work with North East Lincolnshire Council to put in place an option for parents to consent to their child taking part in restorative justice, in

lieu of paying a monetary fine, similar to what currently is in place in Doncaster.

- 45 Apart from consideration of disability and children under the age of 18, enforcement of the relevant legislation is carried out fairly, transparently and proportionately irrespective of any other protective characteristics. All designated officers with the responsibility to enforce the prohibitions and requirements within the order are trained in equality and diversity from induction and this is updated on a regular, if not annual basis.

## **CONSULTATION**

- 46 Consultation has taken place with Portfolio Holder Cllr Chris McGuinness. Consultation has also taken place throughout the process with legal, procurement and ICT to ensure we consider any relevant duties or legal requirements.

## **BACKGROUND PAPERS**

- 47 No relevant background papers.

## **GLOSSARY OF ACRONYMS AND ABBREVIATIONS**

FPN – Fixed Penalty Notices

PCN – Penalty Charge Notices

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