

## Notice of Non-Key Executive Decision

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| <b>Subject Heading:</b>                              | Approval to tender for Parks and Littering Enforcement Pilot   |
| <b>Decision Maker:</b>                               | Barry Francis, Director of Neighbourhoods  |
| <b>Cabinet Member:</b>                               | Councillor Barry Mugglestone, Lead Member for Environment  |
| <b>SLT Lead:</b>                                     | Barry Francis, Director of Neighbourhoods  |
| <b>Report Author and contact details:</b>            | Jon Cassidy, Programme Manager<br>T: 01708 433588<br>E: <a href="mailto:jonathan.cassidy@havering.gov.uk">jonathan.cassidy@havering.gov.uk</a>   |
| <b>Policy context:</b>                               | This service will contribute to the Cleaner and Prouder corporate themes.  |
| <b>Financial summary:</b>                            | The pilot will be cost neutral for the council and it is expected that the Pilot will generate a total of £0.175m in income and cost reductions. £0.75m due to income made from FPNs and £0.100m made through cost reductions to revenue budgets in a full year. |
| <b>Relevant OSC:</b>                                 | Environment and Community Safety   |
| <b>Is this decision exempt from being called-in?</b> | No   |

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**The subject matter of this report deals with the following Council Objectives**

|                               |                                     |
|-------------------------------|-------------------------------------|
| Communities making Havering   | <input checked="" type="checkbox"/> |
| Places making Havering        | <input checked="" type="checkbox"/> |
| Opportunities making Havering | <input type="checkbox"/>            |
| Connections making Havering   | <input type="checkbox"/>            |

## Part A – Report seeking decision

### DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

This decision paper seeks approval to commence a full EU compliant tender process to award an 18 month contract for the provision of a Parks and Littering Enforcement Pilot from 1<sup>st</sup> April 2023 to 30<sup>th</sup> September 2024. Included in the contract will be an option to extend the Pilot for a further 12 months.

### AUTHORITY UNDER WHICH DECISION IS MADE

Havering Council's Constitution, Part 3.3 Powers of Members of the Senior Leadership Team; Contract powers (a) To approve commencement of a tendering process for all contracts above a total contract value of £500,000.

### STATEMENT OF THE REASONS FOR THE DECISION

#### 1. Background

The Council currently exercises powers to take formal enforcement action including the issue of Fixed Penalty Notices (FPNs) and prosecution of those who commit environmental crime in accordance with the Environmental Protection Act 1990, the Clean Neighbourhoods and Environment Act 2006 and other related legislation.

The cleanliness of the local environment is a top priority for the quality of life of local communities. Reducing litter, and other anti-social criminal behaviours will also influence the feeling of pride in local areas and develop stronger relationships between service providers and local communities, enhancing the reputation of the council.

Success in achieving cleaner local neighbourhoods over the long term will depend on changing people's attitudes and behaviour towards the environment and this in turn depends on visible, effective deterrents. The Pilot will aim to change behaviours by sending the message that disregard for the environment is not acceptable and will result in action being taken.

#### 2. Proposal

The main objective of the Parks and Littering Enforcement Pilot is to issue Fixed Penalty Notices for the offences listed below.

| Offence   | Legislation                                   |
|---|---|
| Litter (includes smoking litter, gum, public urination, and spitting) | Environmental Protection Act 1990 S.87(1) S88 |

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|   |   |
|---|---|
|   |   |
| Fly-tipping – domestic and commercial waste | Environmental Protection Act 1990 s.33, s.34  |
| Commercial Waste (Duty of Care)             | Environmental Protection Act 1990 S34(5)      |
| Breach of Domestic Waste (Duty of Care)     | Environmental Protection Act 1990 S34(2A)     |
| Not producing a waste transfer documents    | Environmental Protection Act 1990 s.34        |
| Waste Presentation                          | Environmental Protection Act 1990 S46/47      |
| Enforcement of Park By-laws                 | Public Health Act 1875 & Open Spaces Act 1906 |
| Breach of PSPO/CPN                          | ASB Crime and Policing Act 2014               |

The successful provider will deliver the Parks and Littering Enforcement Pilot across the London Borough of Havering for a fixed 18-month period, in order to gather and analyse data as to the effectiveness of the contracted enforcement service. The Pilot will permit a 12-month extension period, to enable sufficient time to go out to tender for a longer term contract, should the outcome of the pilot be successful.

In addition to the enforcement activities, the Parks and Littering Enforcement Pilot will also include locking and unlocking of parks across the Borough, a service that is currently managed internally via agency staff.

### **3. Pilot Costs**

The Pilot is based on a 'no cost - no risk' financial model. This means that the cost of providing the Service to the Council will be funded from the Fixed Penalty Notice ("FPN") payments and any shortfall shall be a risk for the Provider. In addition, the Provider will provide the Council with an agreed share of the income from paid FPN's. The agreed share will be as per the percentage submission detailed in the Provider's tender response and the schedule of rates.

Based on indicative FPN forecasting, the Council is expect to receive circa £0.75m in income generated from those FPNs, during the 18 month contract. In addition to this, the Council will make a net cost reduction of £0.100m to existing revenue budgets from the internal parks locking service being included within the Pilot.

### **4. Project Management of the Tender Process**

The project will be managed using the Councils Project Management toolkit adapted for the particular needs of this project. A formal project management structure will be established, including identification of peoples' roles and responsibilities. Throughout the project the following control measures will be put in place:

- Reporting progress to the Project Board on a monthly basis
- Reporting progress on Verto on a monthly basis

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- Managing the progress of the project through the monitoring and delivery of a Project Plan and Tender Timetable
- Assigning tasks and managing these with a regularly updated Action Log
- Identifying and managing risks with a regularly updated Risk Log
- Communication to wider stakeholders on a monthly basis where deemed necessary.

The scope of the project includes:

- a) Review of existing documents
- b) Production of new documents
- c) Managing the tender process
- d) Evaluating bids
- e) Awarding the contract
- f) Preparing for the start of the new Contract
- g) Measuring the benefits

A Project Board will be responsible for seeing that the project objectives are being achieved in a timely and effective manner. The Project Board will be a newly formed group and will meet on a monthly basis commencing August 2022. The aim of the Project Board is to act as the formal body to supervise the tendering of the service carrying out the key functions below;

- a) Supervise the design of the pilot as to ensure that it will deliver the required outcomes
- b) Supervise activities across the tender process whilst ensuring required documentation is returned within specified deadlines.
- c) Ensure that procurement is monitored and effectively follows the project plan, ensuring the tender activities are acted upon within strict deadlines.
- d) Supervise the preparation and completion of other relevant tender documents in alignment with requirements.
- e) Evaluate tender documentation to ensure compliance with the requirements of the Council's tender.

### **5. Procurement Approach**

This procurement will be subject to and adhere to the Council's Contract Procedure Rules. The procurement followed a formal tender process in line with the EU procurement open process in accordance with the Public Contracts Regulations 2015, which require compliance with principles of non-discrimination, equal treatment and transparency.

Due to the inclusion of parks locking service to the concessions contract for Parks and Littering Enforcement, the proposed contract would be termed a "mixed" contract. That means that it is a contract that contains both concession and services elements.

Regulation 20 of the Concession Contracts Regulations 2016 (CCR) sets out how mixed contracts should be treated:

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*(d) in the case of a mixed contract containing elements of concession contracts as well as elements of public contracts covered by the Public Contracts Regulations 2015(1) or contracts covered by the Utilities Contracts Regulations 2016, the mixed contract shall be awarded in accordance with the Public Contracts Regulations 2015 or the Utilities Contracts Regulations 2016, respectively.*

The procurement will be an open unrestricted procedure. The indicative procurement timetable is as follows;

- a) Project Board develops and prepares tender documents in August 2022
- b) The project aims to publish the tender in October 2022
- c) Project Board evaluates bids in November 2022
- d) New contract to be formally awarded in February 2023
- e) The service will be mobilised between March 2023 and April 2023
- f) The contract will begin on 1<sup>st</sup> April 2023 for an initial 18 month pilot contract (with a 12 month extension option following review of pilot success)

To conclude, the new contract will be managed by the Enforcement Manager supported by the Head of Environmental Enforcement, with engagement with key internal stakeholders from Civil Protection and Public Realm.

### **OTHER OPTIONS CONSIDERED AND REJECTED**

- 1. Externalise existing enforcement team:** This option was considered and rejected because an externally employed enforcement team is a very different team to an internal one, and both can – and usually do – produce different work streams. It is felt that a ‘blended’ service might work best, hence the need for a trial, to see how that works in Havering. It is also currently unclear exactly what the new administration wants from their enforcement service and so whilst that is subject to consideration we would not at this stage want to fully switch from an internal enforcement team to an external one.
- 2. Do nothing:** This option was considered and rejected because there is a need to ensure that Havering is a safe and clean place to live. The current internal resources makes it challenging to cover the remit of all parks, Town Centres and open spaces across Havering. By engaging a provider, at a cost neutral contract, this will also increase the amount of income generated for Fixed Penalty Notices (FPNs) whilst ensuring that all parks and open spaces are regularly patrolled. Also, doing nothing does not allow us to benefit from any cost reductions that could be made by handing over responsibility for locking parks as part of this work, something that is currently an expensive task.

### **PRE-DECISION CONSULTATION**

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The pre-decision consultation has involved engaging with a number of stakeholders for the tender. In summary, the table below presents the type, methods and stakeholders engaged in the pre-decision consultation;

| Type                       | Methods   | Consultees   |
|----------------------------|---|--|
| Project Board              | Formal regular meetings<br>phone, email                     | a) Environment and<br>Community Safety<br>b) Public Protection<br>c) Procurement<br>d) Finance |
| Review of Tender Documents | Desktop Research,<br>Phone, Email, Meetings                 | a) Potential providers<br>b) Neighbouring<br>boroughs<br>c) Project Board<br>members           |
| Prior Information Notice   | Notice published via the<br>Council's procurement<br>system | a) Interested Providers in<br>the market   |
| Market Engagement Event    | Meeting with potential<br>bidders                           | a) Environment and<br>Community Safety<br>b) Procurement                                       |

### **NAME AND JOB TITLE OF STAFF MEMBER ADVISING THE DECISION-MAKER**

Name: Chris McAvoy

Designation: Head of Environmental Enforcement and Community Safety

Signature: *C McAvoy*

Date: 12<sup>th</sup> August 2022

## Part B - Assessment of implications and risks

### LEGAL IMPLICATIONS AND RISKS

The Council has power to procure the contracts under the general power of competence contained in section 1 of the Localism Act 2011 which allows the Council to do anything that an individual may do subject to any statutory constraints on the Council's powers. None of the constraints on the Council's s.1 power are engaged by this decision.

The Council also has power to procure the contracts under s111 Local Government Act 1972 which allows the Council to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions.

The contract contains both concession and services elements which are objectively separable. Regulation 20 of the Concession Contracts Regulations 2016 and Regulation 4(2) of the Public Contracts Regulations 2015 (PCR 2015) deal with such contracts and require that they are procured via the PCR 2015 regime regardless of the respective value of each part. The proposed method of procurement complies with this requirement.

For the reasons set out above, the Council may commence the tender process for the parks and littering enforcement pilot.

### FINANCIAL IMPLICATIONS AND RISKS

The Pilot is based on a 'no cost - no risk' financial model. This means that the cost of providing the Service to the Council will be funded from the Fixed Penalty Notice ("FPN") payments and any shortfall shall be a risk for the Provider. In Addition, the Provider will provide the Council with an agreed share of the income from paid FPN's. The agreed share will be as per the percentage submission detailed in the Provider's tender response and the schedule of rates.

Based on indicative FPN forecasting, the Council is expected to receive circa £0.75m in income generated from the FPNs, during the 18 month contract. In addition to this, by including the internal parks locking service within the Pilot, the Council will make a net cost reduction of £0.100m in a full year within the revenue account.

### HUMAN RESOURCES IMPLICATIONS AND RISKS (AND ACCOMMODATION IMPLICATIONS WHERE RELEVANT)

There are no implications or risks anticipated to council staff as the employees involved in the delivery of the pilot will be employed directly by the successful Provider.

### EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS



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The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have due regard to:

- (i) the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (ii) the need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
- (iii) foster good relations between those who have protected characteristics and those who do not.

Note: 'Protected characteristics' are: age, sex, race, disability, sexual orientation, marriage and civil partnerships, religion or belief, pregnancy and maternity and gender reassignment.

The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce. In addition, the Council is also committed to improving the quality of life and wellbeing for all Havering residents in respect of socio-economics and health determinants.

The action undertaken in respect of this pilot will include monitoring how the service meets the needs of the council and residents, including those from ethnic minority communities and the disabled. The Council will also ensure that any prospective providers have undertaken equality training and adhere to the Council's Fair to All Policy or their own equivalent.

### **ENVIRONMENTAL AND CLIMATE CHANGE IMPLICATIONS AND RISKS**

The Council will embrace the Environment and Climate Agenda both strategically and globally through its development of footprint reduction initiatives, Climate Action plans and externally delivered services. The Council will strive to minimise negative impacts and optimising positive opportunities delivering our Climate change action plan.

### **BACKGROUND PAPERS**

None

### **APPENDICIES**

None

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**Part C – Record of decision**

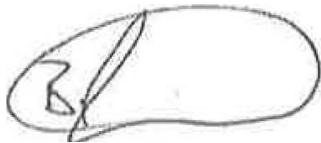
I have made this executive decision in accordance with authority delegated to me by the Leader of the Council and in compliance with the requirements of the Constitution.

**Decision**

Proposal agreed

**Details of decision maker**

Signed

A handwritten signature in black ink, appearing to be 'B. Francis', enclosed within a hand-drawn oval border.

Name: Barry Francis

Cabinet Portfolio held:

CMT Member title:

Head of Service title: Director of Neighbourhoods

Other manager title:

Date: 16/08/2022

**Lodging this notice**

The signed decision notice must be delivered to Democratic Services, in the Town Hall.

**For use by Committee Administration**

This notice was lodged with me on \_\_\_\_\_

Signed \_\_\_\_\_

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