

Report to the Cabinet

Report reference: C-063-2016/17

Date of meeting: 9 March 2017



**Epping Forest
District Council**

Portfolio: Safer, Greener and Transport

Subject: Off Street Car Parking Enforcement Policy

Responsible Officer: Qasim (Kim) Durrani (01992 564055).

Democratic Services: Gary Woodhall (01992 564470).

Recommendations/Decisions Required:

- (1) To note that good progress is being made in the mobilisation of the Off Street enforcement contract with NSL which will commence on 1 April 2017;**
- (2) That in order to comply with legislative and statutory requirements and enable successful operation of the Off Street enforcement contract the following be agreed:**
 - (a) the use of Traffic Enforcement Centre (TEC) for debt registration;**
 - (b) the use of Traffic Penalty Tribunal (TPT) for adjudication service in respect of disputed Penalty Charge Notice (PCN);**
 - (c) To apply to the Driver and Vehicle Licencing Agency (DVLA) for permission to access their database to obtain the registered keeper's details for enforcement purposes;**
 - (d) the appointment of enforcement agents, sometimes referred to as Bailiffs, for debt recovery in respect of Off Street operations;**
 - (e) that the current level of PCN at Band 2, £70 for higher more serious and £50 for lesser contraventions be retained;**
 - (f) that as much as possible cashless payments will be encouraged for parking permits, season tickets, pay and display, PCN payments by the use of pay by phone and online technology however the option to pay by cash and cheque will remain available;**
- (3) To Approve the attached document titled Civil Parking Enforcement Policy and Guidance on the Processing of Penalty Charge Notices within the District;**
- (4) That an annual report setting out the activities of the service be presented to Cabinet within six months of the end of each financial year;**
- (5) To note that NSL has been acquired by Marstons and that this will have no impact on the contract;**
- (6) That a Car Parking Partnership Board be established to provide supervision of**

the contract with its membership and terms of reference being determined by the Leader of the Council; and

(7) That delegated authority be given to the Director of Neighbourhoods (and officers appointed by him) to consider representations and challenges to PCNs under Part 6 of the Traffic Management Act 2004 (and enabling statutory instruments) and to determine, in accordance with the published Enforcement Policy, whether to cancel any Notice or enforcement action and determine, based on evidence or grounds for doing, whether to cancel any Notice or enforcement action

Executive Summary:

In order for NSL Limited to carry out enforcement in Council car parks and for the associated functions to be performed, by NSL and Council staff, it is essential to have the necessary approvals in place. This report seeks authority for these considerations, which are also reflected in the Civil Parking Enforcement Policy

Reasons for Proposed Decision:

To put in place formal arrangements as required by law to enable NSL and Council staff to carry out all the functions associated with the delivery of Off Street enforcement contract.

Other Options for Action:

There are no other options, if the necessary approval is not given then the NSL contract can not commence.

Report:

1. The Council first took on the enforcement of parking controls in 2002 when these were decriminalised. This was under an agency agreement with Essex County Council (ECC). The enforcement operations were undertaken via contractors. The last contract, with Vinci Parks Limited, ended in 2012 and by that time the agency agreement with ECC had ended and the North Essex Parking Partnership (NEPP) had been established for On Street enforcement. The Council decided to have the Off Street enforcement and associated functions delivered by NEPP as well. This resulted in revenue saving at the time.

2. Following a review of the Off Street operations by RTA Associates Limited in 2015 a decision was taken to withdraw from the Off Street element of the NEPP. A formal notice to this effect was served on NEPP which means that from 1 April 2017 the Council will manage the Off Street operations itself. As a result of the recently concluded procurement process NSL Limited have won the contract for the enforcement and associated elements of the contract.

3. The Cabinet agreed at its meeting on 1 December 2016 to award the contract for the enforcement, cash collection and associated activities to NSL Limited. This was after an eight month long procurement exercise conducted under OJEU Regulations. Under the terms of the contract NSL will provide the following services:

- Enforcement in Council owned and managed car parks.
- First line pay and display machines maintenance, cash collection, counting and banking.
- Provision of permit/season tickets.
- Provision and management of IT systems associated with the enforcement

operations.

- Provision of Interactive Voice Response (IVR) and web based payment solutions.
- Provision of cash less solutions for parking and permits.
- Civil Enforcement Officers (CEO) to report defects in car parks.
- Provision of operational equipment, vehicles, uniforms and associated stationery.

4. Good progress is being made in the mobilisation process. The software solutions for the enforcement and back office processes are being deployed, NSL is procuring the hardware that will be required on the contract and they intend to recruit Civil Enforcement Officer (CEO) locally and will be advertising on the Council website as well as other standard media. Internally Council officers are making the necessary changes to prepare for the commencement of the contract including the appointment of another officer in the car parking team to assist with the increased workload. **(recommendation 1)**

5. Civil Parking Enforcement (CPE) whether on or off street is subject to strict legislative and statutory guidance and requires processes to be put in place to enable transparency and accountability. In order for NSL to carry out the off street enforcement operations and for the Council to deal with challenges and representation from motorists a number of decisions are required. These are noted below **(recommendation 2)**:

(a) Traffic Enforcement Centre (TEC) was established for the purpose of allowing local authorities, Transport for London and Highways England, to enforce unpaid penalty charge notices. It is attached to Northampton County Court Bulk Centre. TEC authorise the local authority to prepare the Order for Recovery of unpaid penalty charges. They also process all statutory declarations and witness statements. The other aspect of the TEC is to authorise the issue of a warrant of control requests from local authorities, Highways England and Transport for London.

(b) The Traffic Penalty Tribunal (TPT) are based out of Cheshire and offer an adjudication service when a motorist challenges a Penalty Charge Notice (PCN) after it has gone all the way through the challenge process of the issuing authority. The Traffic Penalty Tribunal comprises individually appointed independent adjudicators and a small team of administrative staff who work on their behalf and is the only Tribunal available in England for English Authorities outside of London;

(c) in pursuing recovery of PCN issued it is necessary to write to the registered owner of a vehicle. This requires seeking access to DVLA database and that is only allowed if formal permissions have been granted by DVLA;

(d) in some cases there is no other alternative but to use enforcement agents also referred to as Bailiffs to recover debt. The intention is to use the Councils existing framework of enforcement agents;

(e) the PCN charging at Band 2, in place across the District for a number of years is proposed to be retained, £70 for higher offences for example parking in a Disabled Bay and £50 for lesser contraventions; and

(f) payments for pay and display tickets, permits and season tickets and PCNs can be made in a number of ways. The intention is to encourage cash less, pay by phone and online payments. This will help reduce overheads and cash handling costs in the long run. The option to pay by cash and cheque will remain available.

6. In order for the Council to enforce against motorists for contraventions under the Traffic Management Act and associated guidance it is necessary to have a CPE Policy which

sets out the offences and the regulatory framework. The Policy is attached as background paper. The Policy does not replace or replicate national guidance rather provides clarity to motorists and those enforcing the guidance (**recommendation 3**).

7. The Traffic Management Act (2004) requires the Council to publish an annual report on the activities of the service within six months of the end of a financial year. The guidance recommend that the report should contain: total income and expenditure, breakdown of income whether parking charges or penalty charges, higher/lower number of PCNs served, number of PCNs paid at discounted or full rate, number of PCNs against which a challenge or formal representation was made, number of PCNs written off and reasons for doing so and other related information (**recommendation 4**).

8. NSL is a large multinational company and has recently had a change in ownership. It has been acquired by Marstons and that this will have no impact on the contract as they will operate as a separate business and with increased scale and resources (**recommendation 5**).

9. The delivery of the Off Street parking enforcement is a major front line activity and the effective operation of the car parks has a direct impact on the vitality of the town centres. It is recommended that the contract be monitored by a Partnership Board consisting of the senior officers from NSL and the Council and chaired by the Portfolio Holder for Safer Greener and Transport with another Executive Cabinet Member as deputy. This will be similar to other large front line contracts, for example the Biffa waste contract, and will allow strategic oversight of the Off Street enforcement operations. It is also recommended that the terms of reference of the Board and the membership be decided under a Leader Action (**recommendation 6**).

10. Motorists who have been issued a PCN have a right to challenge, details of how a challenge can be made will be available on the PCN. The reasons for acceptance of a challenge are within the Enforcement Policy attached to the report. It is best practice to keep the determination of challenges within the back office, this protects the CEOs from allegations of inconsistency and favouritism and provides consistency in the enforcement of traffic regulations. It is recommended that the authority to consider representations and challenges to PCNs be given to the Director of Neighbourhoods and officers appointed by him (**recommendation 7**).

Resource Implications:

There are no additional resources implications as a result of the decision in this report. The Council will achieve a yearly saving of £58,600 from 2017/18 as a result of this procurement exercise.

There are additional costs associated with TUPE transfer of a member of staff from NEPP to NSL. These costs are not yet fully known as NSL is assessing all options available for the new employee, for example redeployment into a new role. There will be one off pension strain costs or possibly redundancy costs. These will be borne by the Council, as agreed by Cabinet previously, a report will be presented as soon as these costs are known.

Costs associated with the charges payable to TEC, TPT and enforcement agents etc will be covered from existing service budgets.

Legal and Governance Implications:

Statutory rules governing local authority's choice of contractor for carrying out its parking services are covered by the general powers delegated to local authorities by statute. The

Council and in turn the Service Provider must comply with the statutory documents and any changes, new legislation, procedures, regulations, codes, guidance, etc, which may be introduced during the Contract Period. The current framework is:
Road Traffic Regulation Act 1984 (as amended) (RTA);

Traffic Management Act 2004 (as amended) (TMA);

Statutory Guidance – Traffic Management Act (February 2008);

Operational Guidance to Local Authorities: Parking and Enforcement, Traffic Management Act 2004 (March 2008)

Under Section 111 of the Local Government Act 1972, the Council has the power to do anything to facilitate or which is conducive or incidental to the discharge of any of their functions. (the 'anything' in this instance should be sufficient to cover the contracting of third parties to deliver local authority services)

Section 2 of the Local Government Act 2000 (2000 Act) empowers the Council to do anything which they consider is likely to achieve any one or more of the following objects:

- (a) The promotion or improvement of the economic well-being of their area;
- (b) The promotion or improvement of the social well-being of their area; and
- (c) The promotion or improvement of the environmental well-being of their area.

The power may be exercised in relation to or for the benefit of-

- (a) The whole or any part of a local authority's area; or
- (b) All or any persons resident or present in a local authority's area.

The purpose of parking orders issued under the Road Traffic Regulation Act 1984

On 11 June 2015 the Council issued an Off-Street Parking Places Order (the "Order") in exercise of its powers under s32,33 and 35 and Part IV Sch 9 of the Road Traffic Regulation Act 1984 (the "1984 Act").

The purpose of the Order is to set out the amount of fines for certain offences, where the car parks are and when they are open. The Order can also designate a particular piece of Council land as a carpark.

The Local Government Acts quoted above appear to give the Council sufficient authority to choose a third party to deliver its parking services. The only other relevant statutory rules relating to choice of third party to carry out the parking services are EU procurement rules. These have been complied with through the tendering process. The Order essentially sets out the kind of parking services the Council provides, where it will provide them and how much these services will cost users. It will be important to ensure the current Order accurately reflects the parking services to be delivered by the New Provider.

Background:

Before 1991, the police and traffic wardens were responsible for enforcement and income from fixed penalty notices (FPNs) went to the Exchequer. The police service found itself increasingly unable to resource parking enforcement and a number of forces supported the idea of another agency taking on the responsibility.

The road safety and congestion implications of this lack of enforcement were unacceptable. The Road Traffic Act 1991 made it mandatory for London boroughs and optional for other local authorities to take on the civil enforcement of non-endorsable parking contraventions.

This meant that staff, of local authority having taken over this power from the police, either employed directly or indirectly, for example a contracted service, can issue Penalty Charge Notices (PCNs) and the local authority can keep the income.

The legal framework for enforcement authorities in England comprises Part 6 of the Traffic Management Act 2004 (TMA) and the regulations to bring Part 6 into effect. The TMA and the associated regulations have given English authorities outside London many powers already available to authorities in London, giving greater consistency across the country while allowing for parking policies to suit local circumstances. The framework aims to make the system fair as well as effective.

Local authorities have long been responsible for managing all on-street and some off-street parking, whether directly or indirectly. The relevant powers are in the Road Traffic Regulation Act 1984 (RTRA). The Road Traffic Act 1991 significantly changed the way that on-street parking restrictions are enforced.

Safer, Cleaner and Greener Implications:

All the Council car parks have Park Mark accreditation by continuing to provide adequate enforcement action and maintaining all the pay and display machines in a good state of repair the Council can continue to keep the accreditation.

All car parks are regularly inspected for maintenance issues including hedges, fences and signs and lines. CEO will immediately report any exceptions to the Council officers. This will enable a quicker response to repairs in car parks.

The current ability of motorists to pay by: cash, phone and debit or credit cards will continue.

Consultation Undertaken:

The Portfolio Holder Advisory Group has kept an oversight on the delivery of this project.

NSL have been consulted on the decisions in this report.

Background Papers:

Cabinet reports on the decision to give notice of withdrawal from the Off Street part of NEPP and progress report on the procurement process.

Risk Management:

The risk of ongoing service provision post termination of arrangements with NEPP is minimised by the award of contract to NSL and the good progress being made in the mobilisation.

There remains a risk associated with the TUPE transfer of one member of staff from NEPP to the new contractor. It is not yet possible to assess the cost risk to the Council. It is intended to bring a report to Cabinet as soon as these costs are known.

There is a risk of financial loss to the Council if all the case files and data relating to the ongoing PCNs and enforcement cases is not transferred to the Council by 31 March 2017. This is being mitigated by the project team working closely with all the stakeholders to ensure that the back office case management system is able to migrate all the historical data.

Equality Analysis:

The Equality Act 2010 requires that the Public Sector Equality Duty is actively applied in decision-making. This means that the equality information provided to accompany this report is essential reading for all members involved in the consideration of this report. The equality information is provided at an Appendix to the report.