

APPENDIX A

1.0 POLICIES

1.1 Enforcement

Complementary mechanisms for increasing recycling are used in a variety of guises by other Authorities but the Officers at WLDC feel that **formal enforcement and compulsory recycling should be a last resort**. By reducing residual waste capacity and having a robust approach to excess waste, residents should be strongly encouraged to recycle without the need for formal enforcement. However, as happens in other local authorities, the triple bin scheme and alternate weekly collections will require more discipline and enforcement, and where there is an environmental health risk or a persistent reluctance to recycle, WLDC does already have the power to compel residents to dispose of their waste in an appropriate way.

1.2 Waste Minimisation

While Officers strongly support the need for recycling and composting, the first stage of the waste hierarchy to 'reduce' waste and therefore **Officers are first keen to support mechanisms for waste minimisation**. At a local level, this can be achieved through policies on bin capacity and 'no side waste.' However, Officers have taken on board feedback from numerous members of the public and recognise their own responsibilities as public representatives.

The key areas to influence are the manufacturing and retail sectors and one way of demonstrating concern could be to work with others via the Lincolnshire Waste Partnership

The new triple bin scheme will require some householders to make greater efforts to separate recyclates from other household waste if they are to have enough space in their refuse bins. Early indications suggest that the majority of householders have embraced the new scheme and the amount of waste recycled has increased significantly, with 50% of WLDC's household waste being recycled in September 2009. WLDC is expected to have an average recycling performance of 54% for 2010/11. However, environmental and financial problems caused by householders who have not engaged appropriately with the new scheme must be controlled if WLDC is to secure the longer-term success of the scheme.

This report seeks Member endorsement for the Waste and Recycling Enforcement Policy set out in section 3.0 of this report.

2.0 BACKGROUND INFORMATION

2.1 Legislation

Section 46 of the Environmental Protection Act 1990 enables the waste collection authority to specify the following (subject to the serving of a notice):

- Day of collection
- Frequency of collection
- Number, size and type of receptacles provided
- The waste streams allowed in each type of waste container.

The introduction of the Clean Neighbourhoods and Environment Act 2005 (Section 47A) enables Local Authorities to issue fixed penalty notices to an individual who is guilty of contravening the legislation. This gives the guilty person an opportunity to discharge the contravention by paying a fine, and hence avoiding court action, and possibly a larger fine. The fine level can be set by the Local Authority within the DEFRA guidelines (£60-£110 with an early payment option).

2.1.1 Environmental Issues

It is intended that the legislation be used to enforce a number of waste issues, in order to encourage residents to manage their waste in a responsible manner and use the recycling schemes available to them. Failure to ensure residents comply with Section 46 will lead to increased environmental and financial problems and an increase in the number of complaints received from the public.

Section 46 can be used to enforce the following waste issues:

2.2.1 Bins regularly left out on a Public Highway or Open Space after Collection Day

Under the section 46 notice, residents are informed of their scheduled collection day. Bins left out for excessive periods of time:

- Can cause obstruction to pedestrians.
- Are vulnerable to vandalism and theft.
- Can be accessed by traders or other households leading to contamination of the bin, or excess fly tipped waste being left.
- May cause a security breach to households where bins are used to gain access to private property.
- Can be used as catalysts for larger and more dangerous fires that can have fatal consequences.

2.2.2 Deliberate Contamination of Recycling Receptacles

If incorrect items are placed in a recycling bin there are a number of consequences, depending upon the extent of contamination and the types of waste presented:

(i) Rejected loads

Once the bin wagon load is tipped at the receiving site it is checked for contamination. If there is too much contamination in the load then the whole load may be rejected. Procedures at MRF's (Materials Recovery Facilities) are becoming more stringent nationally and it is not uncommon for whole lorry loads to be rejected because the contamination rate is too high. West Lindsey's contamination rate stood at 11.2% before the triple bin scheme took effect. The rate went up to 23% at our near neighbours East Lindsey after they introduced a similar scheme in 2007. Their contamination rate has now come down to 7% whilst recycling has increased to 58.2% and WLDC is taking advice from ELDC at this time. Composting facilities have equally tight regulations. Whilst contamination was light during the pilot, larger amounts could mean that an entire load (up to 7 tonnes at a time) has to go to landfill. This would cost the council tax payers of WLDC significant landfill costs and could mean additional fines if WLDC do not meet landfill diversion targets by 2013.

(ii) Decreased value of recyclate

Items such as nappies, concrete rubble and videotapes have been found by collection crews and Officers in blue and green bins so far. If not spotted at the picking station these items could cause extensive damage to valuable equipment and would also create down time at the MRF. The waste destined for the MRF is only allowed to be stored for a limited period of time and a 2-day shut down could lead Lincolnshire Districts having to pay additional transport and gate fees to use other MRF facilities across the country. It should also be noted that Lincolnshire County Council will shortly be negotiating a new MRF contract and a high contamination level could affect the value of WLDC materials and necessitate a higher gate fee.

(iii) Fly tipped waste

If a recycling container has excessive contaminates in it, and this is spotted by a waste collection operative, the bin will not be emptied. An enforcement policy is therefore necessary to deal with these cases in a consistent manner in order to reduce the likelihood of waste being fly-tipped, and avoid confrontation between residents and the bin crews.

2.2.3 Side Waste (additional waste presented by the side of the bin)

By moving to alternate weekly collections of residual waste and recyclable waste, some households are only able to keep their waste contained within a bin if they use both the recycling container and residual bin. It is likely that households producing side waste on a regular basis are not separating out their recyclates or have inadequate bin provision for the number of people residing at their address. By enforcing a side waste ban, WLDC will:

- Improve the environmental quality of the area by reducing litter escaping from loose sacks;
- Encourage the use of the kerbside recycling scheme and maximise WLDC's recycling performance;
- Over time, encourage waste minimisation habits amongst householders;
- Reduce the risk of injury to waste collection crews, as manual handling of loose waste will be minimised.

A side-waste ban could also be enforced using other legislation, such as Section 33 Environmental Protection Act 1990 or issuing fixed penalty fines for littering, depending on the size of the discarded waste.

West Lindsey, in common with many other Local Authorities has also introduced a "closed lid" policy. As detailed in the triple bin update report of July 2009, residents are required to present waste in their black wheeled bin with the lid closed. This is important as it limits the amount of waste residents can dispose of and encourages them to recycle.

Also by shutting the lid odours will be contained, flies are less likely to enter the bin and there will be less damage caused to lids during the emptying cycle of the collection vehicle.

Additional waste outside of the wheeled bin (side waste) will not be collected, unless it is presented in a pre-paid WLDC blue sack. A maximum of 2 can be presented per resident per fortnight so that people cannot buy their way out of their recycling responsibilities

2.2.4 Ban on Garden Waste in the Residual Bin (where a household has been offered a kerbside collection of garden waste)

WLDC has offered the majority of households with gardens a free kerbside collection of garden waste. Some residents have declined the scheme as they produce little garden waste due to home composting, or would prefer to take their waste to the household waste recycling centres. Some residents have declined the scheme, as they do not wish to have the additional bin taking up space on their property.

By enforcing a ban on garden waste from being presented in the residual bin, WLDC will:

- Protect the environment and avoid landfill fines: garden waste is biodegradable, and as such, garden waste ending up in landfill contributes to climate change may expose WLDC to heavy fines from the Government.(Up to £150 per tonne);
- Improve recycling performance through use of the kerbside scheme;
- Encourage waste minimisation through home composting.

It is recommended that this ban is enforced vigorously in all areas of the District participating in the triple bin scheme.

2.2.5 Ban on Recyclable Items being placed in the Residual Bin (where a household has been placed on the kerbside recycling service)

Some Councils have found that banning paper and packaging recyclables in the residual bin has lead to an increase in recycling across the district. Under a Section 46 notice, it is possible to pursue residents who put recyclable materials in their residual bin. Whilst WLDC have endeavoured to make recycling as easy as possible, Officers do recognise that the scheme requires a degree of understanding to be able to follow it with 100% accuracy. Therefore, officers recommend that households should not be issued with Fixed Penalty Notices if some recyclable items are found in their residual waste. Officers believe that promotional activities and education and awareness are more suitable at this stage. The collection crews and recycling staff have been issued with “polite notice” recycling stickers to raise awareness of households not participating in the recycling scheme.

If there is strong evidence to suggest that a resident makes little or no effort to recycle and there are no reasonable grounds for failing to comply with Section 46 notice, Officers may ask that this policy be reviewed at a later date.

2.3 Education and Awareness

Any use of the legislation will be used in conjunction with and following awareness raising activities. Officers recognise that behavioural change is necessary amongst many residents in order to comply with the legislation, and that information, assistance and time is required to encourage residents to change their habits.

The council has allocated an additional £130,000 in 2009/10 to raise awareness of the triple bin collection scheme and facilitate its introduction. The transition has been aided by the appointment of a temporary Recycling Advisor – a position that has now been made full time – and by assistance from recycling staff at neighbouring Authorities. This assistance has initially been without cost to WLDC and is an example of successful partnership working. It is recognised however, that other Authorities face equal resource constraints and some money remains in the budget to allow Officers to remain with WLDC on a part time basis. Agreement has been reached in principal for monitoring and educational assistance to last until April 2010.

Funds for the triple bin scheme were secured from the Waste Resource Action Programme (WRAP) and a request for more assistance to maintain and enhance the awareness raising programme will be submitted shortly. A number of education and awareness initiatives have taken place pre-and post implementation of the triple bin scheme. These have been extensively listed in previous reports to the Communities and Waste Committee and in WLDC's Recycling Communications Plan.

3.0 HOUSEHOLD WASTE AND RECYCLING ENFORCEMENT POLICY

3.1 Enforcement Warnings

A set of advice / warning stickers have been designed that can be placed on a householder's waste or recycling container. These can be issued by Waste Collection Operatives and supervisors or members of the recycling team.

Please note: The stickers are a slight variation on the bin hangers that were described to members in the July 2009 update report. The sticker system was seen to be easier to operate and more likely to engage the collection crews (whose help we will depend on). The set of 4 stickers were produced after consultation with Operational Staff and remind residents how to present their bin correctly for collection. The sticker will clearly identify the reason if a bin has not been emptied.

1. (Yellow) refuse rejection advice sticker (side waste / refuse not collected)
2. (Blue) garden waste contamination advice sticker (garden waste not collected)
3. (Red) recycling contamination advice sticker (recycling not collected)
4. (Green) recycling present in refuse polite notice sticker (bin emptied)

It should be noted that these stickers have been produced in relatively small quantities to enable Officers to assess their efficacy, their usage by collection operatives and the public reaction to them. They may be refined based on feedback, but it is anticipated that their usage will generate the following enforcement warnings.

3.1.1 First Warning

Once a sticker has been issued to a bin, the officer or crew notes the address where the bin belongs and the reason for rejection. If the specific address is not known (e.g. the bin is at a collection point and does not display a house number), then the location is noted.

The information is then recorded on a log form and is passed to the Waste Technical Support team who will log the first warning in FLARE. Information is also passed to customer service operatives so that they are aware of the reasons for rejections. An advice letter will be sent and residents will be invited to request a visit or waste audit from a recycling advisor. The approach will be based on educational and awareness raising and we will offer help to any resident who is genuinely struggling with the scheme in any way.

3.1.2 Second Warning

If a further contamination or rejection sticker is issued at the same address then it will be noted by the technical support team when it is logged in FLARE and obtain the residents details from Council Tax. The case will be passed on to WLDC's Recycling Advisory Officer who will issue a mis-presentation letter within 5 working days to the household where the bin belongs, or the group of households that use that designated collection point. The letter highlights the following information:

- Number, size and type of receptacles provided;
- The waste streams allowed in each type of waste container (WLDC Guidance leaflet attached to the letter).

This letter shall make reference to the previous letter, and will also invite the resident to request a visit or waste audit from a Recycling Officer, who can offer advice if householders are genuinely struggling to use the scheme. If a resident requests a visit, the Recycling Advisor will record all details of the visit in FLARE.

The letter shall also make reference to the sticker previously placed on the bin, and will include a warning about breaches of Section 46 of the EPA 1990, and further possible enforcement action.

3.1.3 Third Warning

If a further contamination or rejection sticker is issued at the same address then the Recycling Advisory Officer shall arrange to visit the offending household in an attempt to offer advice and guidance to that household.

The officer shall record the visit in a journal or "pocket book" and attempt to acquire a signature of understanding from the householder(s). If the officer is unable to make contact with the householder(s), a final written warning will be sent to the household, giving the householder(s) an opportunity to contact the Council. This third warning letter shall also make reference to the previous warning letters.

3.1.3 Fourth Warning: Serving a Section 46 Notice

If a further contamination or rejection sticker is placed on the same bin then the information is passed on to the Waste Technical support team who will log this warning in FLARE (Section 46 Required). An Officer authorised by the Director of Service will visit the property, and make a photographic record of the offence, and record the visit in a journal or "pocket book". An authorised Officer will serve a section 46 notice on the all responsible adults in the household. Residents must comply with that notice, or risk being issued with a fixed penalty notice for non-compliance. Any notice issued remains active as long as the householder/resident remains at that address unless otherwise stated on the notice.

3.2 Issuing a Fixed Penalty Fine (FPN)

An FPN may only be issued after a resident fails to comply with the section 46 notice and after the following action has been taken:

- The resident has received a section 46 Notice (to be hand delivered by the Recycling Advisory Officer and recorded in the Officer's pocket book);
- The resident has received at least one visit from a Council officer to advise the resident on how to use the recycling scheme and the visit shall be recorded in the officer's Pocket Book and on a "Recycling Officers Visit Form". A sample "Recycling Officers" Visit Form is appended to this report.
- Physical **and** photographic evidence must be secured by the Authorised Officer prior to issuing of a FPN. This evidence will need to be appropriately stored and exchanged and supported by appropriate witness statements

Officers have the discretion to issue more warnings before passing the case file onto the Recycling Team Leader in order to generate a Fixed Penalty Notice, depending on the amount of case file evidence and extent of the contravention. The decision to issue a fixed penalty notice will be made by the Recycling Team leader and will be based on the detail and quality of the case file presented. At this stage, there must be a full review and it must be established that sufficient evidence exists to commence prosecution proceedings. This is because full prosecution will result if an FPN is either not paid or not appealed against.

This FPN will be issued by mail if the name of the offender is known, or issued in person to the mortgage or rent payer of the property (or to whom the Section 46 Notice was served). The Recycling Team will be responsible for issuing and recording FPN's and supplying completed case files to WLDC's legal section. Theoretically, residents who have had two or more fixed penalties issued to them for Section 46 contraventions should be prosecuted for any further contraventions of Section 46, as opposed to being issued with any further Fixed Penalty Notices (in line with DEFRA Guidance).

3.3 Fine Level

The Fixed Penalty Fine will be set at £100 with an early payment option of £60 if the payment is made within 7 days. This is currently DEFRA's recommended default fine level and is consistent with other Local Authorities who have started to use this legislation, for example East Lindsey District Council. It is anticipated that this fine level will be reviewed on a regular basis in line with government recommendations. A reduced fine level for early payments will help to avoid the case going to appeal should a resident choose to challenge the Fixed Penalty Fine which could result in extra payments for a resident.

3.4 Revenue generated through the payment of Section 46 FPN's

DEFRA instruct Local Authorities to use any revenue from the serving of FPN's to support further enforcement activity and education / awareness raising.

It is anticipated that the amount of revenue gained through Section 46 Enforcement will not be very high, as this policy promotes the education of residents through awareness raising and warnings, and FPN's will only be served as a last resort. However, all revenue acquired will contribute to the additional use of participation officers, enforcement officers and the additional administration requirements through the maintenance of Section 46 case files.

3.5 Public Right of Appeal

If a member of the public contacts the Council due to any warning received, and as a result of further investigation it is found that the resident was not at fault for the contravention, then the record of that warning will be deleted from a case file.

As with all fixed penalty fines, the householder has a right to appeal against the issuing of a fine. The appeal must be received in writing within the given time period laid out on the FPN ticket. Appeals will be decided by the Director of Neighbourhood Services in consultation with the Chair of the Community and Waste Committee in appropriate circumstances.

3.6 Section 46 Contraventions

The following contraventions apply to all Section 46 notices. The wording of notices will vary according to the offence perpetrated but stipulations include:

- Bins left out on a public highway or open space after collection day;
- Contamination of recycling / garden waste receptacles;
- Ban on garden waste in the residual bin (where a household has been offered a free kerbside collection of garden waste);
- Ban on waste being placed by the side of the bin for collection or placed in the bin in such a manner as to prevent the lid from closing, (all waste must be contained within the bin) with the exception of any "extra collections" authorised by the Council due to holiday periods, special events / weather or industrial action by waste collectors.

No action beyond education and awareness raising will be taken if recyclable items are being placed in the residual bin. However, if a particular household has been offered kerbside recycling services and there is evidence that the household is making no or little effort to recycle, and causing environmental problems as a result, Officers will return to members and seek guidance as to the options that are available to them.

3.7 Demonstration of Collection Reliability

Before a case file is considered by WLDC's Legal Services team / Director of Neighbourhoods and Health, the Operational Services Department will have to demonstrate that the waste collection service to the property under investigation was receiving a regular and reliable service for the duration of the case file period. This information will be retrieved from the FLARE system, where missed collections are recorded.

4.0 ISSUES FOR FUTURE CONSIDERATION

- 4.1 This policy is intended to supplement the policies presented in the update report of July 2009 support the implementation of the new triple bin system and alternate weekly waste collections. There are a number of waste related environmental issues not covered with this policy, such as commercial collections and trade waste abuse, and the introduction of a free garden waste collection service to Gainsborough's South West Ward. These issues will be subject to a further report scheduled to be presented at this Committee's next meeting.

5.0 FINANCIAL AND STAFFING IMPLICATIONS

- 5.1 Financial resources for the awareness raising activities mentioned in this report can be met through existing budgets in this financial year. A Recycling Advisory Officer has been hired on a permanent basis in order to assist with education and enforcement activity. Provision for extra staffing resources exists until the end of this financial year. Subject to these policies being ratified, the level of staffing required to support the scheme will be reviewed, and a bid will be made to secure further external funding for Officers.

6.0 EQUAL OPPORTUNITIES IMPLICATIONS

- 6.1 Instructional Information issued to residents is available in other languages, large print and Braille. The circumstances of individual households will be taken into consideration before a fixed penalty fine is issued. If mental health, disability or other factors make compliance to the scheme difficult, then officers will make every effort to make the scheme accessible to individuals brought to our attention.

Any direct surveillance work carried out as a result of enforcement activity will be subject to approved RIPA applications, in line with WLDC Council procedures.