

BRECKLAND DISTRICT COUNCIL

Report of: Lynda Turner, Executive Member for Localism, Community and Environmental Services

To: Cabinet 20 November 2012

(Author: Dale Robinson, Interim Environmental Services Manager)

Subject: Review of Policy for Charging for the Provision of Wheeled bins to New Properties

Purpose: To advise Members of the result of the review of the Council's wheeled bin provision charging policy and seek Members' approval for a revised policy.

Recommendation(s): That:

- 1.1. A delivery and administration charge per property is levied in accordance with Table 1 paragraph 2.2.1 (excluding VAT). The charge being irrespective of the number or size of bins delivered at any one time.
- 1.2. This charge covers the costs for the administration, procurement, storage, cleaning (if necessary) and delivery of the bins. The bins themselves are provided free of charge to the occupier of the property for their use but remain in the ownership of the Authority and as such must remain at the property when occupiers move house.
- 1.3. Collections will only be made from Breckland District Council issued and/or approved wheeled bins.
- 1.4. To qualify for a free delivery, occupiers reporting a missing bin and requesting a replacement are required to make a written application together with signed declaration, prior to the bins being delivered, that they have undertaken all reasonable enquiries to locate their bin (s) and the bin is in fact missing/lost or stolen. Alternatively they may report the bin as stolen to the Police and obtain a crime number.
- 1.5. Residents who refuse to pay the delivery and administration charge do not receive the Council's bin provision service and in such cases the Council will invoke the powers under Section 46 (3) of the Environmental Protection Act 1990 by service of notice on the occupier.
- 1.6. For housing developments of five or more dwellings the Council, where the developer agrees, enters into a section 106 agreement for the payment and provision of bins to the development in line with the general charging policy.
- 1.7. Where a developer refuses to enter into a section 106 agreement for the payment and provision of bins then the charge is levied on the new occupiers of the development in question.

1. BACKGROUND

- 1.1. The Cabinet on the 8th May 2012 received a report seeking Member approval to introduce a policy to charge for the provision of wheeled bins (green and black for household /recycling waste only) for new properties. This was ratified by Council and introduced on the 1st June 2012.
- 1.2. At that time charges to replace damaged or stolen bins were not introduced but were considered to be an option for future discussion.
- 1.3. The driver for the new policy was to recover existing costs of new bin provision thereby producing budget savings estimated at £30,000 per annum (full year effect). The report majored on the use of Section 46 of the Environmental Protection Act 1990 to underpin the policy and laid out a schedule of fees for the provision.
- 1.4. The expressed aim was to recover the costs of the provision from developers but recognised that if the developer refused to pay then the recovery would have to be made from the new residents.
- 1.5. Since its introduction 4 developers have been invoiced for 96 properties and 33 residents have paid individually resulting in approximately £7,000 received to date. The majority of the individual residents invoiced have accepted the charge and some have requested receipts to presumably claim the money back from the seller of the property.
- 1.6. However a number of developers have come together to challenge the lawfulness of the policy. Following comments received, Officers had begun to review the policy and on the 10th September 2012 the policy was suspended pending the outcome.
- 1.7. Other compensatory efficiency savings in 2012/13 have been found to accommodate the anticipated savings shortfall.

2. CONSIDERATIONS

2.1. Strategic Policy Drivers

- 2.1.1. In introducing a policy of this nature it is important to ensure that the Council retains control of its collection systems.
- 2.1.2. As a waste minimisation and recycling measure and to ensure that the numbers of collections are controlled, it is necessary for the Council to (a) control the number of bins residents can present and (b) to ensure any bins presented match the Council's collection infrastructure. This is best achieved by retaining control of the number of bins issued and their ownership.
- 2.1.3. Although the principle driver for the policy is cost recovery, producing budgetary savings, charging policies can also be used as a fiscal driver to encourage reductions in residual waste presentation and increased recycling.

2.1.4. The Council's recycling rate through the kerbside collection scheme has been reducing. The trend over the last three years has been for the authority to collect more residual waste and less recyclable waste. Whilst there are multi-factorial reasons for the reduction in recycling, from 28% in 2009/10 to a predicted level of 23% this financial year, the Council can use this policy to help to encourage residents to only request larger residual waste bins where they have an absolute need and help to ensure residents are using the existing recycling provision to maximum effect.

2.1.5. The existing policy focussing on new properties only is unlikely to produce the level of cost recovery originally envisaged i.e. £30,000 p.a.

2.1.6. Therefore the strategic policy drivers for this revised policy can be seen as financial and environmental.

2.2. Bin Deliveries

2.2.1. A breakdown of deliveries made over the past three years is contained in table 1

Table 1: Number of Bin Deliveries by Type

Delivery Type	Average deliveries per year	Proposed Charge*	Estimated Income
Stolen/Missing bin (replacement bin form to be completed or crime number received)	310	£0	£0
New properties	404	£62	£25,048
Historic upgrade – (120lt bins)	74	£0	£0
Bin deliveries/exchanges at Breckland DC request	24	£0	£0
Recycling bin upgrade 240lt to 360lt	124	£0	£0
Residual bin upgrade 240lt to 360lt	114	£62	£7,068
Replacement due to damage by Breckland DC	79	£0	£0
Replacement due to wear and tear	N/a	£0	£0
Recycling bin downgrade	20	£62	£1,240
Residual bin downgrade	25	£0	£0
		Estimated Total	£33,356

*Exclusive of VAT

2.2.2. The numbers of replacement/missing bin deliveries; recycling and residual bin upgrades and downgrade have been reasonably stable over the three years. Deliveries to new properties fluctuate, whilst historic upgrades and damaged bins deliveries are showing a downward trend.

2.3. General Powers

2.3.1. The report written in May 2012 highlighted the use of Section 46 of the Environmental Protection Act 1990 and has de facto been construed as the underlying legal basis for the policy. As a result, the question has

been raised as to the lawfulness of the existing suspended policy. Our legal advice is that the policy is lawful but the use of section 46 may not be considered conducive to its effective delivery.

- 2.3.2. In order to retain control of the service it is vital that the Council retains ownership of the bins delivered. Accordingly the legal power used and the make up of the charges levied should support this aim.
- 2.3.3. Other Council's, who have introduced similar policies, have recognised this difficulty and have used their general powers of competency. Legal opinion obtained is that the Council has the power available to support the suggested policy under the following statutes. Section 1 of the Localism Act 2011- General power of competence; section 111 Local Government Act 1972 – Subsidiary powers of local authorities and Section 93 Local Government Act 2003 – Power to charge for discretionary services.
- 2.3.4. In order to satisfy these powers the policy must take into account that the power to charge has to be with the householders/ person receiving the service agreement.
- 2.3.5. As a result of this, it is proposed that residents who refuse to pay the charge would not receive the Council's bin provision service. However, the Council is under a legal duty to arrange for the collection of household waste and therefore in such cases would need to invoke the powers available to it under Section 46 of the Environmental Protection Act 1990 by service of notice on the occupier. Experience here and elsewhere is that the exercise of this power is hardly ever required.

2.4. Planning Policy – New Developments

- 2.4.1. The general powers of competence outlined above can also be used to provide the Council with the ability to include the provision of bins within a section 106 agreement.
- 2.4.2. The recently introduced National Planning Policy Framework brought in tighter restrictions surrounding the planning tests that have to be passed. As a result of this, it is unlikely that such provision can be enforced on developers. However, they can be included in section 106's on agreement. As this can only be achieved by agreement it would not be appropriate, nor probably lawful, to back this by conditioning the development.
- 2.4.3. It is suggested that as part of the S106 agreement, in conjunction and in agreement with the developer, the Council looks to provide an improved customer service. In this regard, developers would be looked to place orders through Breckland DC and via the Council's procurement processes and agree a delivery strategy to suit the nature and size of the development e.g. a) bins delivered to the each individual property by the Council on notification of occupancy by the developer or b) bulk delivery and storage on site with the developer placing the bin at the property with a welcome pack the day before the new owner takes possession of the property.

- 2.4.4. The Community Infrastructure Levy (CIL) relates to the provision of major infrastructure and legal opinion is that bin provision of this nature is not within their scope.
- 2.4.5. Planning Policy CP9 provides the policy hook to allow for negotiation within the Section 106 process for the inclusion of bin provision. This can be, subject to internal procedures being agreed, implemented almost immediately. However in so doing it would be wise not only to consider the costs of drawing up an agreement but also the size of the development.
- 2.4.6. It is therefore suggested that this part of the policy is only applied to developments of 5 or more dwellings. This does mean however that there would be no mechanism to agree provision for small developments and/or single dwelling developments resulting on the subsequent occupiers coming under the general bin delivery and administration charge policy.

2.5.A Revised Policy

2.5.1. The revised policy suggested below is therefore designed to ensure:

- the Council retains ownership of the wheeled bins provided
- the Council retains a measure of control on the number and type of wheeled bin supplied to match its collection infrastructure
- There is no disincentive to residents wishing to recycle more
- Residents are discouraged from disposing of more residual waste
- That the charge meets the Authorities reasonable costs in the provision of wheeled bins
- Residents are not disadvantaged because of operational decisions and/or historic bin provision by the Council
- The charge is only levied once for each new property
- That developer's agreement is obtained prior to commencement of housing development for payment of provision of bins to their developments via the section 106 process and where this is not obtained the charge is levied on the new occupiers of the development in question.

2.5.2. It is therefore proposed that:

- 2.5.2.1. A delivery and administration charge per property is levied in accordance with Table 1 paragraph 2.2.1 (excluding VAT). The charge being irrespective of the number or size of bins delivered at any one time.
- 2.5.2.2. This charge covers the costs for the administration, procurement, storage, cleaning (if necessary) and delivery of the bins. The bins themselves are provided free of charge to the occupier of the property for their use but remain in the ownership of the Authority and as such must remain at the property when occupiers move house.
- 2.5.2.3. Collections will only be made from Breckland District Council issued and/or approved wheeled bins.

- 2.5.2.4. To qualify for a free delivery, occupiers reporting a missing bin and requesting a replacement are required to make a written application together with signed declaration, prior to the bins being delivered, that they have undertaken all reasonable enquiries to locate their bin (s) and the bin is in fact missing/lost or stolen. Alternatively they may report the bin as stolen to the Police and obtain a crime number.
- 2.5.2.5. Residents who refuse to pay the delivery and administration charge do not receive the Council's bin provision service and in such cases the Council will invoke the powers under Section 46 (3) of the Environmental Protection Act 1990 by service of notice on the occupier.
- 2.5.2.6. For housing developments of five or more dwellings the Council, where the developer agrees, enters into a section 106 agreement for the payment and provision of bins to the development in line with the general charging policy.
- 2.5.2.7. Where a developer refuses to enter into an agreement described in 2.5.2.6 above then the charge is levied on the new occupiers of the development in question.

2.6. Implementation Issues

- 2.6.1. To allow for internal administration and consultation processes to be put in place, including with our planning colleagues, it is suggested that this policy is commenced 2 months after the decision to proceed.
- 2.6.2. Customer service is a key priority and it is important that customers requesting the service have the ability to fulfil their request in one call. This includes payment and ordering and therefore we will be looking to implement appropriate procedures within the Contact Centre and SERCO to ensure this is achieved.

3. OPTIONS

- 3.1. To continue with the existing suspended policy
- 3.2. To vary the proposed revised policy
- 3.3. To agree with the policy as set out in this report.

4. REASONS FOR RECOMMENDATION(S)

- 4.1. The revised policy would enable cost recovery and therefore budgetary savings. In addition the policy is designed to ensure the numbers of collections are controlled; bins presented match the Council's collection infrastructure; and it provides a fiscal driver to encourage reductions in residual waste presentation and increased recycling.

5. EXPECTED BENEFITS AND TIMELINES

- 5.1. Revenue savings and environmental improvements are anticipated as detailed in the relevant sections.
- 5.2. It is suggested that the revised policy is operational two months after the decision being made.

6. IMPLICATIONS

6.1. Carbon Footprint & Environmental Issues

- 6.1.1. Improvements in rates of recycling and reductions in residual waste to landfill have been demonstrated to produce carbon dioxide equivalent reductions.

6.2. Constitution & Legal

- 6.2.1. The legal framework underpinning the policy has been described within the body of the report.
- 6.2.2. This is a key decision and has been published in the key decision plan. It has been confirmed that Cabinet has the power to settle the policy.

6.3. Contracts

- 6.3.1. There are no contract implications anticipated as a result of this policy review.

6.4. Crime and Disorder

- 6.4.1. There are no anticipated impacts on crime and disorder expected as a result of this policy review.

6.5. Equality and Diversity & Human Rights

- 6.5.1. There are a no equality or diversity implications anticipated as a result of this policy review.

6.6. Financial

- 6.6.1. A proforma B is attached. It is anticipated that the revised policy will recover approximately £33,000 in a full year.

6.7. Risk Management

- 6.7.1. There is a risk that:
 - 6.7.1.1. The anticipated levels of cost recovery are not achieved as result of the expected number of deliveries not materialising.
 - 6.7.1.2. That developers do not agree to enter into section 106 agreements for development of 5 or more dwellings, pushing the recovery of the costs onto individual new occupiers.

6.7.1.3. That occupiers served with a notice under section 46 (3) appeal against the notice to the magistrates courts.

6.8. Staffing

6.8.1. No staffing implications arise thought this report.

6.9. Stakeholders / Consultation

6.9.1. This report has been presented in draft form to a selection of developers operating in the area and they have commented as follows:
to be added when comments received (will be reported verbally)

7. WARDS/COMMUNITIES AFFECTED

7.1. The revised policy would affect all wards within Breckland.

Background papers:- Decision of Cabinet published on 10th May 2012
 Report to Cabinet – Policy for the Provision of Wheeled
 bins for new properties dated 8th May 2012

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Key Decision:

Yes

Appendices attached to this report:

Appendix A – proforma B