

## ABERDEEN CITY COUNCIL

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<b>COMMITTEE</b>	<b>Housing and Environment</b>
<b>DATE</b>	<b>11<sup>th</sup> March 2014</b>
<b>DIRECTOR</b>	<b>Pete Leonard</b>
<b>TITLE OF REPORT</b>	<b>Installation of food waste and recycling facilities on private land</b>
<b>REPORT NUMBER:</b>	<b>H&amp;E/14/024</b>

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### **1. PURPOSE OF REPORT**

The purpose of this report is to establish the legal positioning of Aberdeen City Council in relation to installation of food waste and recycling facilities on land not owned or managed by us.

### **2. RECOMMENDATION**

That the Housing and Environment committee notes the report and approves the use, as a last resort, of legislative notices to ensure all residents are treated equally in the provision of food waste collection and recycling services.

### **3. FINANCIAL IMPLICATIONS**

The only financial implications arising from this could be costs associated with legal matters should an occupier (land owner) dispute enforced provision of food waste or recycling facilities. Any such costs will be managed within existing budgets.

The cost to procure and install the food waste housing(s) is covered by the Zero Waste Scotland funding received to roll out food waste collections city wide. This amounts to £1.36million covering a period until the end of 2015; when food waste collections should be provided to all householders. All food waste housing and associated ground works will be managed and paid for by budgets within Waste Services, as will expansion of recycling facilities.

### **4. OTHER IMPLICATIONS**

A network of communal food waste collection and recycling facilities will enable Aberdeen City Council to meet its statutory obligation to provide recycling and food waste collections to all households.

Provision of this service will enable Aberdeen city to work towards a national ambition of zero waste to landfill. The facilities contribute toward improving

recycling performance whilst diverting a resource from landfill. All uncontaminated material collected will be converted into compost; helping support a closed loop economy.

There is a risk of Aberdeen City Council facing a legal challenge if we install such facilities on land not owned by us and without the permission of the occupier.

The work undertaken to identify the locations of food waste and recycling facilities will be conducted by members of Waste Services.

No Health and Safety or policy implications are envisaged from this report.

## **5. BACKGROUND/MAIN ISSUES**

It is imperative that Aberdeen City Council is clear in how it implements the Waste (Scotland) Regulations 2012; with particular emphasis on the requirements of food waste collection and recycling provision to all residents across the city.

To date, residents are offered food waste collections through brown bin mixed food and garden waste collections or through communal on-street facilities. Recycling collections are provided through either kerbside collections, communal on-street collections of specific recycling streams or through the network of bring facilities. Over the next few years such services will be expanded city-wide covering all multi-occupancy dwellings. This requires development of a network of communal bring facilities which are located on-street as near to residents and existing refuse/recycling facilities as possible. As part of the roll out, provision will need to be made to courtyard developments and social housing; many of which are owned or managed by private landowners, factors or associations.

There will need to be agreement between Aberdeen City Council and the private landowners, factors or associations to ensure facilities are provided to residents to enable them to recycle different waste types. Instances have arisen in the past in relation to provision of recycling facilities where the landowner or representative has not agreed to the installation of additional containers; in these situations Aberdeen City Council has not provided the recycling service.

The reasons cited by landowners include the lack of room within the site, the potential impact on other uses within the site (e.g. car parking or amenity planting) and concerns about litter and vermin. Aberdeen City Council now has a statutory obligation to provide these services and so the existing 'soft touch' approach is no longer viable. As a result, there is now a need to provide a position statement on how to proceed in these situations.

### **Proposed Approach**

1. First and foremost measures will be made to arrange installation of communal recycling facilities in a cooperative manner.
2. Experience shows that this will lead to a successful outcome in many instances, however, if this process is not successful, the Waste and Recycling Service will advise landowners that the next step will be the use of its statutory powers under Section 46 of the Environmental Protection Act 1990. This will involve serving a notice on the occupier specifying the placing and type of containers for the purpose of facilitating the emptying of them.
3. Should agreement still not be forthcoming, Aberdeen City Council will serve notice to the landowner, factor or association (deemed to be the occupier of the land). This will state the legal position of Aberdeen City Council and our requirement to enforce provision. A copy of the enforcement notice is detailed within Appendix One. This was drafted on advice from the legal department.
4. In relation to food waste Aberdeen City Council's preferred form of provision is to install a closed vermin and vandal proof housing containing a 140 litre wheeled bin as congruent with existing on-street services. This housing is required to be secured to the ground meaning some minor impact on the fabric of the property. Landowners may object to this. In this instance, the Council would make provision by means of a 140 litre wheeled container for food waste. Due to the insecure nature of this option vermin, odour and vandalism issues would be likely; this will be explained to the landowner and it will be made clear that it is their responsibility to manage the consequences of this decision. Should a landowner alter their mind once provision has been made and seek a secure housing; a charge may be applied for this by Aberdeen City Council.

As stated above, serving a legal notice is considered a last resort. This is a change to current practice and it is therefore important to ensure such measures are understood and approved by members.

Legal Services advise that the designation of landowners as occupiers may be open to challenge. The landowners may argue that only the tenants of the building can be deemed the occupiers. Waste Management have advised that for policy reasons they do not wish notices to be served on individual tenants. This is because the Council is providing a service to the tenants under the legislation.

Serving notices on the landowners has been suggested as a means of breaking the stalemate. However, if a Court found that the Council should not have served these notices on the landowners then there would be an argument that the Council has acted outwith the scope of the legislation.

As advised by the legal department any such notice will be provided in writing and be sent via recorded delivery. No other form of communications will suffice as these would not be considered usable as evidence within court. Prior to any notice being issued further advice will be sought from the legal department with confirmation of any maximum fines that maybe applied.

## **6. IMPACT**

Corporate - The development of alternatives to landfill and enhanced recycling will help Aberdeen move to become a Zero Waste City - a key action within the Smarter Environment – Natural Resources Strategic Priority of the Five Year Business Plan.

Public - The recycling facilities to be installed will expedite a significant expansion of recycling services to all Aberdeen residents. This will ensure an end to the current iniquitous system whereby householders living in individual houses, largely in suburban areas, receive kerbside recycling and organic waste services and those in multi-occupancy properties only have general waste collections. Any occupiers who refuse permission to install such facilities will adversely impact on residents' ability to utilise these statutory services. Consequences could include:

- Provision of no recycling facilities to some residents and non-compliance with statutory obligations;
- Facilities being placed some distance away from the property that discourages use by the resident;
- An impact on waste being diverted from landfill; and
- Not attaining recycling performance targets.

Any development of waste infrastructure attracts interest from local communities, often centred on nuisance issues such as noise, odour, vermin and traffic. These issues have been addressed in previous papers relating to the implementation of the Waste (Scotland) Regulations 2012.

## **7. MANAGEMENT OF RISK**

In order to manage the risk; every attempt will be made to consult with private landowners who service courtyard and social housing. It is hoped that recycling locations can be mutually agreed between both parties through open dialogue and consultation prior to installation.

Should occupiers refuse permission to allow installation of these facilities on their property then alternatives will be sought and used if applicable. After which a letter enforcing our legal position will be provided to the occupier.

## **8. BACKGROUND PAPERS**

Please refer to the following:

- Waste Strategy Review - Equality and Human Rights Impact Assessment August 2013.
- Waste Strategy – Engaging with Stakeholders April 2010.

## **9. REPORT AUTHOR DETAILS**

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## APPENDIX ONE – EXAMPLE ENFORCEMENT NOTICE

Dear

### **Environmental Protection Act 1990**

### **Notice for Waste Receptacles**

**[address of property] “Property”**

Under Section 46 of the Environmental Protection Scotland Act 1990, a waste collection authority is authorised to issue a notice to specify the kind and number of receptacles to be used for waste collection, including the receptacle required for the collection of waste to be recycled.

Section 46(4) authorises the waste collection authority to specify the size, construction and maintenance of the receptacles together with the placing of the receptacles for the purpose of facilitating the emptying of them, and access to the receptacles for that purpose.

We Aberdeen City Council, as the waste collection authority for the Property, hereby issue this notice requiring that a waste recycling receptacle be placed at the Property on the location [*delineated/circled red*] on the attached plan.

The waste recycling receptacle shall be the size and construction specified on the attached specification. Aberdeen City Council will supply and install the recyclable waste receptacle [free of charge].

[Once installed, Aberdeen City Council will be responsible for maintaining the recyclable waste receptacle to a reasonable standard. Collections of the recycling will take place [*details of collection*].]

As you are in control of the common refuse area for the Property, this notice is served on you as the occupier of the Property.

If you do not allow the specified waste recycling receptacle to be located as shown on the plan, you may be liable for a fine not exceeding [£1000].

This notice does not require you, other occupiers, residents or tenants of the Property to make use of the food waste receptacle.

[Aberdeen City Council reserves the right to issue new notices under the Environmental Protection Act 1990 which alter any of the provisions contained within this notice.]

This notice may be appealed under section 46 of the Environmental Protection Scotland Act 1990 by way of summary application to the Sheriff Court on the ground that:

- (a) the requirement is unreasonable; or
- (b) the receptacles in which household waste is placed for collection from the premises are adequate.

The period allowed for making an appeal is 21 days from the day this notice was served on you.