

EXTRAORDINARY MEETING OF COUNCIL
27th JULY 2021

Report of the Director of Community & Environmental Services

WASTE & RECYCLING SERVICES

PURPOSE OF REPORT

The report seeks Council's approval to provide temporary support to the waste and recycling contract by contributing towards an uplift in HGV driver rates of pay, the leasing of an additional garden waste collection vehicle and consideration of a temporary suspension of the garden waste service.

RECOMMENDATIONS

- (1) That Council agree to offer a financial contribution of up to 50% for the increase in hourly rates of pay for HGV drivers, until 31 March 2022
- (2) That Council agree to the cost of leasing an additional collection vehicle to help cater to the increasing number of subscriptions to the garden waste collection service, until 31 March 2022
- (3) That Council agree to the temporary suspension of the garden waste service for a four week period, in order for Serco to redirect resources to clear the back log of recycling, food and general waste
- (4) That Council agree to the retention and use of the contract's Key Performance Indicators, but not apply financial penalties where under performance is outside of Serco's control
- (1) If Recommendation 4 is approved, that delegated authority be granted to the Director of Community & Environmental Services, in consultation with Legal Service Manager, to determine if any KPI penalties should be waived for a period of 3 months
- (2) That, subject to the outcome of the recommendations above, the revised revenue budget for 2021/22 be updated to reflect the full cost implications, to be financed from the Covid Funding Reserve

WARDS AFFECTED

All Wards

STRATEGIC LINK

The Waste Management contract contributes towards the District Council's priority of keeping the Derbyshire Dales clean, green and safe. It must also balance affordability with quality in reflecting the District Council's Medium Term Financial Strategy.

1 BACKGROUND

- 1.1 The waste and recycling service has suffered disruption throughout this calendar year, with the situation deteriorating further in recent months. The disruption is a direct result of the national shortage of HGV drivers and the impact of COVID-19.
- 1.2 The Road Haulage Association (RHA) estimates that there are currently around 100,000 HGV driver vacancies in U.K. and that the industry is now at 'crisis point'. In a recent letter to the Prime Minister (**Appendix One**), the RHA say the shortage of drivers is due to several factors, including:
- **COVID** - Many drivers returned to their country of origin during extended periods of lockdown and restricted travel. The vast majority have not yet returned.
 - **EU exit** - The uncertainty of Brexit and future rights to live and work in the UK forced many drivers to do the same. Again, the vast majority have not returned nor are they expected to.
 - **Retiring drivers** - The average age of an HGV driver is 55, with less than 1% under the age of 25. Prolonged periods of inactivity have resulted in much of this aging workforce retiring early or finding employment in other, less demanding, sectors.
 - **Test shortage** - During a typical year, 72,000 candidates train to become HGV drivers with 40,000 succeeding. The complete shutdown of vocational driving tests throughout much of last year resulted in the loss of over 30,000 test slots and only 15,000 were able to complete training successfully - a drop of 25,000 from the previous year.
 - **IR35** - The introduction of IR35 has resulted in agency labour withdrawing their services as low-profit margin logistics businesses (typically 2-3%) cannot sustain demands for £5-£6 per hour rate increases.
- 1.3 Over the last six months, our waste collection contractor, Serco, along with many other companies which require HGV drivers, have experienced difficulties in recruiting new HGV drivers, despite ongoing attempts to do so.
- 1.4 Serco make daily calls to a number of recruitment agencies, in an attempt to recruit HGV drivers, and have utilised staff from other contracts as a short term measure. In addition, the Council has approached numerous recruitment agencies and has also requested mutual aid on three occasions from other Derbyshire Local Authorities. As many others are experiencing similar issues, they have been unable to provide support. The Council has also requested driver assistance from the Derbyshire Fire Rescue Service (DFRS) and the military.
- 1.5 Serco need a minimum of 24 HGV drivers to ensure that household and trade waste collection rounds are completed, but need a total of 30 HGV drivers to allow for holiday and sickness cover. As of Monday 19th July, Serco only had 17 available.

- 1.6 The briefing held on 7th July provided Members with a full explanation on the situation and also discussed possible options which could reduce the level of disruption residents are currently experiencing. These options included:
- Temporary suspension of excess recycling waste
 - Temporary mixing food waste and general waste and/or garden waste
 - Alternate weekly food waste collections
 - Temporary suspension of garden waste collections
 - Temporary suspension of recycling rounds
 - Council to contribute to increase in hourly rates of pay for HGV drivers on a temporary basis
 - Purchase or hire of an additional vehicle for the increase in subscriptions for the garden waste collection service
- 1.7 As a result of the discussions with Members and with Serco, and in response to a deteriorating daily situation, Officers made an operational decision to reluctantly agree to the temporary suspension of the collection of excess recycling waste and mixing of food waste and general waste from Monday 26th July, for a period of three months.
- 1.8 However, in the period following last week's decision, the Council has received a lot of feedback regarding these proposals which indicates that there are more residents experiencing repeat missed collections than the Council was previously aware of. This necessitates the consideration of additional proposals which are outlined in this report.

2 REPORT

- 2.1 The Council has, over the last few months, reviewed the contractual position and obligations of the Council and its contractor, Serco. Within the contract, there are mechanisms to address contract failings and disputes including the provision to employ alternative contractor to cover for services not delivered with the provision to recharge Serco.
- 2.2 This option would mean that the Council need to strictly enforce the terms of the Agreement, which may result in an improvement of the service and/or allow the Council to engage other contractors to provide parts of the service and recover all costs from Serco, if there are contractor's and drivers available to provide the service.
- 2.3 Based on the unsuccessful attempts to source mutual aid from other Derbyshire Local Authorities, who utilise various other collection contractors, we believe this is unlikely. In addition, the Council have also recently requested support from Derbyshire Fire & Rescue Service and even the military, who so far have been unable to provide the required support.
- 2.4 This week localgov.uk, the UK's largest dedicated local government news website, reported that "many councils have declared an 'emergency situation' after large numbers of staff have been told to self-isolate by the COVID-19 app. This has been compounded by a national shortage of 100,000 HGV drivers as a result of Brexit".
- 2.5 Derbyshire County Council have stated that 'all Waste Collection Authorities have been communicating driver shortages issues for the past month within the Derbyshire Waste Partnership. Waste Collection Authorities throughout the County are all experiencing driver shortage issues, with some reviewing short term capability, which may mean delays

and disruptions in service. It is understood that the driver shortage issues are mainly down to the impacts of Covid-19, and national issues with training and driver testing.'

- 2.6 Even some of the larger council, who arguably have a greater level of resource to draw on, have been impacted by these issues. With Derby City Council forced to delay some collections and suspend its garden waste collections, and Sheffield City Council announcing the need to suspend garden waste collections.
- 2.7 In addition to the lack of available drivers, this approach could result in a very confrontational contractual relationship, with continued service disruption until such time and Serco meet their obligations. Therefore, this approach is not recommended at this stage.
- 2.8 Whilst there are mechanisms within the contract to address some of the wider and long term issues, it is recommended that the Council agrees to temporary emergency measures outside of the terms and conditions of the contract, in order to be respond more promptly to the current back log of uncollected waste.
- 2.9 This is not an approach the Council would wish to take in normal times, however the legal dialogue and the due process could take some time and may not be successful on all counts, due to the pandemic and driver shortage situation. The main priority and the purpose of this report is to focus on restoring a regular schedule of collections as soon as possible. It is however, likely that further dialogue with Members will be needed in the near future regarding the wider contractual issues.
- 2.10 As there is no single solution available which will resolve the current situation, a package of measures therefore needs to be considered in order to improve current collection performance, balancing available resources with service demand. In addition to the operational decisions taken by Officers, Members need to decide if the Council supports providing a contribution to the uplift of HGV hourly rates of pay, paying for the provision of an additional vehicle for garden waste collections and the continuation (or not) of the KPIs.
- 2.11 Rates of pay for HGV drivers
The current rate of pay for HGV drivers is £10.82, which had previously not been problematic for recruiting appropriately qualified drivers. However, the national shortage of HGV drivers is, through market demand, inflating rates of pay beyond the contract's affordability limit.
- 2.12 In response, Serco have asked the Council to cover the cost of any increase in rates of pay to HGV drivers. Whilst the officers accept that Serco are not at fault for this issue, they do not believe the Council should be responsible for a 100% of these costs.
- 2.13 As a temporary measure, it is recommended that up to a 50% contribution be made for any uplift in HGV driver hourly rates, until 31 March 2022. During this period, it is hoped that the national shortage of HGV drivers is stabilised or at least some form of Government intervention is made to improve the situation.
- 2.14 **Appendix Two** outlines the additional costs required for every £1.00 increase in hourly rates of pay. Based on the highest hourly rate of pay provided Serco (£17 per hour), this would cost the Council an additional £18,856 per month.

- 2.15 During 2020/21, the District Council received Coronavirus emergency funding of £937,877 from central government to combat service funding pressures arising from the pandemic. Whilst some of this money has been utilised, Council has recently approved the establishment of a Covid Funding Reserve of £608,040 as part of the 2021/22 budget. The purpose of this reserve is to meet the ongoing financial impacts of Covid-19. Any additional costs to be incurred by the Council would therefore be met from this reserve, without detriment or impact on the Council tax payer. The resources that have been provided by Government are intended to address the situation we are currently facing.
- 2.16 It is proposed that a review of the situation takes place in January 2022; if the position remains the same or if there are indications that a national increase in pay is likely to be a long term issue, then Serco will need to apply to the Council for a Variation Order for this to become a permanent feature. Should Serco wish to make this approach, Member approval would be required before formal agreement and amendment to the contract.
- 2.17 If Members choose not to provide a contribution, Serco have confirmed that these additional costs would 'destabilise the financial viability of the contract'.
- 2.18 Garden Waste
As a result of the disruption, there are now areas across the district with a back log of waste, including recycling, food waste and general waste. Suspending the collection of garden waste, would free up five HGV drivers, allowing Serco to redirect staff to clear the back log of uncollected waste across the district.
- 2.19 Should Members wish to approve this, there would be a financial impact in doing so, as the Council would miss out on approximately £55k in recycling credits for the month.
- 2.20 There is also the risk of reputational damage, as this is the first year the subscription service was introduced and a temporary suspension may have impact on the number of subscribers in the future.
- 2.21 Should Members wish to adopt this temporary measure, it is recommended that the fee for next year's subscription be retained at £35.00, rather the previously agreed £50.00, by way of an apology and recompense for the current disruption.
- 2.22 Serco have also requested an additional vehicle for garden waste collections, given the number of subscribers to the garden waste collection scheme has already surpassed the expect level of growth.
- 2.23 Given the driver shortage concern and to ensure the service can sustain the level of subscribers for the coming year, it is recommended that the additional vehicle is leased until 31 March 2022, rather than purchased at this stage. During this period, the Waste and Recycling team will be able to gauge if a more permanent arrangement is required and if so, determine whether the Council or Serco is responsible for that cost.
- 2.24 The cost of leasing the vehicle from Serco until 31 March 2022 will be provided at the meeting. However, if Members agree to the hire of a vehicle, Officers will look to the market to source the most competitive price.
- 2.25 Key Performance Indicators (KPIs)
Serco have requested that the all KPIs are suspended due to the 'restrictive circumstances' currently in place. The following statement has been received from Serco, in response to the Council objection to the current level of service provision:

“As the Authority is aware, Serco has been following the Cabinet Office (PPN02 and PPN04), DEFRA and WISH guidance on delivery of services throughout the pandemic. In all our contracts we have either suspended or amended our KPI regimes and penalties, to take account of the restrictive circumstances in which we are currently working. Cabinet Office guidance PPN04 states:

‘These provisions are intended to ensure Accounting Officers and contracting authorities are able to support suppliers at risk to be better able to cope with the crisis so they can resume delivery of critical services and fulfil their contractual obligations. This includes proactively considering and making payment in advance of need due to the impact of COVID-19 and/or providing relief against their current contractual terms, for example relief on KPIs and service credits, to maintain service continuity.’

We are still operating to the guidance and under Covid restrictions such as working in bubbles, additional cleansing, vehicles that haven't yet been deployed, backlogs in the reinstatement of services switched off, isolation of crews, etc. It was therefore unreasonable to unilaterally reinstate KPIs from March with no warning and without discussion or agreement with Serco”.

- 2.26 Serco are currently relying on Government Guidance PPN02 and PPN04 these were issued by the government on 19th March 2020 and 9th June 2020 respectively.
- 2.27 The Agreement includes a clause relating to COVID-19 and suspension of KPI but the above guidance notes were not incorporated into the Agreement prior to its signature on 17th September 2020 which Serco had the opportunity to do so in contract negotiations.
- 2.28 External legal advice has stated that these are non-binding guidance and aimed to support companies that are struggling due to COVID-19 not a company that saw an increase in profits last year.
- 2.29 The legal opinion is these guidance notes would not override the contractual obligations of the contract as there was an opportunity to address these issues prior to signing.
- 2.30 Legal advice also does not support the termination of Serco as the waste provider. The Agreement provides provision for the termination which have not been met. Further the delay in taking the matter in-house or contracting a further provider will mean problems and delays in supplying the service. Serco have a binding contract that they need to deliver on.
- 2.31 Whilst there is clearly an impact on the service delivery as a direct result of the national shortage HGV drivers and the global pandemic, it is recommended that the KPIs remain in place to help monitor and manage the behaviour of the contract.
- 2.32 It is however, recommended that the Council consider reviewing the KPIs and showing some leniency on those which are outside of Serco's control. Whilst the review of KPI would normally be the responsibility of the Council's Authorised Officer (Waste & Recycling Manager), given the complexity of the issue, it is suggested that this responsibility is passed to the Director of Community & Environmental Services and the Legal Services Manager.

2.33 Communication

Over the last two weeks there have been some requests for the Council to deliver letters to all properties across the district, in order to provide an update on the current situation.

2.34 There are over 34,000 properties within the Dales and whilst this is achievable for a fee of circa. £5,000, it does present some challenges Members need to be mindful of, including a lead time for print and distribution of a minimum of two weeks (longer if Royal Mail distribution slots are unavailable), which risks information dating between print approval and residents receiving the actual letter/leaflet.

2.35 As this is a dynamic situation, it recommended that the Council continues its current method of communication to update residents. Currently we keep residents informed through our Waste e-newsletter (9,000 subscribers), website, social media channels and local media. While we appreciate not everyone has access to social media, it should be noted that a single waste update posted on our Facebook page on 16 July reached 28,300 people and attracted 446 comments. We also have the email addresses of 17,133 households that have subscribed to the garden waste collection service (around a half of all households in the Derbyshire Dales). We therefore estimate that we can directly reach at least 75% of all households and we will continue to liaise with local town and parish councils to help us reach the remainder, providing regular updates and physical posters for notice boards etc.

3 **RISK ASSESSMENT**

3.1 Legal

Any change to the Agreement including a change to the contract price as tendered is required to follow the Change Procedure as written in Schedule 9 of the Agreement.

The Public Contract Regulations 2015 section 72 state the circumstances in which a contracts that have been tendered may be modified to allow for additional payments.

The additional resource of a hire vehicle due to exceeding the envisaged garden waste subscription falls under clause 1(b) namely for additional works, services or supplies by the original contractor that have become necessary and were not included in the initial procurement.

The claim for addition funds for drivers falls under (1)(c) namely the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen.

3.2 Financial

As highlighted within the report the one off costs of support during 2021/22 can be financed from the Covid Funding Reserve, which currently has a balance £608,040. Subject to member approval of the report recommendations, the revised revenue budget for 2021/22 will be updated to reflect the full cost implications and the use of the reserve.

A one year suspension to the fee increase would impact the income generated from the Garden Waste collection service, and the full implications of this will be considered when the 2022/23 budget is set. The Medium Term Financial Plan approved earlier this month did not anticipate an increase in income from garden waste from 2022/23.

As funding is available from the Covid funding Reserve, the financial risk of the report recommendations is assessed as Medium to High.

As stated in the report, if Members choose not to provide a contribution, Serco have confirmed that these additional costs would 'destabilise the financial viability of the contract'. The financial risk of this is High.

4 OTHER CONSIDERATIONS

In preparing this report, the relevance of the following factors has also been considered: prevention of crime and disorder, equalities, environmental, climate change, health, human rights, personnel and property.

5 CONTACT INFORMATION

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5 BACKGROUND PAPERS

None

7 ATTACHMENT(S)

Appendix One: RHA letter to PM

Appendix Two: Cost of increase to hourly rates of pay