

**Decision Maker:** **PORTFOLIO HOLDER FOR PUBLIC PROTECTION AND ENFORCEMENT**

FOR PRE-DECISION SCRUTINY BY THE PUBLIC PROTECTION AND ENFORCEMENT DEVELOPMENT AND SCRUTINY COMMITTEE ON TUESDAY 22<sup>ND</sup> JUNE 2021

**PUBLIC PROTECTION AND ENFORCEMENT PORTFOLIO**

**Date:** **Tuesday 22 June 2021**

**Decision Type:** Non-Urgent                      Non-Executive                      Key

**Title:** **THE EXTENSION OF THE STRAY DOGS CONTRACT AND THE PEST CONTROL CONTRACT, AND PROCEEDING TO PROCUREMENT (GATEWAY 0): FOR THE STRAY DOG SERVICE AND PEST CONTROL CONTRACTS**

**Contact Officer:** Joanne Stowell, Assistant Director of Public Protection  
Tel: 020 8313 4332    E-mail: Joanne.Stowell@bromley.gov.uk

**Chief Officer:** Director of Environment and Public Protection

**Ward:** (All Wards);

---

1. Reason for report

- 1.1 The contract awarded to SDK Environmental Ltd for delivering the Stray Dogs & Pest Control Services contracts commenced on 1st February 2018 for 3 years, plus a 2-year (1+1) discretionary extension.
- 1.2 In anticipation of the contract expiring on the 31<sup>st</sup> January 2021, approval for a one-year extension to 31<sup>st</sup> January 2022 (utilising the formal extension options built into the contract) was sought. As the cost was less than £100K the extension was agreed in accordance with CPR 23.7 and 13.1, with approval from the Director of Environment and Public Protection, Assistant Director Governance & Contracts, Director of Corporate Services and the Director of Finance in accordance with CPR 2.1.2.
- 1.3 As approval is being sought to utilise the final year extension option (to extend the contract to 31<sup>st</sup> January 2023), the cumulative spend for this proposed extension is likely to exceed £100K, as such, Member approval is required.

---

## **2. RECOMMENDATION(S)**

### **The Portfolio Holder is asked to:**

- 2.1 Note the contents of this report.
- 2.2 Note the history and annual contract value of the contract with SDK Ltd and agree to the extension of the both the Stray Dog Service (Lot 1) and the Pest Control Service (Lot 2) as supported by the business case outlined at 5.1 (Lot 1) and 9.1 (Lot 2), and in accordance with Contract Procurement Rule (CPR) 23.7.3 as outlined in paragraph 17.2 to 31<sup>st</sup> January 2023.

### Impact on Vulnerable Adults and Children

1. Summary of Impact: None
- 

### Corporate Policy

1. Policy Status: Existing Policy:
  2. BBB Priority: Excellent Council Quality Environment Safe Bromley:
- 

### Financial

1. Cost of proposal: Estimated Cost : £56k
  2. Ongoing costs: 1 year contract extension
  3. Budget head/performance centre: Anti-Social Behaviour Team
  4. Total current budget for this head: £294k
  5. Source of funding: Existing revenue budget 2021/22
- 

### Personnel

1. Number of staff (current and additional): Not Applicable
  2. If from existing staff resources, number of staff hours: Not Applicable
- 

### Legal

1. Legal Requirement: Statutory Requirement:
  2. Call-in: Applicable:
- 

### Procurement

1. Summary of Procurement Implications:
- 

### Customer Impact

1. Estimated number of users/beneficiaries (current and projected): Borough Wide
- 

### Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable

2. Summary of Ward Councillors comments: Not Applicable

### **3. COMMENTARY**

#### **Stray Dogs Legislative Framework**

- 3.1 The Council has a statutory duty under sections 149 and 150 of the Environmental Protection Act 1990 (EPA 199) and the Environmental Protection (Stray Dogs) Regulations 1992 (the 1992 Regulations) to collect and detain stray dogs. Prior to April 2008, the police also had a duty to accept and detain stray dogs and tended to facilitate this function out of hours.
- 3.2 There is no statutory definition of a stray dog. Any dog found in a public place, or a private place where it should not be, which appears to be without its owner and not under the control of its owner or a person representing them, may be seized and detained as a stray dog by an appropriate person.
- 3.3 On 6th April 2008, section 68 of the Clean Neighbourhoods and Environment Act 2005 (CNEA 2005) came into force. This removed from the legislation any requirement for the Police to seize stray dogs or to accept any brought to them. As a result, Local Authority duties were extended, and they now have sole responsibility for discharging all stray dog functions.
- 3.4 The Department for Environment, Food and Rural Affairs (DEFRA) produced comprehensive guidance on stray dogs for Local Authorities, within which it states that the minimum requirement of the Local Authority's extended duty is, that where practicable, they provide a place to which dogs can be taken outside normal office hours (referred to in this guidance as an 'acceptance point'). Authorities are not required to offer a night-time call-out service to seize and detain stray dogs seen or found by the public. However, contact numbers for out of hours cover should be widely publicised to enable 'finders' to take a dog to an acceptance point if one is provided in lieu of a warden service. Whilst there is no statutory requirement for an out of hours collection service for stray dogs, there is a risk to the reputation of the Council in not providing one, as in declining to do so relies on the goodwill of residents to capture and transport strays to the designated acceptance point. Some authorities that do not provide a 24-hour service have had strays left tied to railings outside the Council offices.

#### **Pests - Legislative Framework**

- 3.5 There is no specific statutory requirement for the Council to provide a pest control treatment service to the public; however, there are specific statutory obligations under Part I of the Prevention of Damage by Pests Act 1949 (PDPA 1949) in relation to the Council having to keep its district clear of rats and mice. There are further statutory obligations to deal with insect infestation under the EPA 1990 and the Public Health Act 1936 (PHA 1936).

#### **Delegated Functions:**

- 3.6 The Council has a legal duty under the Environmental Protection Act 1990 s149 to appoint an officer for the purpose of discharging the functions imposed or conferred by the legislation for dealing with stray dogs found in the area of the authority. In Bromley the Assistant Director of Public Protection retains the overall responsibility for ensuring that the authority's stray dog functions are discharged correctly. The responsibility for discharging functions can be delegated to third parties such as contractors, as is the case for Bromley.

## **Procurement History**

3.7 On 28th September 2016, (ESD16043) the Portfolio Holder for Public Protection & Enforcement agreed that officers should go out to the market for the provision of the Dog Warden, Kennelling, Rehoming and Pest Control Services, under 4 separate Lots. Following difficulties in the tendering process, on the 27<sup>th</sup> September 2017 (ES17076) the Portfolio Holder for Public Protection and Enforcement agreed to reduce the 4 Lots down to 2:

- Lot 1 – Dog Warden, Kennelling and Re-homing Service; and
- Lot 2 – Pest Control Service.

3.8 Following the tendering process, 1 bid was received for both Lot 1 and 2, and 1 bid was received for Lot 2 alone; authorisation was given by relevant Chief Officers on the 1st September 2017 to proceed to evaluate the tender returns; following evaluation, on the 1<sup>st</sup> February 2018 the contract for both Lot 1 and 2 was awarded to the incumbent provider SDK Environmental Ltd for a period of 3 years, with a 2 year option to extend. Prior to this, the incumbent had provided both the stray dog and pest services since 2006.

### **Service Profile - Current Contract Stray Dogs (Lot 1)**

#### **Contract Term and Value – Stray Dogs (Lot 1)**

3.9 The current contract commenced on the 1<sup>st</sup> February 2018, the contract term was for 3 years, with a discretionary 2-year (1+1) option to extend. Prior to its expiration on the 31<sup>st</sup> January 2021, a one-year discretionary extension was agreed by the Director of Environment and Public Protection on the 29th September 2020 in accordance with CPR 2.1.2, 13.1 and 23.7. This extended the contract to 31<sup>st</sup> January 2022.

3.10 The current contract value is £56K which includes a fixed cost of £48K for the warden element, the remainder being variable depending on the number of dogs received, treatment given and rehoming costs (see also 3.11 below).

#### **Scope of Service – Stray Dogs (Lot 1)**

3.11 The current stray dog contract with SDK (Lot 1) operates a 24-hour, 7 day a week dog warden service.

It must be noted that within the fixed warden element of £48K also includes telephone and payment handling, call centre facilities, van hire and maintenance, premises provision and maintenance, equipment and management time.

3.12 Where there is reason to believe that a dog is a stray, on being reported by the public, it will be seized and detained by an SDK dog warden, and transported back to the SDK receiving kennels. On arrival the dog is health checked and fed. SDK staff then attempt to identify the dog's owner by checking for a microchip or collar, if ownership is established, SDK will attempt to reunite the dog with its owner. If the owner cannot be established, it is transported to dedicated holding kennels (The Lodge in Cudham) for the statutory 7- day period.

- 3.13 From day 1 of the dog being seized, under statute an owner has 7 days to claim the dog, and on full payment of fees plus satisfactory documentation for proof of ownership, the dog would be released back into the owner's care.
- 3.14 From day 7, the dog automatically becomes the property of the Council, and can be put forward for re-homing at this point, be passed on to a stray dog establishment, or be euthanised. As the Council operates a "No Animal Destruction policy" (Decision reference PPS15013), euthanasia is only applied to dogs which are either a banned breed (in accordance with the Dangerous Dogs Act 1991) or unsuitable for re-homing due to behavioural or health issues, as determined by a vet. Under this contract, the statutory 7 day period has been extended to 12 days, after which point the dog becomes the property of The Lodge, is accepted into their re-homing programme, and the Council is no longer liable for any costs associated with the dog.

### **Fees – Stray Dogs (Lot 1)**

- 3.15 Under section 149(5) of the EPA 1990, the authority may charge the owner all expenses incurred during the dog's detention plus a further £25 as prescribed by the 1992 regulations. The expenses are calculated as the per-day kennel cost, plus any costs involved in detaining the dog. Any additional charges Authorities incur resultant from necessary veterinary treatment of injured dogs are also added.

The fees are:

- Statutory fee - £25 which is payable in all cases.
- Collection and return fee - £100, this fee is discounted to £50 if the dog is microchipped (this fee is sometimes avoidable should the warden be able to reunite the dog with the owner at the location).
- Daily kennelling charge which is currently £18.60 per day inclusive of VAT.

All payments are made to SDK directly, and the statutory fees are deducted from the Councils monthly invoice. An authority is within its rights to detain a dog until the owner has paid the full amount, and as explained previously, the dog becomes the property of the Council after the statutory 7 days.

## **4. PERFORMANCE OF THE SERVICE AND DATA ANALYS – Stray Dogs (Lot 1)**

- 4.1 The performance of SDK with regards to Lot 1 has been good, there have been no complaints made against the company and key performance indicators have been achieved. A Contract Change Notice was agreed and signed to formalise suggested changes by the Council for improvements to data, and for SDK to collect Bromley's penalty fees on the Council's behalf at the point of dog collection. This increased income as owners have to pay these fees before the dog is released from the kennels.
- 4.2 The contract is well managed and runs effectively and efficiently, as such, the Officer time previously dedicated to this service has reduced. Additionally, audit checks on the designated kennels in February 2020 (The Lodge), confirmed that the welfare of the animals was high, the facilities were clean and tidy, and that staff appeared to dedicate a considerable amount of time with each dog, all of which were walked at least twice a day.

## Data Analysis - Stray Dogs (Lot 1) Table 1 Stray Dog Statistics April 15 to Jan 21

	<b>Apr 15 Mar 16</b>	<b>Apr 16 Mar 17</b>	<b>Apr 17 Mar 18</b>	<b>Apr 18 Mar 19</b>	<b>Apr 19 Mar 20</b>	<b>Apr 20 Mar 21</b>
<b>No of service requests</b>	317	289	260	228	201	109
<b>No of requests received in office hours</b>	132	109	121	85	103	47
<b>No of requests received out of office hours</b>	185	180	139	143	98	62
<b>No of dogs returned directly to owners</b>	51	38	32	36	24	7
<b>No of dogs taken to Kennels</b>	122	120	98	67	88	37
<b>No of dogs reclaimed from kennels</b>	60	62	38	32	31	21
<b>No of dogs re-homed</b>	59	54	57	33	55	16
<b>No of dogs PTS</b>	3	2	2	2	2	0

4.3 Table 1 above provides a trend analysis showing the numbers of dogs received into the service and their associated outcomes since April 2015. The data shows an annual downward trend of -65% between the total number of service requests received between April 15 and March 21. A similar trend is noted for the number of requests received out of hours (-66%). Additionally, a downwards trend is noted for the No of dogs taken to kennels between April 2015 and March 20 (-70%). These trends coincide with those observed by the Dogs Trust, who attribute the decline to the statutory requirement requiring owners to microchip their dogs (April 16), having said that, a 31% increase noted in dogs taken to kennels between March 19 and March 20, and this demonstrates that anomalies can occur.

## 5. MARKET CONSIDERATIONS, BENCHMARKING AND SUMMARY OF THE BUSINESS CASE - Stray Dog Service (Lot 1):

5.1 The services provided by all neighbouring boroughs were reviewed, along with the fees that are charged to residents. With the exception of Croydon and Southwark, all provide a 24-hour, 7 day per week service. Bromley's fees are also comparable to other authorities; along with Bromley, half of the neighbouring councils offer a discount for dogs who have been microchipped. Appendix A provides the details for service provision and fees applied by neighbouring Councils.

5.2 The information in paragraphs 4.1-4.2 highlight that the contract is running well with no performance issues, as such, there is no obvious value to retender at this stage.

## 6. Options Appraisal - Stray Dog Service (lot 1)

6.1 The option to bring the service in-house has been discounted, as the costs would exceed those of the current contract. In order to explore alternative service delivery options, research was undertaken which included desktop research and benchmarking for the provision of stray dog services. The option to retender has also been considered, and for the reasons highlighted in 5.1 to 5.2, this option has been discounted.

## 7. Preferred Option - Stray Dog Service (lot 1) – Utilise the remaining 1-year extension to 31<sup>st</sup> January 2023



7.1 Following the benchmarking and performance analysis, together with the outcome of the options appraisal, Officers recommend that the current contract be extended by 1 year (to 31<sup>st</sup> January 2023) as provided for within the contract as.

- The service is already in place, the service provided is of a good standard and represents value for money.
- The Costs of the service have been budgeted for.
- Residents will continue to benefit from a 24-hour collection service which is commensurate with that offered by most neighbouring Councils.
- This presents the lowest risk; and the solution most likely to deliver the best commercial and sustainable outcome for LB Bromley.

### **Future Procurement Pathway**

7.2 Officers intend to initiate the formal tender process in early 2022, and will publicise and carry out a two- stage restricted tender process for the provision of stray dog service (to include a dog warden service and kennelling). It is intended that the term of the contract will again be for three years, with a discretionary 2-year (1+1) extension option built in.

7.3 As the contract value is estimated to be £310k (based upon 2019/20 expenditure) and is under £500K, the approval to go out tender is a Chief Officer decision rather than one taken by Members, in accordance with the Council's specific requirements for authorising proceeding to procurement are covered in 1.3 of the Contract Procedure Rules with the need to obtain the required formal agreement.

## **8. Current Pests Contract - Contract Term and Value – Pests (Lot 2)**

8.1 The current concessionary contract commenced on the 1<sup>st</sup> February 2018, the contract term was for 3 years, with a 2 year (1+1) discretionary option to extend. Prior to its expiration on the 31<sup>st</sup> January 2021, a one-year discretionary extension was agreed by the Director of Environment and Public Protection on the 29<sup>th</sup> September 2020 in accordance with CPR 2.1.2, 13.1 and 23.7. This extended the contract to 31<sup>st</sup> January 2022.

8.2 This is a concessionary non-exclusive contract; both residents and the Council are able to procure work with other businesses. The service provided to the Council includes the monitoring of bait boxes in parks, two depots and the two Council owned travellers' sites, this element is a free of charge service, however, it does not include the cost of any treatment arising out of the monitoring. The total payments made this financial year for toxic treatments at the locations specified in the contract are approximately £10k, none of which have been procured through SDK Ltd.

### **8.3 Scope of Service – Pests and Performance of the service (Lot 2)**

8.4 As this is a concessionary contract, the Council refers residents to SDK as the preferred contractor, and they deal with all aspects of providing the services. Residents and businesses requiring pest control services are charged by the contractor at a rate in accordance with the prices agreed via the tender process. The service runs independently from the Council, with customers needing to contact the contractor's call centre directly to arrange and pay for treatment. By allowing SDK to advertise their services to residents on the bromley.gov.uk

website, the Council benefits from a free monitoring service within our parks, two travellers' sites and two depots. The contract is now in full compliance and delivers the monitoring elements. Appendix B provides a summary of the specification.

## **9. MARKET CONSIDERATIONS, BENCHMARKING AND SUMMARY OF THE BUSINESS CASE - Pest Control Service (Lot 2):**

9.1 Appendix C shows the current prices for residential treatments, and the rates applied for commercial treatments for the Council. Appendix D looks at the service provided by Bromley's neighbouring boroughs and the fees which are charged to their residents. Analysis shows that SDK's fees for residents are competitive and that they receive value for money.

## **10. Options Appraisal - Pest Control Service (Lot 2)**

10.1 The option to bring the service in-house has been discounted, as the costs would exceed those of the current contract. In order to explore alternative service delivery options, research was undertaken which included desktop research and benchmarking for the provision of the Pest Control service. The option to retender has been considered, and for the reasons highlighted in 8.4 and 9.1, this option has been discounted.

## **11. Preferred Option – Pest Control Service (lot 2) Utilise the remaining 1-year extension to 31st January 2023**

11.1 In order to explore alternative service delivery options, research was undertaken which included desktop research and benchmarking for the provision of pest control services. Following the benchmarking and performance analysis, Officers recommend that the current contract be extended by 1 year (to 31<sup>st</sup> January 2023) as provided for within the contract as.

- The service is already in place, the service provided is of a good standard and represents value for money;
- The Costs of the service have been budgeted for;
- Residents will continue to benefit from competitive prices from SDK;
- This presents the lowest risk; and the solution most likely to deliver the best commercial and sustainable outcome for LB Bromley.

### **Future Procurement Pathway**

11.2 Officers intend to initiate the formal tender process in early 2022, and will publicise and carry out a two- stage restricted tender process for the provision of stray dog service (to include a dog warden service and kennelling). It is intended that the term of the contract will again be for three years, with a discretionary 2-year (1+1) extension option built in.

11.3 As the contract value is estimated to be £310k and so under £500K, the approval to go out tender is a Chief Officer decision rather than one taken by Members, in accordance with the Council's specific requirements for authorising proceeding to procurement are covered in 1.3 of the Contract Procedure Rules with the need to obtain the required formal agreement.

## **12. STAKEHOLDER ENGAGEMENT**

21.1 No stakeholder engagement was necessary, as the recommendation is to extend the contract for both Lots 1 and 2 for an additional year.

## **13. PROCUREMENT AND PROJECT TIMESCALES AND GOVERNANCE ARRANGEMENTS**

13.1 **Estimated Contract Value for the Stray Dog Service (Lot 1)** – The service is budgeted for £90K per Annum, the total contract price with the 2-year extension will be £100K

13.2 **Estimated Contract Value for the Pest Control service (Lot 2)** – This is a concessionary contract.

13.3 **Other Associated Costs** – Not Applicable

13.4 **Proposed Contract Period** – The current contract for both Lots 1 and 2 is for 3 years, with a provision for a 2-year (1+1) extension. The total contract term with the extension will be 5 years and will expire on the 31<sup>st</sup> January 2023.

## **14. SUSTAINABILITY AND IMPACT ASSESSMENTS**

14.1 There are no sustainability considerations associated with the recommendation to extend the contract.

## **15. POLICY CONSIDERATIONS**

15.1 There are no policy considerations associated with the recommendation to extend the contract.

## **16 IT AND GDPR CONSIDERATIONS**

16.1 There are no IT or GDPR considerations associated with the recommendation to extend the contract.

## **17. PROCUREMENT RULES**

17.1 The report seeks a one-year extension to the contract with SDK Environmental Ltd, utilising the formal extension options built into the contract, the cumulative value of the proposed extension being an estimated £100K

17.2 The Council's requirements for authorising an extension are covered in CPR 23.7 and 13.1. For an extension of this cumulative value, the Approval of the Portfolio Holder following Agreement by the Chief Officer, the Assistant Director Governance & Contracts, the Director of Corporate Services and the Director of Finance, and the budget holder must be obtained. In accordance with CPR 2.1.2, Officers must take all necessary professional advice.

17.3 Following Approval, the extension must be applied via a suitable Change Control Notice, or similar, as specified in the contract.

17.4 The actions identified in this report are provided for within the Council's Contract Procedure Rules, and the proposed actions can be completed in compliance with their content.

## 18. Financial Considerations

- 18.1 The estimated annual value of the contract extension is £56k based on average costs over recent years. These costs are provided for within the Anti-Social Behaviour Team's existing revenue budget.
- 18.2 The cumulative Council spend with SDK Environmental Ltd to the end of March 2021 was £725k.

## 19. Legal Considerations

- 19.1 The Council has a statutory duty to provide the stray dog services and a number of pest control services more fully explained elsewhere in this report. In connection with the Council's ownership and control of its land the Council has legal obligations owed towards visitors' occupiers and neighbours which may involve pest control. The Council has a legal power to exploit its assets by way of a concession arrangement as part of its general power of competence under section 1 of the Localism Act 2011.
- 19.2 A contract to procure the stray dogs and pest control services are public contracts within the meaning of the Public Contracts Regulations 2015. The cumulative value of the stray dog service (including the discretionary 1+1 year extension options) is likely to be above the services threshold and would require a full EU procurement to be undertaken. The value of the pest control service will need to be evaluated under the Regulations together with the concession element once a specification is determined.
- 19.3 In so far as a deciding to pursue the options to extend the existing contracts, as the contract extensions were included within and fully described as part of the tender and contract terms the Regulations would permit such a modification under Regulation 72 without the need to carry out a tender exercise.
- 19.4 The Councils Procurement Rules provides authority to the Chief Officer, Delegated budget holder, Director of Corporate Services, Director Finance and the Assistant Director of Governance and Contracts to authorise the recommended contract extensions with a value between £100k and £500k (here approximately £100k over 2 years) through a Member Gateway Report

<b>Non-Applicable Sections:</b>	Personnel Considerations
Background Documents: (Access via Contact Officer)	ESD16043 28th September 2016 ES17076 27th September 2017 2018 award 2020 Waiver