

**SUPPLEMENTARY 1**

**THE CABINET**

**Monday, 20 February 2023**

**Agenda Item 14a    Waste Strategy - Food Waste Legislation Update  
(Pages 1 - 6)**

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**CABINET****20 February 2023**

<b>Title:</b> Waste Strategy – Food Waste Legislation Update	
<b>Report of the Cabinet Member for Public Realm and Climate Change</b>	
<b>Open Report</b>	<b>For Information</b>
<b>Wards Affected:</b> All	<b>Key Decision:</b> No
<b>Report Author:</b> Rebecca Johnson – Director of Public Realm	<b>Contact Details:</b> Tel: 07355 036078 E-mail: <a href="mailto:rebecca.johnson@lbbd.gov.uk">rebecca.johnson@lbbd.gov.uk</a>
<b>Accountable Director:</b> Rebecca Johnson – Director of Public Realm	
<b>Accountable Strategic Leadership Director:</b> Leona Menville – Acting Strategic Director My Place	
<b>Summary</b>	
<p>The Environment Act 2021 and the Resource Waste Strategy states that Local Authorities must implement separate weekly food waste collections to all households, flats and flats above shops by March 2025.</p> <p>London Borough of Barking and Dagenham (LBBd) is one of four Waste Collection Authorities that come under the East London Waste Authority (ELWA) Waste Disposal Authority.</p> <p>ELWA has a 25-year PFI contract with ELWA Ltd, operated by Renewi, which has meant there was the opportunity for ELWA, and by proxy, its Constituent Councils (including LBBd), to submit a request to DEFRA for deferment under grounds of demonstrable unavoidable net cost due to the contract.</p> <p>ELWA has confirmed that due to lack of sufficient and demonstrable evidence from the contractor, ELWA is unable to submit a deferment application and therefore LBBd will be bound by current law for the implementation of separate weekly food waste collections by March 2025.</p> <p>Cabinet is advised that this is the current situation to the best of Officers' knowledge, but is subject change dependent on any further developments with ELWA, DEFRA and the contractor.</p>	
<b>Recommendation(s)</b>	
The Cabinet is recommended to:	
(i) Agree to receive a further report on options on how LBBd will adhere to legislation around separate weekly food waste collections; and	

- (ii) Note that at point of writing, without a deferment, LBBB will be required to provide a separate weekly food waste collection service to all households, flats and flats above shops by March 2025.

**Reason(s)**

This report relates to the Council's ambitions around the environment and our commitment to achieving net zero and increasing recycling rates.

**1. Introduction and Background**

- 1.1. The Environment Act 2021 and the Resource Waste Strategy set out key legal requirements around the future of waste collections and disposal.
- 1.2. The Act requires Local Authorities to provide a weekly separate food waste collection from all households by March 2025 – this includes communal blocks and flats above shops.
- 1.3. The Resource Waste Strategy sets out further potential requirements around key recyclates, but is subject to the outcome of the Consistency consultation, which is still outstanding.
- 1.4. The requirement around food waste is now in law, but the implementation of that requirement is subject to further regulations.
- 1.5. Waste disposal for LBBB and the other three constituent councils as part of East London Waste Authority (ELWA) are subject to a 25-year PFI IWMS contract (expires last day 22 Dec 2027).

**2. Deferment**

- 2.1. DEFRA recognises that there could be potential impacts on long-term waste disposal contracts such as LBBB's and is considering deferment of the 2025 food waste requirement until those contracts end. The deferments are known as 'transitional arrangements'.
- 2.2. The deferment will only be granted if sufficient evidence can be provided to show demonstrable unavoidable net cost due to the contract for the waste disposal authority (i.e. ELWA) can be provided to DEFRA by mid-February 2023.
- 2.3. Councils granted a deferment will be named in regulations with a new compliance date – LBBB's would be 23/12/2027 if applied.
- 2.4. On 20 January 2023, DEFRA provided further clarity on the level of evidence required for submission.
- 2.5. At the point of writing this report, the contractor, Renewi, has not provided ELWA with sufficient evidence for a deferment submission and if this remains the case by 28 Feb 2023, then ELWA and its Constituent Councils will be subject to the requirements already in law i.e. implementation of separate weekly food waste collections by March 2025.

### **3. Next step**

- 3.1. Officers will be undertaking further reviews into the cost and operational implications of the new statutory requirements.
- 3.2. A further report will be brought to Cabinet with a proposal on how LBBB will adhere to its legislative requirements.

### **4. Options Appraisal**

- 4.1. Statutory implementation of separate food waste collections for households, flats and flats above shops is already in written into law, so no options are able to be considered at this stage.

### **5. Consultation**

- 5.1. LBBB's current position regarding its statutory obligations have been discussed and clarified with DEFRA on 20 Jan 2023 and through engagement with the Waste Disposal Authority (WDA), ELWA, along with the other Constituent Councils under the same WDA.
- 5.2. Due to the enforced time constraints from DEFRA in addition to the current position being confirmed by ELWA on 13 February 2023 (at Appendix 1), which confirmed reduced options, this report has come before Cabinet at the earliest opportunity in consideration of our residents and key stakeholders have been briefed internally.

### **6. Financial Implications** completed by Sandra Pillinger, Group Accountant

- 6.1. Separate weekly food waste collection will need to be in place by March 2025. This will have significant revenue and capital cost implications. Detailed costings will need to be produced to determine the financial impact and the value of the resources required to set up and operate food waste collection.
- 6.2. There will also be cost implications resulting from changes to the ELWA contract.
- 6.3. Government has allocated £295m of funding across England to finance the implementation, as set out in the Autumn 2021 Budget. LBBB is set to receive a share of this funding, but the value of the Council's allocation is to be determined.

### **7. Legal Implications**

Implications completed by: Dr Paul Feild Principal Governance & Standards Solicitor

- 7.1. As set out in the body of this report, the Environmental Act 2021 amends the Environmental Protection Act 1990 to insert a revised section 45A. This creates a duty on Waste Collection Authority's (this Council) to arrange at least weekly a collection of food waste. At present, food waste is contained within the household residual waste. The default position is that the regime is targeted to be introduced in spring 2023.

- 7.2. The Council is one of the four Constituent Councils (along with the London Boroughs of Havering, Newham and Redbridge) which form the East London Waste Authority (ELWA). ELWA is a Waste Disposal Authority. It is the responsibility for the Waste Collection Authority to pass the food waste onto the Waste Disposal Authority.
- 7.3. Because the Waste Disposal is governed by a 25-year Private Finance Initiative (PFI) by a contract between ELWA and a company (ELWA Ltd), changes in waste handled by the company may have cost implications. It is understood that the Secretary of State may consider, if requested, a deferment of the duty to collect food waste until the expiry of the contract (December 2027) because of costs of changing the contract. However, it is far from certain what the actual final costs would be and secondly, the delay from 2023 may lead to the four Constituent Councils not being able to avail themselves of Government food waste transition payments.
- 7.4. To summarise, the default position for this Council and the other three Council is to be part of the 2025 implementation and this may be the most cost advantageous, but the final costs situation is not clear at the time of this report, and the final position of the other three boroughs is to yet to be determined, plus there needs to be clarity about the issue of a timely feedback on deferment to the Secretary of State.
- 7.5. Due to the enforced time constraints from DEFRA wanting to understand the position of ELWA, in addition to the current position being confirmed by ELWA on 13 February 2023 (at Appendix 1), which confirmed reduced options, this report has come before Cabinet at the earliest opportunity. Key stakeholders have been briefed internally.

## **8. Other Implications**

- 8.1. There are no other implications as a direct result of this report. The full implications will be detailed in the proceeding report.

### **List of appendices:**

- Appendix 1 - Letter from ELWA, 13 Feb 2023

Date 13 February 2023

Dear Directors of Environment,

**Re: Food waste collection and disposal changes from DEFRA**

Further to the workshop held on Friday I am writing to set out the current position on the above at ELWA.

Clearly ELWA cannot advise the Constituent Councils (CCs) of their collection costs in relation to the new food waste collections required under the Environment Act 2021. We note however that CC officers did sign off strategic forecast collection costs in 2020/21 for the Joint Strategy modelling, so you may be able to take something from this (we will of course help wherever we can).

Under the twenty-five year contract with Renewi, the terms are such that this newly separated food waste stream must be managed under the contract, and ELWA will have a contractual obligation to direct the CCs to deliver the waste as per arrangements to be made with Renewi.

In order to take a decision on whether or not to apply for 'transitional arrangements' ELWA would need more information than it currently has from Renewi, so we are not presently able to make such an application. Therefore I cannot advise what the financial impact on ELWA will be of receiving separate food waste from the CCs. The main variables are:

1. The gate fees Renewi can secure for third-party food waste treatment
2. Is the food waste facility local (i.e. can the CCs deliver directly into it) or does Renewi have to provide new reception, bulking and transfer capacity so that Renewi can receive the food waste locally and then transport it to a treatment facility elsewhere?
3. What impact does removing food waste from the mechanical and biological treatment (MBT) bio-drying process have on the efficiency of that process? Currently air is driven through residual waste (which includes food waste) to accelerate a natural composting-like process such that just over 30% of the mass is evaporated and the remainder can more easily be separated into recyclable metals, glass/aggregates and organic 'fines' with the remainder being prepared as a refuse derived fuel (RDF) for treatment at energy recovery facilities elsewhere. If the mass reduction (evaporation) is less, the overall economics of the MBT facility could change for Renewi, in which case Renewi would invoke the Change in Law provisions of the contract to claim its losses from ELWA. Conversely, Renewi will have a smaller amount of organic 'fines' from the MBT process, and will therefore save the cost of having these treated at a third-party facility in the North-west. Renewi has not been able to quantify the above matters, as it does not have the necessary datasets.

Continued

Current market intelligence is that the cost of food waste treatment (not including bulking and transport if needed) is unlikely to exceed the banded price that ELWA would otherwise pay Renewi for its treatment in the MBT; supply and demand issues could change this.

Finally, in terms of impacts on local recycling rates, separately collected food waste sent to a food waste treatment facility will count towards the CCs' and ELWA's recycling rate, but at the moment the organic 'fines' extracted at the MBT facility after bio-drying also count. As such, recycling rates would be improved by separate food waste collections as soon as they are introduced.

As above, we will give whatever support we can in relation to the Joint Strategy modelling of collection services, and we will continue to liaise with Renewi.

As discussed at the meeting on Friday, please can you let me know your Council's preferred direction of travel later today or tomorrow.

Regards,

*By Email*

Andrew Lappage  
**Managing Director**