Dear all,

URGENT UPDATE – Section 108 Environment Act 1995

Unfortunately, we now have an adverse decision made in the High Court relating to the use of section 108(4)(j) Environment Act 1995:

Walker v Chelmsford CC [2020] EWHC 635 (Admin)

Following this decision, local authorities will not now be able to require information from persons relating to controlled waste offences unless the officer is present on the relevant premises at the time.

This decision relates to the power under section 108(4)(j) only. It does not apply across the use of section 108(4) generally. The court did acknowledge that section 108 is not to be read as a power to be exercised only in relation to entry onto premises and thus, for example, section 108(4)(k) is not restricted to use on premises.

However, in looking at the origins of section 108(4)(j) the court considered previous legislation and, amongst other things, took the view that previous incarnations had referred to use “face to face” and thus although there is no reference to premises within subsection (j) it should be read in that light.

Where section 71 Environmental Protection Act 1990 is available for use, authorities may use this power as an alternative.

Members will know that we were very much in agreement with the argument put forward by Stephen Hockman QC, representing Chelmsford in this case, but we must recognise that the Court found against the local authority. The Court has not recognised this as a case of national importance and therefore we will remain bound by the court’s decision.

We understand that Chelmsford are currently lobbying the Secretary of State to provide information upon the implications of this decision and we will keep an eye on developments.