

Agenda Item No: 4



Report To: Overview and Scrutiny Committee

Date: 20th May 2014

Report Title: Fly-Tipping – Powers and Obligations for the Council

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Summary:	The report provides Members with an overview of the legislation and powers relating to fly-tipping. Current issues and considerations for Ashford BC are included with Members invited to raise any questions and discuss them.
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Key Decision: NO

Affected Wards: All

Recommendations: The O&S Committee notes and discusses the report and determines what, if any, further matters they wish explored or information going forward.

Policy Overview: N/A

Financial Implications: None resulting from this report.

Risk Assessment N/A

Equalities Impact Assessment None

Other Material Implications: As noted in the report.

Exemption Clauses: N/A

Background Papers: None

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Overview and Scrutiny Committee
Fly-tipping – Powers and Obligations for the Council

1. Fly-tipping – an introduction

- 1.1. The collection and disposal of controlled waste is principally governed by Part II of the Environmental Protection Act 1990 (the EPA). This Act conferred powers and duties to various bodies, such as local authorities, businesses and any producer of waste, and created an associated licensing system.
- 1.2. The Environment Act 1995 (EA) and the Clean Neighbourhoods and Environment Act 2005 (CNEA) further supports or supplements the EPA by conferring various powers of enforcement to waste collection authorities such as Ashford BC.
- 1.3. Controlled waste is defined as meaning:
“household, industrial and commercial or any such waste”
- 1.4. Waste in this context does not include household waste as defined by the EPA from a domestic property which is treated, kept or disposed of within the curtilage of the dwelling.
- 1.5. The uncontrolled or illegal deposit of such controlled waste is recognised as one of the most common or widespread offences committed under the EPA 1990. In 2012/13 it was reported that there were over 700,000 incidents nationally costing around £37 million to remove and properly dispose of.

2. What is Fly-tipping?

- 2.1. The provision that defines and makes fly-tipping an offence is Section 33(1)(a) of the EPA 1990 which provides that:
“a person shall not deposit controlled waste, or knowingly cause or knowingly permit controlled waste to be deposited in or on any land unless a waste management licence authorising the deposit is in force or the deposit is in accordance with the licence”
- 2.2. The offence is triable in court either way and punishable on indictment by up to 5 years imprisonment or a fine or both, and summarily by up to 12 months imprisonment or a £50,000 fine or both.
- 2.3. In cases of conviction the court can also order costs associated with investigation, enforcement, clean up and disposal and also there are powers for the depriving offenders of their rights in relation to any vehicle used in committing the offence.

3. Controls over Fly-tipping

- 3.1. The EPA 1990 introduced the **Duty of Care** which is important as it places clear responsibilities on both businesses and householders. This states that it is the responsibility of all businesses to take all reasonable steps to ensure that their waste is being disposed of safely. The Duty of Care applies to anyone involved in the following:
 - importing
 - storing
 - transporting
 - treating
 - disposing
 - acts as a broker to arrange the above

3.2. When transferring waste to a third party householders or businesses are required by law to ensure a waste transfer note has been issued and copies kept by both parties for at least two years. They are also expected:

- to ensure that the person or company removing the waste is licensed waste carrier, or the site the householder or business transport the waste to is licensed
- know where the waste will finally be disposed of
- when storing the waste ensure that it is secure in suitable containers to prevent it escaping or unauthorised removal as far as is reasonably practical
- place the waste in the area for collection outside the premises as near to the collection time as possible
- do whatever is reasonable possible to ensure the security of the waste and act accordingly to any problems

3.3. The EPA allows for a defence for a person to prove:

- a) That the person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence; or
- b) That the acts alleged to constitute the contravention were done in an emergency in order to avoid danger to human health in a case where:
 - (i) the person took all such steps as were reasonably practicable in the circumstances for minimising pollution of the environment and harm to human health; and
 - (ii) particulars of the acts were furnished to the waste regulation authority (the Environment Agency) as soon as reasonably practicable after they were done.

4. Enforcement Powers

4.1. Enforcement Officers of the authority are authorised to request a copy of any business or householder held waste transfer note where the householder has passed the waste on for disposal. If it is found that either are not complying with the Duty of Care obligations then offenders may receive a conviction leading to imprisonment for up to five years, a fine of up to £50,000 or both, plus other associated costs.

4.2. The CNEA also introduced the option to issue Fixed Penalty Notices (up to £300) in instances where the Duty of Care obligations have not been discharged.

4.3. The onus on providing satisfactory evidence lies with the business or householder or any individual suspected of being involved in fly-tipping. This is important as it has removed the often past used plea or mitigation of simple ignorance (see Para 3.3 above) which was often used by householders having paid for the waste to be taken away which was subsequently fly-tipped.

4.4. Where any controlled waste is carried and deposited from a motor vehicle then, importantly for the purposes of enforcement, the person in control of the vehicle is treated as knowingly causing the waste to be fly-tipped regardless of any instructions the person may give or have been given. Also, this allows

for proven owners of vehicles to be classified as in control of it and there is no need to prove a link between owner and driver where it is used for committing a fly-tipping offence.

- 4.5. Powers relating to vehicles also include for an authorised officer of the local authority or police constable to stop and search a vehicle and seize it or its contents where he believes it is involved or is going to be involved in fly-tipping offences. Powers of entry and investigation of premises are also available arising from the Anti-social Behaviour Act 2003.
- 4.6. Where fly-tipping has occurred on land then the authority may serve notice on the occupier of the land requiring its removal within a specified period, usually not less than 21 days, and also require steps to be taken to prevent a re-occurrence, for example, making the land secure. However, any such notice can be appealed in the magistrate's court and will be quashed if the occupier can satisfy the court that they neither deposited, knowingly caused nor knowingly permitted the deposit of the waste.
- 4.7. Where an appeal is not lodged then failure to comply with a notice is itself a further offence with penalties for each day after expiry of the notice.
- 4.8. Where a notice is not complied with then the authority may undertake the works subject of the notice and recover reasonable expense.
- 4.9. The authority may remove waste without a notice having being served and take other remedial steps in circumstances where it is necessary to prevent pollution or harm to human health, where there is no occupier of the land, or where satisfied that the occupier neither deposited, knowingly caused nor knowingly permitted the deposit of the waste.
- 4.10. However, costs associated with action in circumstances set out in Para 4.9 above can only be recovered from persons found later to have been responsible for the fly-tipping or from the occupier where pollution or harm to human health or its prevention is involved.

5. Practicalities and Ashford

- 5.1. Fly-tipping is clearly offensive where it occurs and can, if uncontrolled, be the source of detriment to an area. However, the scale and extent of fly-tipping and its impact is often perceived to be higher than the reality.
- 5.2. The incidence in the Ashford BC administrative area is relatively high when compared nationally but the incidence has not significantly changed over the last 3 to 5 years. Ashford sits "somewhere in the middle" within the Mid Kent Partnership. Recorded incidences for 2013/14 are just over 1000 (2012/13 = 946) and there is no evidence that new waste collection arrangements have made any contribution to the incidence of fly-tipping.
- 5.3. The new combined waste and cleansing contract provides for most small scale fly-tipping (up to 2 cuM) to be automatically removed from public land and has provisions for the removal at additional scheduled rates for larger amounts. This does represent a significant cost at £26,500 for 2013/14, however, this is much lower than 2012/13 reported at around £47,000 and is likely linked to the smaller fly-tips being automatically cleared as part of the core waste and cleansing contract.
- 5.4. The majority of the additional works undertaken in 2012/13 related to housing sites and was therefore internally re-chargeable.
- 5.5. Often the challenge arises where the fly-tipping occurs on private land and there is no obvious occupier or simple proven offence that can be followed through. It is normally neither sensible, practicable nor affordable, especially

with falling budgets, for a local authority to get involved in “clear all” arrangements.

- 5.6. Where sufficient evidence can be gathered, and sufficient budgetary resources are made available, then there is a strong deterrent value in taking prosecutions for fly-tipping offences. It should not be underestimated that investigations and the necessary follow up enforcement actions are very time consuming and require trained staff and support from partner authorities and agencies where necessary.
- 5.7. With enforcement, Members should appreciate that most cases are seen as falling to the local authority unlike in the past where the Environment Agency (the EA) got more involved. These days, the EA only look into much larger cases and/or where there is a suspected organised and illegal business involvement.
- 5.8. Annual targeted clean ups take place in parts of the Borough, supported by partner agencies and organisations, with the next one on May 15th having a rural emphasis. This can also be the foundation for widening education and awareness raising activities to complement the new littering campaign utilizing our new character “Sir Litternot” due to be considered by Cabinet on 8th May. A useful emphasis will be reminding residents / householders of their clear responsibilities in managing their waste and the employment of any others in its transport and onward disposal. Similarly, smaller businesses in some retail categories are often found to present the greatest challenge and remain relatively ignorant of their responsibilities.
- 5.9. Members will be aware that the new waste and cleansing contract is operating very well overall. However, there are significant challenges at the moment in setting up more robust and sustainable contract monitoring arrangements and meeting peaks of customer demand for newer services such as communal property roll-out and household green waste collections and associated bin deliveries. Demand for this service alone is running at twice the predicted levels. This limits the level of resources that can be sensibly or justifiably allocated to significant enforcement activity without more dedicated and additional resources.
- 5.10. Management is being innovative and exploring opportunities to utilise similar skill sets of other officers within the Council, e.g. T-CAT and Civil Enforcement Officers, as identified in the Generic Enforcement Paper due to be submitted to Cabinet on 8th May.

6. Recommendations.

- 6.1. Members’ views and any concerns are appreciated and OSC are invited to discuss the issues highlighted in the report and determine what, if any, further matters they wish explored or information going forward.