

Committee Name and Date of Committee Meeting

Improving Places Select Commission – 07 February 2023

Report Title

Fly-tipping in Rotherham - Update

Is this a Key Decision and has it been included on the Forward Plan?

No

Strategic Director Approving Submission of the Report

Paul Woodcock, Strategic Director of Regeneration and Environment

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Ward(s) Affected

Borough-Wide

Report Summary

This report provides an update in relation to levels of fly-tipping and enforcement activity in Rotherham and an overview of the national and local position in relation to fly-tipping.

Recommendations

1. That members note the work carried out by the Council to tackle fly-tipping

List of Appendices Included

Appendix 1 Government Fly-tipping statistics for England, 2020 to 2021

Appendix 2 Equalities Screening Assessment

Appendix 3 Carbon Impact

Background Papers

Government Fly-tipping Statistics 2020 - 21 ([Fly-tipping statistics for England - GOV.UK \(www.gov.uk\)](https://www.gov.uk))

The Environmental Protection Act 1990

Consideration by any other Council Committee, Scrutiny or Advisory Panel

No

Council Approval Required

No

Exempt from the Press and Public

No

Fly-tipping in Rotherham - Update

1. Background

- 1.1 The Environmental Protection Act 1990 provides powers to Local Authorities to issue fines and/or prosecute offences relating to fly-tipping, which is the illegal disposal of household, industrial, commercial or other 'controlled' waste. The waste can be liquid or solid. Controlled waste includes garden refuse and larger domestic items such as fridges and mattresses.
- 1.2 The most recent Government fly-tipping statistics for England is for 2019/20 and demonstrates the scale of fly-tipping nationally. For the 2019/20 financial year, local authorities in England dealt with 976,000 fly-tipping incidents, an increase of 2% from the 957,000 reported in 2018/19. The most recent national statistics relating to fly-tipping are attached at Appendix 1.
- 1.3 Table 1 below describes the number of fly-tips removed by the Council since 2017 and shows the number of fly-tips removed proactively by the service has increased significantly since 2017 due to improvements in the working practices within the service. Many more fly-tips are now identified and removed by the service without being reported by the public. As a result of this the level of fly-tipping reported by the public has fallen each year following a peak in 2019 and is 3% lower in 2021 compared to 2017.

Table 1 – Fly-tips Removed 2017-2022

Fly-tips Removed	2017	2018	2019	2020	2021	2022
Reported by the Public (reactive)	4012	3401	5028	4046	3877	2824
Identified by Council Officers (proactive)	332	2116	1164	2278	2100	2865
Total	4344	5517	6192	6324	5977	5689

- 1.4 Table 2 below describes the types of fly-tips being removed, categorised as either single items, e.g. bags of waste or a single mattress, or large fly-tips. The data shows that the number of large fly-tips has fallen since the peak in 2018 and by around 40% since 2017 however the number of small fly-tips has increased significantly over the period.

Table 2 – Types of Fly-tips Removed

Types of Fly-tips Removed	2017	2018	2019	2020	2021	2022
Single Items, e.g. waste bags, single mattresses	1260	1903	2609	3752	4197	3619
Large or multiple items	3084	3614	3583	2572	1780	2070
Total	4344	5517	6192	6324	5977	5689

- 1.5 Local authorities have powers available to investigate, clear and take appropriate enforcement action in relation to small scale fly-tipping on public land. The Environment Agency have responsibility for dealing with larger-scale fly-tipping, hazardous waste and fly-tipping by organised gangs.
- 1.6 It is noteworthy that with any fly-tipping on private land, it is normally the responsibility of the landowner to remove the waste. The Council and the Environment Agency have legal powers to require landowners to clear fly-tipped waste from their land, along with powers to enter the land and clear it, potentially seeking reimbursement for costs related to it.
- 1.7 Regulation and Enforcement Services discharge the powers available under the Environmental Protection Act 1990 to issue fixed penalty notices or prosecute offenders. Fixed Penalty Notices to a value of £400 are issued to those caught fly-tipping, generally of household items or smaller amounts. Where offenders fail to pay a fixed penalty fine, tip large amounts, or work on a commercial basis, then consideration of prosecution will be undertaken.
- 1.8 Where an individual is convicted by the Court, the Environmental Protection Act 1990 provides for unlimited fines and/or a custodial sentence up to 12 months and up to 5 years imprisonment when convicted on indictment.
- 1.9 The Council also has the powers to seize vehicles which have been used to commit fly-tipping offences.

2. Key Issues

- 2.1 Fly-tipping impacts directly on the environment particularly on flora and fauna as well as effecting the quality of life of residents. Whilst urban areas tend to suffer more from household waste and items being deposited on streets, rural areas are impacted by large scale fly-tipping of waste which, on occasion, blocks the highway.
- 2.2 There is inevitably a significant cost to the Council both reputationally and as a result of the actual financial costs of clearing, investigating and disposing of fly-tipping. The clearance and disposal costs for 2021 have been estimated at around £200,569.49. Investigation of fly-tipping accounts for an estimated 14% of the overall Regulation and Enforcement budget which equates to approx. £115,000 per year. It is reasonable therefore to estimate that the total cost of dealing with fly-tipping in the borough is around £315,569.49 per year.

2.3 There has been a significant increase in the number of cases requiring investigation by Regulation and Enforcement in 2022 compared to previous years. This is due to a number of factors including the use of CCTV and fly-tips proactively identified by officers. Table 3 below details the numbers of investigations carried out since 2017.

2.4 **Table 3 – Fly-tipping reports to Regulation and Enforcement Services, 2017 to 2022**

	2017	2018	2019	2020	2021	2022
Fly-tipping reports to Regulation and Enforcement for investigation	1590	1337	1988	1897	1914	3122

2.5 Prior to the Covid-19 pandemic, enforcement activities had been increasing however this has been impacted in recent years as can be noted from the table below. Whilst numbers did reduce during 2020 and 2021 they are now showing signs of recovery and the management team are focussed on increasing enforcement activity. Table 4 below provides a numerical representation of the actions undertaken.

Table 4 – Fly-tipping Enforcement actions 2017 to 2021

	2017	2018	2019	2020	2021	2022
Small fly-tipping FPNs issued	12	5	21	3	6	16
Large fly-tipping FPNs issued	6	15	30	81	34	35
Fly-tipping prosecution case files	14	26	18	12	17	30
Duty of care producers issued	106	147	178	80	155	72
Commercial Duty of Care FPNs	37	51	63	20	10	32
Domestic Duty of care FPNs	0	0	1	8	2	12
Duty of care prosecutions	0	3	1	3	1	7
Simple cautions Issued	4	1	0	1	0	1
Total Actions	179	248	312	208	225	205

2.6 Approximately 16.7% of Regulation and Enforcement investigations are fly-tipping related. Each of these cases typically involve Officers visiting the incident site, gathering evidence, collecting photos from the scene, conducting interviews under caution, issuing fines and preparing prosecution files for Court. It should be noted that the issuance of fines and prosecutions are reliant

on sufficient evidence of the offender which, despite thorough investigation, is lacking in most incidents.

- 2.7 The Council has been working for a number of years to bring fly tipping offenders to justice, this has included significant investment in areas such as CCTV and Out of Hours Enforcement as well as targeted activity within the service to improve work with partners and across Council departments. There is a target in the Council's Year Ahead Plan for fly tipping prosecution, which is set at 37 and the Council is set to achieve this target.
- 2.8 CCTV has proven very successful contributing to successful prosecutions, including two custodial sentences of 20 weeks in 2018 and 2 years in 2019, being handed down by the Court. Whilst positive, the increasing levels of CCTV assets also have resource implications in term of officer time and expertise to manage the associated systems.
- 2.9 As a result of this work, the Council performs well when compared to other local authorities and the work undertaken in Rotherham is very well recognised by other Local Authorities with five Councils having visited Rotherham over the past few years to learn the methods deployed here.
- 2.10 In the latest national data set available, which shows 2020 to 2021 data, Rotherham took 2,694 actions relating to fly tipping, which is the 4th highest in the Yorkshire and Humber Region and higher than the Council's neighbours in South Yorkshire. When you look at fixed penalty notices for the same period, Rotherham is the third highest in the Yorkshire and Humber Region (249 fixed penalty notices). Whilst performance is good, the Council continues to look to do more and there is a plan in place, which has been developed working with Scrutiny, to continue to improve enforcement activity.

2.11 **Enviro-Crime Action Plan**

The Council has an Enviro-crime action plan which addresses how fly-tipping is tackled across the Borough and how cleansing and enforcement interact to ensure the best possible outcomes. Areas of work included in the plan are:

- Benchmarking against neighbouring Local Authorities
- Reviewing resources and equipment
- Process mapping
- Fly-tipping hotspot identification
- The effectiveness of partnership working
- Data analysis to identify and monitor hotspots
- The effectiveness of campaigns and other communications

The action plan focuses on three main objectives: Prevention, Education and Enforcement. (see Appendix 4)

2.12 *Objective 1 - Prevention*

- Improve Communication with the public

- Householders Duty Of Care, those that do not follow the rules i.e. right bin-right day – recycling, fly-tipping, bins left on streets.
- Designing out crime in hot spot areas.
- Deploying more prevention tools such as signage and CCTV
- Working with private landowners to secure their land or property.
- Work with local businesses to manage waste effectively.

2.13 *Objective 2 - Education*

- To educate people about the impact of enviro-crime and how to dispose of waste correctly through.
- An education package focussed on effective management of waste and waste offences.
- Effective communications to promote the environment
- Effective communications to promote enforcement activity to deter offences, including regular campaigns under #getridreyt
- Promote volunteering opportunities and the work of volunteers.

2.14 *Objective 3 - Enforce*

- Deployment of CCTV capability to identify offences
- Use of partnerships to increase capability such as working closely with neighbourhood policing teams
- Effective actions at all stages of the waste life-cycle
- Increase enforcement outputs such as producers, fines and prosecutions
- Effective place-based working to problem-solve locations
- Ensure cleansing and enforcement services are closely aligned

Pilot Scheme

2.15 As part of the action plan a Pilot Scheme has been introduced in Eastwood tackling the issue of fly-tipping.

2.16 In October 2022, a 6-month contract was awarded to Clifton Learning Partnership to deploy one staff member to undertake education and engagement work in Eastwood, for 6 hours per week.

2.17 The following sets out a broad overview and the focus areas for the programme.

- This investment is for a dedicated individual who will engage with the community on cross-service issues.
- Waste, Neighbourhoods, and Enforcement deal with many related issues in the community and we are looking to educate and engage on a weekly basis to see if we can have real impact and understanding from within the community.

- Many of the focus areas will be week on week, but some ad-hoc communications will be required when performing activities throughout the community.

2.18 The programme aims to gain insight into:

- To gain understanding of why residents are not complying with the Councils waste scheme. This includes but is not limited to, right bin right day, recycling, storing of waste and additional waste bins applications
- To gain understanding into why some fly tip. Or what their understanding is of fly-tipping
- To gain understanding around why waste is allowed to build up in premises

2.19 The programme's key areas for engagement focus include:

- Helping residents understand what bin goes out on what day
- Helping residents understand what the different colour bins are for and what should go in them
- Giving residents understanding of what contamination is and why bins are left
- Helping residents understand the importance of putting bins back away safely and secure after collections
- Helping residents understand the additional bin applications and process and criteria
- Helping residents understand what waste minimisation is and their role in it
- Helping residents understand landlord responsibilities and their rights

2.20 In addition, there will be ad-hoc focus areas including Community clean-up days, and promotion and engagement.

2.21 In order to detect and deter offences of fly-tipping and littering, Enforcement and Regulatory services have:

- Deployed Local Authority Support Enforcement Officers to enforce littering. This has resulted in 66 littering FPNs in Eastwood to date in 2022.
- Conducted daily patrols to identify fly-tipping, search for evidence, review CCTV and make door to door enquiries in the vicinity of each deposit. This has resulted in 28 fly-tipping FPNs in Eastwood in 2022. Some cases are now being heard in Court due to non-payment.
- Written to all Landlords to ensure waste is managed appropriately both within premises and also responsibly disposed of. A high-profile case of non-compliance with Duty of Care for waste displayed by Landlord will be seen as a key milestone in 2023.

2.22 The results of this pilot scheme will shape the council's fly-tipping action plan when tackling fly-tipping across the borough.

3. Options considered and recommended proposal

- 3.1 This report is for the purposes of scrutiny and therefore members are asked to note the content.

4. Consultation on proposal

- 4.1 No consultation is necessary at the stage.

5. Timetable and Accountability for Implementing this Decision

- 5.1 The update reflects the current position in relation to fly-tipping.

6. Financial and Procurement Advice and Implications (to be written by the relevant Head of Finance and the Head of Procurement on behalf of s151 Officer)

- 6.1 Regulation and Enforcement costs are not recorded specifically in relation fly-tipping, rather costs are associated with the wider enviro-crime work which includes littering for example. However, currently, the overwhelming majority of enviro-crime work relates to fly-tipping. As the team carry out a range of enforcement and regulatory activities, enviro-crime being just one element, costs are apportioned to different strands of work. The cost of investigating fly-tipping incidents currently is estimated to be approximately £115,000 per annum, based on an estimate that 14% of officer time is spent on this activity.

- 6.2 The clearance and disposal costs for 2021 have been estimated at around £200,569.49.

7. Legal Advice and Implications (to be written by Legal Officer on behalf of Assistant Director Legal Services)

- 7.1 Section 33(1)(a) of the Environmental Protection Act 1990 details the offence of fly-tipping, including offences of 'knowingly causing' or 'knowingly permitting' fly-tipping.

- 7.2 Section 33(8) of the Environmental Protection Act 1990 states that anyone who commits an offence is liable to an unlimited fine and/or a custodial sentence of up to twelve months upon summary conviction. On conviction on indictment [i.e. Crown Court] the custodial term increases to a maximum of 5 years.

- 7.3 Section 33(ZA) of the Environmental Protection Act 1990 makes provision for the issuing of a fixed penalty fine, which upon payment discharges the liability to conviction for the offence to which it relates. In Rotherham the level of the fixed penalty fine is set to £400 with a reduced fee of £200 if the fine is paid within 10 days.

- 7.4 Section 34 of the Environmental Protection Act 1990 establishes a general duty of care. Anyone who produces, imports, keeps, stores, transports, treats or

disposes of controlled waste must take all reasonable steps to ensure that waste is managed properly. It also applies to anyone who acts as a broker and has control of waste.

- 7.5 Section 34(2A) of the Environmental Protection Act 1990, inserted by the Waste (Household Waste Duty of Care) (England and Wales) Regulations 2005, places specific duty of care obligations on householders. Householders must ensure that household waste is properly disposed of by taking all reasonable measures to ensure that the transfer by him of household waste is only to an authorised person. Household waste is defined in section 75(5) of the Environmental Protection Act 1990 and includes waste from domestic properties, caravans and residential homes.
- 7.6 Where offences are committed relating to the general and householder duty of care, Section 34(6) of the Environmental Protection Act 1990, those responsible are liable upon summary conviction, to a fine not exceeding the statutory maximum; and on conviction on indictment, to an unlimited fine.
- 7.7 The Council has the power to seize and dispose of vehicles used for fly-tipping. Local authorities can stop, search and seize vehicles they suspect are being used for fly-tipping (this must be done in the presence of a police officer). Vehicles which have been used for fly-tipping can also be forfeited to cover the local authority's costs for investigation, enforcement and cleaning-up of any pollution caused by the fly-tipping. It is an offence to transport controlled waste without being registered under Section 1 of the Control of Pollution (Amendment) Act 1989. There is also a Fixed Penalty Notice of up to £300 for failure to produce registration documents on request.
- 7.8 The Council must remove and dispose of fly-tipped waste if it's on public land or land owned by the Council. Council's must also keep any Highway they are responsible for clean and clear from waste. Relevant land is land where all of the following apply:-
- it's open to the air on at least one side
 - it's under their direct control
 - it's publicly accessible (with or without payment)

8. Human Resources Advice and Implications

- 8.1 Human resources implications are outlined within the report concerning the impacts on staffing capacity, capability and resources.

9. Implications for Children and Young People and Vulnerable Adults

- 9.1 No implications

10. Equalities and Human Rights Advice and Implications

- 10.1 A screening assessment is attached at Appendix 2.

10.2 A full impact assessment is not required at this stage as the report is a position statement of the work being currently undertaken by the Council

11. Implications for CO₂ Emissions and Climate Change

11.1 There are no direct implications for climate change that are measurable in relation to fly tipped material. However, release of carbon into the environment from fly tipped material will add to the overall emissions where otherwise the carbon might be captured through correct disposal or recycling.

11.2 There is significant risk from fly-tipping that are linked to biodiversity and impacts on the denaturing of the Borough. This is particularly so with contamination of environments and habitats from a range of toxic chemicals impacting directly on the health of fauna and flora. Additionally, the trapping of small vertebrates and invertebrates in the waste impacts directly on populations along with reducing food available to predators.

11.3 Fly-tipping adds plastic waste to the environment which enters the food chain both for predators and humans through ingestion by prey organisms.

12. Implications for Partners

12.1 No implications at this stage.

13. Risks and Mitigation

13.1 Failure to effectively tackle fly-tipping will negatively impact on the Council's image whilst failing to deliver national and local priorities.

13.2 Failure to have robust capacity and capabilities to take action relating to fly-tipping risks identifying the Borough as a place to attract fly tippers, consequently increasing the number and scale of incidents.

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Approvals obtained on behalf of:-

	Named Officer	Date
Chief Executive	Sharon Kemp	Click here to enter a date.
Strategic Director of Finance & Customer Services (S.151 Officer)	Richard Young	12/01/23

Assistant Director of Legal Services (Monitoring Officer)	Michelle Scales	25/01/23
Assistant Director of Human Resources (if appropriate)	John Crutchley	11/01/23
Head of Human Resources (if appropriate)		Click here to enter a date.

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