

Committee Name and Date of Committee Meeting

Improving Places Select Commission – 01 February 2022

Report Title

Fly Tipping in Rotherham

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 overview of the national and local position in relation to fly tipping, with a focus on the prevention, investigation and enforcement of fly tipping offences.

Recommendations

That members note and comment on 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 Fly Tipping Enforcement Case Studies

Appendix 3 Equalities Screening Assessment

Background Papers

Government Fly Tipping Statistics 2020 - 21 ([Fly-tipping statistics for England - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/fly-tipping-statistics-for-england-2020-to-2021))

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

1. Background

- 1.1 The Environmental Protection Act 1990 provides powers to Councils 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 2019/20, demonstrate 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. Whilst the total number of fly tips removed has decreased since 2020, the number was 37% higher in 2021 than it was in 2017. However, it should also be noted that the number of fly tips removed proactively by the service has increased five-fold 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 2017-2021

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

- 1.4 Table 2 below describes the types of fly-tips being removed, categorised as to whether they are single items, e.g., bags of waste or a single mattress, or large fly-tips. As can be seen from the data the number of large fly tips has fallen since the peak in 2018 and by around 40% since 2017. The number of small fly tips has increased significantly over the period.

Table 2 – Types of Fly tips Removed

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

- 1.6 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.
- 1.7 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.
- 1.8 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.
- 1.9 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.

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 affecting 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 cost for 2020/21 have been estimated at around £175,000 alongside an additional £67,509 related to disposal costs. Investigation of fly tipping accounts for an estimated 14% of the overall Regulation and Enforcement budget which equates to around £115,000 per year. It is reasonable therefore to estimate that the total cost of dealing with fly tipping in the borough is around £370,000 per year.

- 2.3 Whilst the number of reported fly tips has fallen in recent years there has been a 20% increase in the number of cases requiring investigation by Regulation and Enforcement which is due to a number of factors including evidential opportunities, increases broadly in the use of CCTV and of course fly tips proactively identified by officers still may require investigation. Whilst the increase since 2017 is noteworthy, it should also be noted that investigative levels have remained relatively consistent over the previous three years 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 2021

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

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 number did reduce during 2020, they are 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.

2.6

Table 4 – Fly tipping Enforcement actions 2017 to 2021

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

2.7

Whilst there has been an increase in the number of investigations

undertaken, there has also been significant, high level and complex investigations that have had a significant impact on staffing and resources. In particular the recent custodial sentence handed down following an intensive year-long highly complex investigation. Similarly, a developing investigation into potential illicit waste disposal, is highly likely to have significant staff and resources demand over a long period with no guarantee of an enforcement outcome.

2.8

Approximately 16.7% of Regulation and Enforcement investigations are fly tipping related. Each of these cases typically are time consuming and involve Officers visiting the incident, gathering evidence and collecting photos from the scene, conducting interviews under caution, issuing fines and preparing prosecution files for Court.

2.9

There is also an increasing reliance on CCTV as a tool to deter fly tipping as well as capture images of incidents and offenders. CCTV has proven to be very useful, although it should be recognised that it has limitations. If an offender cannot be identified or faces are obscured the Council may not have the evidence required to take action. Similarly, there is only a finite number of cameras that are available and consequently only a limited number of incidents can be captured. That said, the use of CCTV has proven very successful contributing to successful prosecutions (see case studies at Appendix 2), including two custodial sentences 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.

2.10

The work undertaken in Rotherham is very well recognised by other Local Authorities regionally with five Councils having visited Rotherham over the past few years to learn the methods deployed here. The success is reflected in these Councils now utilising Rotherham's tactics to tackle fly tipping in their own areas of Barnsley, Doncaster, Manchester, Bradford and Wakefield.

2.11

Fly Tipping Action Plan

The Council has recently reviewed how fly tipping is tackled across the Borough and how cleansing and enforcement interact to ensure the best possible outcomes. Areas of work reviewed were:

- 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

2.12

As a result of this work, the Council developed a fly tipping action plan. One

of the key aspects of the plan was to improve communication with the public to both increase detection of offences and prevent further offences or offenders by demonstrating the Council's appetite to take action.

- 2.13 One of the actions has led to an overarching campaign being developed called "Get Rid Reyt", where images of offenders are published on the council's website and social media and the public are encouraged to send any information about the person through to enforcement for investigation. Duty of care messages have also been used for waste and the correct disposal methods to help reduce the problem of fly tipping.

- Message example 1

If you've got waste you want to get rid of, like a fridge freezer or an old washer, makes sure you #GetRidRate. Ask if the person helping you remove it is a licensed waste carrier, otherwise you'll get fined too.

- Message example 2

Don't dump your old doors in the wood #GetRidReyt and take it to your local household waste recycling centre. If you fly tip in Rotherham you will get caught and you will get fined #GetRidReyt

- 2.14 In addition, improved partnership working in particular within the central area has led to greater involvement of the Police in identifying fly tipping offences and providing any associated evidence. Alongside this the Police have been trained in issuing littering tickets on behalf of the Council. During recent months, the Council has also undertaken a specific operation to target waste carriers resulting in a number of notices being served for follow up action.

- 2.15 Whilst full delivery of the action plan has been affected by the need to prioritise services such as Covid Enforcement. The action plan remains live and will be refreshed ahead of the start of the financial year to take account of the new Council plan and associated performance indicators.

- 2.16 Fly tipping remains a key priority for services. The Year Ahead Plan is clear that dealing with a fly tipping is a key priority for the Council, residents, and partners.

3. Options considered and recommended proposal

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

4. Consultation on proposal

- 4.1 No consultation is necessary at the stage; however, the Council is considering the creation of an Enviro-crime Strategy which, if developed will be consulted on during the next financial year.

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 exact costs for clearance and disposal by Environmental Services are not routinely available as the team now operate as a combined service covering Grounds and Cleansing and the Budget reflects this. However, estimated costs in 20/21 based on cost to clear 5814 Incidents would have been around £175000, with a further £67,509 disposal costs.

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. 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. 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 relevant land. 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 3.
- 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:-

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