

<b>STRONG AND SUPPORTIVE COMMUNITIES SCRUTINY COMMITTEE</b>	<b>Agenda Item No. 8</b>
<b>14 SEPTEMBER 2016</b>	<b>Public Report</b>

<b>Report of the Service Director for Adult Services and Communities</b>		
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## **TACKLING ENVIRONMENTAL CRIME**

### **1. PURPOSE**

- 1.1 This report is provided to inform the Committee on issues associated with environmental crime and particularly fly tipping, and the approach being taken and being proposed to tackle the problem.

### **2. RECOMMENDATIONS**

- 2.1 The Committee is asked to scrutinise the approach being taken to tackling envirocrime, particularly fly tipping, and to recommend improvements or alternatives to this approach.
- 2.2 The Committee is also asked to specifically comment on the following proposed actions:
- To launch a social media campaign to inform the public and perpetrators of the issue of fly tipping, and that they can be liable if their waste is not legally disposed of
  - To set up a series of covert operations to catch illegal waste carriers. Once this becomes widely known this may deter illegal waste carriers from offering their services
  - To deliver Stop and Search operations. Whilst this is resource intensive, it will send out a clear message and being highly visible can improve public confidence
  - To enter into discussions with trade waste sites to encourage trades people to use the sites.

### **3. LINKS TO THE CORPORATE PRIORITIES AND RELEVANT CABINET PORTFOLIO**

- 3.1 This report most closely links to the Council's corporate priority to keep all our communities safe, cohesive and healthy.
- 3.2 Tackling environmental crime falls within the remit of the Cabinet Member for Communities and Environment Capital.

### **4. BACKGROUND**

- 4.1 As part of a previous performance report, the Safer Peterborough Partnership agreed to further work being undertaken on the impacts, causes and potential solutions associated with envirocrime and particularly fly tipping.
- 4.2 The definition of environmental crime is "an illegal act which directly harms the environment". Fly tipping is the illegal disposal of household, industrial, commercial or other 'controlled' waste

without a waste management licence. The waste can be liquid or solid and controlled waste includes garden refuse and larger domestic items such as fridges and mattresses.

- 4.3 Fly tipping is a criminal offence pursuant to section 33 of the Environmental Protection Act 1990: "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 and the deposit is in accordance with the licence".
- 4.4 There is also an associated offence relating to the unlawful deposit of waste from a motor vehicle whereby the person who controls or is in a position to control the vehicle shall be treated as knowingly causing the waste to be deposited whether or not he or she gave any instructions for this to be done. Fly tipping is not the same as littering.
- 4.5 Fly tipping is a significant blight on local environments; a source of pollution; a potential danger to public health; and hazard to wildlife. It also undermines legitimate waste businesses where unscrupulous operators undercut those operating within the law. Fly tipping can pose risks to human health and animal welfare, spoil relationships between neighbours and their wider community, and affect the way people feel about the place that they call home.
- 4.6 Causes of fly tipping are many and varied, including:
- financial gain or saving by the perpetrator
  - a lack of waste disposal facilities or access to them, and
  - laziness and an attitude that someone else will clear up the waste
- 4.7 Local authorities are responsible for dealing with investigating, clearing and taking appropriate enforcement action in relation to smaller scale fly tips on public land (including public roads and highways within their responsibility). The Environment Agency is responsible for dealing with larger scale fly tips on public land involving more than a lorry load of waste, hazardous waste and fly tipping by organised gangs. On private land it is the responsibility of the landowner to remove fly tipped waste and dispose of it legally. Landowners should ensure that they use an authorised waste carrier to remove the fly tipped waste.

#### 4.7.1 **Current Penalties**

The penalties for fly tipping set out in the Environmental Protection Act 1990 were increased through the Clean Neighbourhoods and Environment Act 2005. It is now a criminal offence punishable by a fine of up to £50,000 or 12 months imprisonment if convicted in a Magistrates' Court. The offence can attract an unlimited fine and up to 5 years imprisonment if convicted in a Crown Court.

In addition to fines, those found guilty of fly tipping may also have to pay legal costs and compensation, which can greatly increase the financial implications of illegal dumping. For example, in 2010 a firm was fined £95,000 for the illegal dumping of waste; in 2013 two waste criminals were fined more than £80,000 for fly tipping asbestos waste; and in 2016 an individual was fined £47,000 for allowing waste to be illegally deposited at two different sites, causing a fly infestation as well as risk of pollution and fire.

From July 2014, new sentencing guidelines produced by the Sentencing Council for England and Wales have also increased potential fines for serious environmental offences, including fly tipping. In addition, under the Proceeds of Crime Act 2002, offenders can have assets frozen and confiscated.

There are also a range of other possible penalties including:

- Fixed penalty notices: From 9 May 2016, local authorities in England can issue fixed penalty notices between £150 and £400 (Peterborough City Council has elected to set the FPN at £300, reduced to £180 if paid within 21 days) for small-scale fly tipping offences pursuant to the Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016. This may be served as a criminal penalty in lieu of prosecution for a criminal

offence.

- Seizing property: the Control of Waste (Dealing with Seized Property) (England and Wales) Regulations 2015 came into force on 6 April 2015 and apply in England and Wales. These regulations establish the procedures which a waste collection authority (most local authorities), the Environment Agency and Natural Resources Wales must follow once they have seized a vehicle and/or its contents because of suspected involvement concerning the transport or disposal of waste (such as fly tipping).

#### 4.7.2 Current Powers

Local authorities and the Environment Agency have powers to require landowners to clear waste from their land. The local authority and Environment Agency also have powers to enter land and clear it, and may seek reimbursement for costs related to this.

Relevant legislation includes:

- Section 59 of the Environmental Protection Act 1990 (as amended): a local authority or the Environment Agency can issue a notice on an occupier or landowner to clear controlled waste that has been illegally deposited within a time period of not less than 21 days. It is an offence not to comply with a notice, if no appeal is made. The authorities can also enter land and clear it, and recover reasonable costs.
- Section 215 of the Town and Country Planning Act 1990 (as amended): this enables local authorities to issue a notice to landowners requiring land or buildings to be cleaned up if its “condition adversely affects the amenity of the area”. The authorities can also enter land and clear it, and recover costs from the owner.
- Section 79 and 80 of the Environmental Protection Act 1990 (as amended): this legislation deals with statutory nuisance. Nuisance can include odours, accumulations or deposits that “must be or be likely to become, prejudicial to people’s health or interfere with a person’s legitimate use and enjoyment of land”. Local authorities have a duty to investigate complaints about statutory nuisance, and can serve an abatement notice on an occupier requiring them to stop causing a nuisance. Failure to comply with a notice can result in a fine of up to £5,000, with a further fine of up to £500 for each day on which the offence continues after conviction
- Waste collection authorities and the Environment Agency also have powers under section 108 of the Environment Act 1995 to request information to assist with fly tipping investigations. Failure to supply the information is an offence.

## 5. KEY ISSUES

### 5.1 Current Situation in Peterborough

Current data from Amey shows there were 10,369 fly tipping incidents reported in 2015, with 5,755 incidents reported to date in 2016. Typically Amey clears 700 to 800 fly tips a month.

Performance of data for the period 1st April 2016 to 31st July 2016 shows:

- Fly tipping investigations 1470
- Warning letters issued 50
- Formal Cautions 13
- Prosecutions 2
- Duty of Care visits 156
- Fixed Penalty Notices issued 43
- Duty of Care Commercial Fixed Penalty Notices issued 68

## 5.2 The Wider Impact

It is widely acknowledged that fly tipping not only blights the local area and presents health and environmental issues, it also has an impact on other agencies.

In 2015 Cambridgeshire Fire & Rescue Service attended 309 refuse fires, and has attended 91 refuse fires to date in the Peterborough. Fires in waste and refuse not only have the potential to create noxious gases and fumes, due to the contents of the waste, but also carry the risk of spreading to other areas and property. This clearly creates a genuine hazard and risk of setting alight homes and businesses as well as the risk of injury, and at worse death from burns and inhalation of toxic gases if the fires were to spread in some instances.

Whilst the police are not directly responsible for dealing with fly tipping and the associated issues, the police public confidence survey in the Peterborough area regularly lists fly tipping in the top 5 topics that the public are concerned about, thus clearly impacting on public perception and confidence of policing in Peterborough.

Partner organisations, such as Cross Keys Homes (CKH) also report issues and impacts from fly tipping. CKH proactively deal with fly tipping and waste accumulations, however they have experienced issues with waste being dumped in and around their waste collection containers from people who are not their tenants.

## 5.3 Current Response

The Safer Peterborough Prevention and Enforcement Service (PES) has a team of Neighbourhood Enforcement Officers (NEOs). The NEOs deal with fly tipping on a daily basis, attending the sites, examining the waste to investigate the origin of the waste and the person who illegally dumped the waste. Whilst the NEOs do a thorough job, unfortunately up until recently they have only been able to investigate a percentage of the fly tips per month where there may be evidence identifying the perpetrator present (394 investigations into fly tips in Feb 2016). The extension of powers to a wider number of officers means that the potential to investigate more incidents is far greater. Recently some success has been seen, with convictions and fines being issued by the criminal courts.

The Council has also now created a dedicated hotline to report fly tipping in an attempt to secure better quality reports including potential evidence of perpetrators. Clearly, if we are able to identify and prosecute more offenders, we will reduce the prevalence of the problem.

Council staff do not have powers of arrest. The PES has several covert cameras available for deployment. The deployment of these cameras is regulated by the Regulation of Investigatory Powers Act 2000. The use of covert surveillance by Local Authorities' received new guidelines and instructions in 2012, this changed the route of approval from an internal Council process to one that requires judicial application and consent and introduced the crime threshold. RIPA is now tightly governed by a Commissioner and access to tribunal if members of the public wish to complain.

An application has to be made to a Justice of the Peace (JP) once the crime threshold has been established. RIPA is only appropriate to the PES team when investigating crimes that carry a minimum sentence of 6 months. Fly tipping qualifies this criteria. The crime threshold is prescriptive. The message on RIPA is clear: "Surveillance should only be used if there are no other less intrusive means of obtaining the information that is sought – it should be used as a last resort". Whilst the facility exists to deploy the cameras, in reality the process is very lengthy and time consuming to use, and there is no guarantee that approval will be granted by the JP. This should not however act as a deterrent to pursuing covert surveillance where deemed appropriate.

The investigation, detection and prosecution of fly tipping perpetrators is without doubt a course of action that needs to be utilised as often as possible with the aim of deterring the crime, measures to address the root cause also need to be implemented.

## 5.4 Clearing Waste from Private Land

Section 59 of the Environmental Protection Act 1990 is the power to require the land owner upon whose land the waste has been dumped to remove the waste, failure to remove the waste results in enforcement action against the land owner it does not seek to deal with the originator of the waste.

Section 59 of the EPA 1990 authorises delegated officers of the local authority to serve a Notice on an occupier of land requiring it to remove waste from the land it occupies. There is a 21 day minimum period for compliance if the statutory requirements are met. The EPA 1990 provides the right of appeal against the service of this Notice by application to the Magistrates Court.

If the occupier or landowner does not remove the waste, the authorities can enter on to the land, clean up the waste and charge the landowner or occupier with the costs of so doing. They can also enter land to clear it of waste if there is no occupier or if the occupier neither knowingly caused nor permitted the deposit of the waste or in order to prevent pollution.

However, the Act does not make the local authority responsible for removing the fly tipped waste. There is a permissive provision in the Act to enable the local authority to remove the waste.

It important to manage expectations and advise there is no overarching duty on local authorities to remove controlled waste: there is a responsibility to take measures to reduce it and to enforce against offences. Local authorities' cleansing duties are codified in the Act and do not extend to such private land.

It is also worth noting that there are other statutory provisions that do exist to require the occupier / owner to remove the waste on pain of prosecution or re-charge – e.g. where the waste may be considered prejudicial to health (section 80 EPA), where the land is defaced by litter or refuse (Anti-social Behaviour, Crime and Policing Act 2014) or even where the waste may be an attractant to rodents (section 4 Prevention of Damage by Pests Act 1949).

The NEO's have used with great success the powers contained within Section 4 Prevention of Damage by Pests Act 1949 to deal with fly tipping on private land.

## 5.5 Potential Solutions

### 5.5.1 *Community Skips or Waste Vehicles*

One method to deal with fly tipping that has been previously used is the use of a community skip. Essentially this is a regular 'builders skip' deployed to an area for use by the community to deposit their waste that cannot be removed via regular refuse collections (bin lorries). Whilst the initial costs of a skip are low, typically £153 for a 20 cubic yard skip, the disposal of the waste will incur a charge.

Although community skips appear to be a simple and cost effective solution, there are some drawbacks, such as:

- people need to physically bring their waste to the skip; this can be restrictive for those who cannot carry their bulky items to the skip
- the skip will need to be 'staffed' throughout the duration of the deployment to ensure only appropriate items are deposited. This is to stop the skip being used for hazardous substances that need specialist removal, such as asbestos
- There is a risk that the skip is used for trade waste, thus defeating the aim of assisting residents to dispose of domestic bulky items

- Not all desired locations can physically accommodate a skip, for example narrow roads
- There is a risk that once the skip is removed, some may still bring their waste to the location, not knowing the skip is no longer there and then subsequently dump the waste in the location, thus defeating the original aim
- All the waste is mixed in as one, which can prevent the waste being effectively sorted and it all then going into land fill

Another solution is a refuse freighter. This can be either a small lorry with a cage/box body, which is used to collect bulky items directly from the resident's address. The advantage of community freighters is that being a vehicle it can collect directly from the address of the property where the waste is and it can also cover a larger geographical area during the hours of operation compared to a skip. Additionally as the waste is loaded it can be sorted and then disposed of in the correct way or even recycled. The refuse freighter has been successfully deployed in Breton, paid for by the Parish Council. The cost of the freighter is £144.79 per hour.

### 5.5.2 ***Stop and Search Operations***

The council can work along the Police and the Vehicle and Operator Services Agency to stop and search vehicles and to prosecute illegal carriers. It is an offence to transport "controlled waste" (household waste, commercial waste, industrial waste or a mixture of the three) as part of a business or otherwise with a view to profit without being registered to carry waste.

The local authority can demand that drivers produce copies of registration certificates. The maximum penalty for this offence on conviction is a maximum fine of £5,000.

Whilst a Stop & Search operation is resource intensive, it is highly visible, thus sending a clear message to the community that the issue is seriously dealt with and sending a clear message to illegal waste carriers.

### 5.5.3 ***Reducing the Business Opportunities of Illegal Waste Carriers***

Illegal waste carriers operate outside of regulations and therefore can offer their services at a greatly reduced cost to the tenant or business using their services. Whilst it is expected that business operators should be aware of the need to ensure that the disposal of their waste needs to conform to legislation, it can be reasonably assumed that most of the public will not be aware of this.

It is possible to examine and investigate fly tipped waste and identify the originator of the waste, with a view to prosecuting the individual or business. However, especially in domestic waste disposal, there is no guarantee that this will act as a suitable resolution (PCC have previously taken individuals to court at great expense, with the outcome being a conditional discharge and no fine) and/or deterrent. Notwithstanding previous experience this still remains an option.

One solution to reduce or remove the opportunities for illegal waste transfer is to provide a service that undercuts the illegal business, therefore making the illegal business unprofitable.

Currently PCC offers a free waste collection service for small recyclable items such as clothing, towels and linen, toys, books etc. and a chargeable bulky waste collection for items such as bed bases, mattresses, sofas, armchairs, fridges, washing machines etc. The charge of this service is £23.50 to the public. Other large/bulky waste, such as fish tanks, lawnmowers, kitchen units, radiators, gas cylinders and so on is charged on an individual quote basis. In the past two years PCC/Amey has performed 8,186 bulky waste collections.

To combine with the implementation of the Selective Licensing Scheme, landlords will be offered 2 free bulky waste collections a year. Feedback from the Neighbourhood and Housing Enforcement teams indicates that when a new tenant occupies a rental property, often the contents of the property that aren't required or are replaced are dumped in the front garden, on

the road or at other locations. Therefore by offering this service, the likelihood of this occurring is greatly reduced. The reason for offering 2 passes a year is that the minimum legal rental period of an assured short term tenancy is 6 months; therefore it is reasonable that no more than 2 free passes a year will be required.

#### 5.5.4 **Legal Self Disposal of Waste**

In the Peterborough area there is a Householders Waste Recycling Centre, which is well utilised. The drawback of this method is that residents need to have access to a vehicle to bring the waste to the centre.

Additionally anecdotal evidence suggests at busy times the centre can struggle to cope with the volume of people attending the centre. The impact of this is that some of those queuing to access the centre are seen to turn away. Whilst this is no factual indication that their waste will be fly tipped, there is a real risk it may be. For householders that wish to bring a large vehicle (transit van size) or trailer into the centre, permits can be obtained on-line to allow this.

Trade waste is catered for in the Peterborough area by privately run waste disposal sites. The minimum charge for these sites is 1 tonne of waste. (At the time of writing this report the private sites had not been contacted). This minimum charge is most likely a barrier for some trades people, as typically a kitchen refit or small house repairs will not generate 1 tonne of waste. Added to this there may be some difficulty in transporting 1 tonne of waste to the waste disposal site. Whilst this is an assumption, it will be worth entering into a dialogue with the site operators to explore if commercial loads less than 1 tonne can be accommodated at a reduced charge.

## 6. **IMPLICATIONS**

- 6.1 It is clear that fly tipping is happening across the Peterborough area on a regular and all too frequent basis. Whilst Officers investigate, identify and where they can issue fixed penalty notices or prosecute, the amount of fly tipping far outstrips the capacity to deal with it.
- 6.2 Likewise whilst Amey clear a large amount of fly tips, again the problem overwhelms the available resource.
- 6.3 We know first-hand and from reports from the community that the issue of fly tipping is a serious blight on the environment and the community and prevents people from taking pride in the area they live and work in.
- 6.4 We also know that the collection of data to identify the exact location, contents and type of waste needs to be improved. Once we have that data, the identification of the root cause will be much easier; for example, if we can identify that the waste is a certain type of commercial waste, then we can target the producers of that waste more effectively.

## 7. **CONSULTATION**

- 7.1 Reports on fly tipping have been presented to both the Operation Can Do and Safer Peterborough Partnership Boards.

## 8. **NEXT STEPS**

- 8.1 Based on the recommendations made by the Committee, the Prevention and Enforcement Service, in close partnership with Amey, will produce and deliver a targeted campaign to tackle fly tipping to support the Council's commitment to address this problem.

## 9. **BACKGROUND DOCUMENTS**

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985

- 9.1 House of Commons Briefing Paper Number CBP05672, 9 May 2016  
Fly tipping - the illegal dumping of waste.

Fly tipping: Causes, Incentives and Solutions  
A good practice guide for Local Authorities  
Jill Dando Institute of Crime Science  
University College London  
06 July 2006

**10. APPENDICES**

10.1 None