

HERTFORDSHIRE COUNTY COUNCIL

**COMMUNITY SAFETY & WASTE MANAGEMENT
CABINET PANEL
TUESDAY, 7 FEBRUARY 2017 AT 10.00AM**

FLY TIPPING IN HERTFORDSHIRE

Agenda Item
No.

6

Report of the Chief Executive & Director of Environment

Authors :- Duncan Jones, Hertfordshire Waste Partnership,
Partnership Development Manager & Chairman of the
Hertfordshire Fly Tipping Group (Tel: 01992 556150)

Matt King, Head of Waste Management and
Environmental Resource Planning (Tel: 01992 556207)

Executive Member :- Richard Thake, Community Safety & Waste Management

1. Purpose of report

1.1 To provide a general update on fly tipping in Hertfordshire under the context of current statutory responsibilities as well as local efforts to tackle the issue.

2. Summary

2.1 Fly tipping is the illegal dumping of waste either through a deliberate act or as a result of not understanding the '*Duty of Care*' which applies to both householders and businesses when it comes to disposing of waste.

2.2 Despite information campaigns which highlight both the correct routes for disposal as well as the potential penalties and enforcement, action instances of fly tipping have increased over the last few years. This trend is reflected elsewhere in the country.

2.3 This report looks at the issue from a Hertfordshire perspective; it identifies the size, scale and nature of the problem as well as what Hertfordshire's Partner Agencies are doing to tackle it.

3. Recommendations

3.1 That the Panel notes the report.

3.2 That the Panel indicates what, if any, additional information and / or other areas related to fly tipping they would like to explore.

4. Background

- 4.1 All borough and district councils are litter authorities with a duty to keep land clear. They are also the lead agencies in relation to reports of fly tipping, unless it is obstructing a highway in which case clearance falls to the Highway Authority. However, they neither have a duty nor the financial capacity to clear fly tipping from private land, which instead falls to the landowner including the associated costs.
- 4.2 During 2015/16, in Hertfordshire there were 14,716 instances of fly tipping recorded by the boroughs and districts. However, in the main these incidents relate to local authority land and for the most part will not include fly tipping on other land such as private land or that which is unregistered. The exceptions to this are where such incidents have been reported to the relevant local authority for investigative purposes.
- 4.3 Nationally the consequences of fly tipping are significant and include:
- It costs an estimated £86m-£186 million every year to investigate and clear fly tipping. This cost falls on taxpayers and private landowners. During 2015/16, Hertfordshire's local authorities estimated the cost of fly tipping to Hertfordshire's residents to be in the order of £800,000.
 - Fly-tipping poses a threat to humans and wildlife, damages the environment, and spoils the enjoyment of towns and countryside.
 - Fly-tipping undermines legitimate waste businesses where illegal operators undercut those operating within the law. At the same time, the reputation of legal operators is undermined by rogue traders.
 - Areas subject to repeated fly-tipping may suffer declining property prices and local businesses may suffer as people stay away.

5 The Hertfordshire Fly Tipping Group

- 5.1 The Hertfordshire Fly Tipping Group (FTG) has existed for some years. The aim of the Group, which meets quarterly, is to reduce and prevent fly tipping across Hertfordshire by bringing all relevant agencies together. More recently it has sought to adopt an improved strategic and operational perspective through closer involvement with the local Community Safety Partnerships.

5.2 The Group's current objectives are:

- To provide a policy forum for development and review of fly tipping issues.
- To ensure there are clear reporting processes between local authorities, housing authorities, the Police and the Hertfordshire Fire and Rescue Service.
- To encourage private land owners to report fly tipping to their local authority.
- To encourage timely, accurate and appropriate information sharing between partners tackling fly tipping.
- To ensure good communication between agencies to progress investigations in a timely manner.
- To co-ordinate opportunities to capture and analyse data to inform problem profiling and strategic needs assessments.
- To initiate and support opportunities for joint agency operations.
- Sharing and co-ordinating crime prevention opportunities.
- Assisting in sharing good practice and national updates.
- To develop protocols for how the problem is publicised and by whom.
- To develop and maintain a media plan for the partnership to raise awareness of the problem, to promote the initiatives and successful prosecutions, to reassure the public that the crime of fly-tipping is being addressed and to act as a deterrent to perpetrators.

5.3 Current membership of the group includes:

- All ten district / borough councils
- Hertfordshire County Council (including Herts Highways and Rights of Way)
- Hertfordshire Constabulary
- Office of the Police and Crime Commissioner
- Hertfordshire Fire & Rescue Service
- National Farmers Union (links to private landowners)
- Local Authority Community Safety Manager Representative
- Environment Agency
- M25 Connect

5.4 The FTG maintains an open invitation to other potential stakeholders who may be able to contribute towards the aims of the Group.

5.5 Previously the FTG had no official arrangements in place for reporting to any local Member Board and therefore there was no regular political oversight of the Group's work in terms of targets or results. There was also no annual work programme.

- 5.6 However, at the FTG's meeting in June 2016 an election process, open to all FTG Members, was held following which the Hertfordshire Waste Partnership's (HWP) Partnership Development Manager was elected Chairman for the period September 2016 – March 2018.
- 5.7 Subsequent to this, the Group's first formal work programme was approved by HWP Members at the HWP Member meeting in July last year. A copy of the work programme has been circulated as Appendix A to the report, FTG Work Programme Sept 2016 to March 2018.

6. FTG Work Programme September 2016 – March 2018

- 6.1. The FTG programme contains 8 distinct works streams including;
- a) Promotion of the Duty of Care
 - b) Creation of a Herts Fly Tipping Brand
 - c) Herts Fly Tipping Group – public face and promotions
 - d) Working with local JPs and magistrates
 - e) Hotspot Identification / County wide mapping
 - f) Reporting
 - g) The Unauthorised Deposit of Waste (Fixed Penalty) Regulations 2016
 - h) Research and Innovation
- 6.2. As such the programme contains elements ranging from pro-active enforcement activity reminding residents and local businesses of their *Duty of Care*, through to working with magistrates in pursuit of better prosecutions that reflect the true costs of fly tipping.
- 6.3. The programme was consulted on with, and reflects contributions from, the FTG, as well as the HWP Heads of Waste Group and HWP Directors Group.

7. Data

- 7.1 Boroughs and districts are responsible for recording data on fly tipping incidents via regular reports to DEFRA's WasteDataFlow System. Most now report on a monthly basis with registered users able to download the reports.
- 7.2 Current reporting requires the data to be broken down into the categories shown in Table 1 below, which also records totals across the boroughs and districts for 2015/16:

Table 1 – Category	No. of Incidents	Percentage
Animal Carcass	17	0.1%
Green	419	2.8%
Vehicle Parts	143	1.0%
White goods	934	6.3%
Other electrical	313	2.1%
Tyres	190	1.3%
Asbestos	79	0.5%
Clinical	7	0.0%
Construction / demolition / excavation	1425	9.7%
Black bags – commercial	66	0.4%
Black bags – household	2766	18.8%
Chemical drums, oil, fuel	60	0.4%
Other household waste	7257	49.3%
Other commercial waste	447	3.0%
Other (unidentified)	593	4.0%
Sub total...	14,716	100%

7.3 Based on the data in **Table 1**, over 60% of the fly tipping in Hertfordshire is domestic in nature which lines up with a similar picture reported nationally.

7.4 This indicates that, whilst other sources of fly tipping should not be ignored especially when it comes to categories such as chemical drums, oils and fuel incidents, in the main, efforts should concentrate on tackling domestic sources of fly tipping.

8. Historic Trend

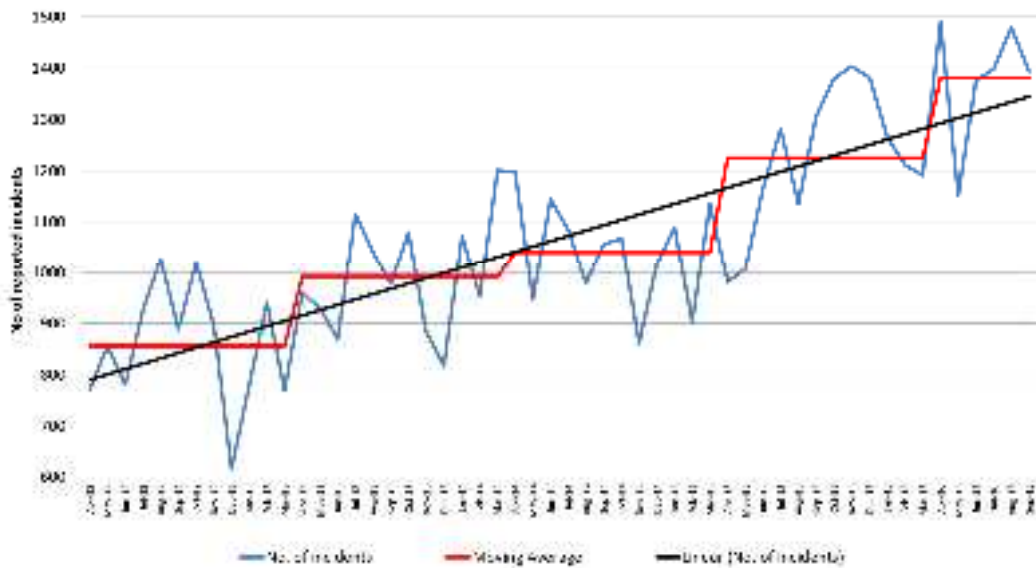
8.1 The historic record for (reported) fly tipping incidents for the period April 2012 – September 2016 is shown in Fig 2. overleaf.

8.2 As can be seen there has been a general upward trend in the number of fly tips reported by the boroughs and districts since 2012.

8.3 However, it should be considered that until recently different definitions of fly tipping were being used by the Partner Authorities making comparisons difficult.

Fig2 - Fly tipping across the HWP - '5 Year View'

(last updated 26th November 2016)



9. Household Waste Recycling Centres (HWRCs)

- 9.1 There have been publicly expressed views suggesting a possible link between fly-tipping and changes to the operational hours of the HWRCs. Amey took over the operation of the county's 17 Household Waste Recycling Centres (HWRCs) on 6 October 2014 and implemented a number of significant service changes from 5 January 2015. These changes included reduced opening hours at 16 of the 17 HWRCs, the closure of those sites for two days a week and the implementation of a van permitting scheme across the network.
- 9.2 For a six week period Amey placed a member of staff at each facility on the days they were closed, to provide residents with information of their nearest alternative facility. This also helped to prevent fly tipping outside the sites and to explain the new arrangements to those who were not aware of the changes.
- 9.3 A free to apply van permitting scheme was introduced to deter commercial waste producers from abusing the sites but is designed to not restrict residents that need to use the service. The permit allows residents with a van, pick-up or trailer 12 visits to dispose of their own household waste at the HWRCs, before they need to apply for a new permit.
- 9.4 The disposal of commercial waste has never been permitted at the HWRCs and abuse of this nature ultimately costs the taxpayer of Hertfordshire. Therefore, where this material has been identified under the permit scheme, these users have been directed to Amey's commercial waste disposal service at the St Albans HWRC or other private operated disposal facilities around the County.

9.5 Although the data indicates that the number of recorded fly tipping incidents is on the increase (as it is nationally), there is no demonstrable link between the changes in operation at the HWRCs and the level of fly-tipping incidents. The majority of residents are now used to the new opening hours and this has been reflected by the minimal amounts of fly tipping at the gates of the HWRCs on closure days.

10. Definition of fly tipping

10.1. Until recently the number of fly tipping incidents recorded in each borough / district were not comparable as a result of different definitions of fly tipping leading for example to some incidents being classed as littering when in fact they constituted fly tipping under Defra guidance.

10.2. Technically there is no definition of fly tipping other than the offences set out in Section 33 of the Environmental Protection Act 1990, i.e. the illegal disposal of controlled waste. The Litter & Refuse Code or Practice published by Defra in 2006 noted that a single plastic sack of rubbish should usually be considered fly tipping rather than litter. However, the use of the term 'usually' indicates an acceptance that definitions cannot be rigid.

10.3. Under this context it is commonly assumed that fly tipping is as a result of deliberate negative behaviour ranging from those that care little about their local amenities to those seeking to profit from the illegal dumping.

10.4. However, it is common knowledge that a significant proportion of the fly tipping incidents recorded each year stem from individuals acting in what they believe to be a fair and reasonable manner, i.e. leaving out additional black bags to be collected alongside their refuse bin on collection day where the motivation is not negative but rather is intended as being responsible. In Hertfordshire, historically, some authorities have classed this as fly tipping and some have not, which again leads to an inconsistency in reporting.

10.5. Taking the above into account and following work by the FTG across the course of last summer, the Partner Authorities largely agreed a new definition of fly tipping in relation to black bags. Key to this was the agreement that incidents that occur on collection day, i.e. plastic bags placed next to a bin on collection day should not be defined as fly tipping.

10.6. However, the following incidents would still be considered fly tipping:

- Plastic bags left out on non-collection days;
- Plastics bags / sacks or other 'containers' containing hazardous materials such as bonded asbestos, chemicals, paints etc;

- Plastic bags / sacks left out next to a bin where it cannot be reasonably determined that the sacks and bin belong to the same premises;
- Plastic bags / sacks left out in numbers that indicate unusual waste behaviour, i.e. the illegal deposit of trade waste as domestic;
- The deposit of trade waste in domestic bins;
- Repeat offenders, i.e. those that regularly leave out excess waste for example as a result of refusing to engage with the comprehensive recycling services now offered by Hertfordshire's boroughs and districts;
- Plastic bags / sacks left out by commercial customers contrary to their contracted waste arrangements. Such incidents should continue to be treated as either fly tipping or alternatively as '*Duty of Care*' offences.

10.7. However, whilst the partner authorities have tried to underpin a common definition for use across the County, it has to be recognised that flexibility is still needed in the overall approach in order to account for the potential range of circumstances that could be encountered as part of any single incident.

10.8. Therefore, pragmatically whilst there needs to be general adherence to the definition noted above; ultimately in determining whether to issue a fixed penalty notice or to prosecute the partner authorities may consider factors such as waste type, size, location, effect on environment and attitude of the offender in accordance with partner authority enforcement policies.

11. The Unauthorised Deposit of Waste (Fixed Penalties Regulations) 2016

11.1. In response to local government's concerns about increases in fly tipping on the 9 May 2016, the Government introduced the Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 herein referred to as *the Regulations*.

11.2. *The Regulations* are intended to address small scale fly tips, which historically make up the bulk of the incidents reported. *The Regulations* amend Section 33 of the Environmental Protection Act 1990 permitting statutory authorities to issue a "Fixed Penalty Notice" (FPN) for fly tipping offenses where the statutory authority believes an FPN is more appropriate than taking the offence to Court.

11.3. However, the Government has made it clear that they should only be used for small scale fly tipping offences with enforcement bodies still expected to pursue prosecutions for more serious cases.

11.4. When the issue was considered by the FTG concerns were raised that different responses could result in an uncoordinated and uneven approach to enforcement. Subsequently, it was agreed that a generic report would be put together by the FTG Chairman which sought to agree a common level of fines across the County. This report would then be used by the partner

authorities to seek approval through 'local processes'. The generic report was presented to the FTG on the 7 September 2016, a copy of which is available on request.

- 11.5. The report, was also the vehicle used to further align the definition of fly tipping and included commentary and endorsements from the Hertfordshire Constabulary, Office of the Police & Crime Commissioner, the Environment Agency, the National Farmers Union as well as Hertfordshire Fire & Rescue with respect to the need for partner authorities to follow a common definition as far as possible – see section 10.
- 11.6. As of the 22 December 2016, local interpretation of *the regulations* was noted as follows:

Partner Authority	Fine	Discount	Notes
Broxbourne	£300	£100	Agreed by the Portfolio Holder in October 2016
Dacorum	£300	£100	Formal Portfolio Holder decision due by the end of January 2017
East Herts	£300	£100	Exec Member Agreed. Non key decision went to Members in November 2016
Hertsmere	£300	£100	Report due to go to the Executive on the 11 January 2017.
North Herts	---	---	Will be considered as part of the wider service/corporate enforcement review. Anticipated commencement in 2016/17
St Albans	£400	£100	Have opted for a higher FPN of £400 but with the same £100 discount. The local scheme of delegations is now being amended to allow officers to issue FPNs which should be completed by the end of financial year.
Stevenage	£300	£100	Due to be ratified as part of a revised Environmental Enforcement Policy due for Member approval in December / January.
Three Rivers	£300	£100	Approved at Committee on the 15/09/16
Watford	£300	£100	Report has been drafted and is due to go to Committee early next year. FPNs scheduled to be in place for the start of 2017/18.
Welwyn Hatfield	£300	£120	Fines and discount approved at Cabinet meeting on 14 June 2016.

- 11.7. Officers believe this level of penalty demonstrates the seriousness of the fly tipping offence, but is set at a level that makes the option to pay the penalty, preferable to going to Court. Setting the reduced penalty at £200 (if paid within 10 days) continues to emphasise the more serious nature of fly tipping compared to littering but also reflects existing practice by

Magistrates who tend to reduce 'sentences' by a third in response to early guilty pleas.

- 11.8. On a more fundamental level the large scale adoption of a common interpretation is an early 'win' for the FTG and underlines the value in working in Partnership to address such issues that are common across the County.

12. Working with the Office of the Police & Crime Commissioner (PCC)

- 12.1. One of the first actions to be undertaken following agreement on new charring arrangements for the FTG was a dialogue with the Office of the Police & Crime Commissioner for Hertfordshire with respect to possible support to help fund new anti-fly tipping activity.
- 12.2. In parallel with these discussions, FTG members were asked to start thinking about new initiatives they would like to implement if additional funding could be secured. At the same time, in anticipation of a successful outcome, a draft bidding process was put in place including a selection criteria presented to and approved by HWP Members at the HWP Member meeting in July 2016.
- 12.3. Subsequent to this, in early October 2016 it was confirmed that the FTG had secured £60,000 of funding to support new activity with the bidding process opened shortly thereafter.
- 12.4. By the deadline of Friday, 25 November 2016, 8 bids had been received with a total project cost of £115,441 of which £82,261 was being sought from the PCC fund. The bids range from the rollout of local public relations campaigns to remind audiences about their Duty of Care to the purchase of convert cameras to the running of a special designed training programme in partnership with Keep Britain Tidy to improve the FTG's overall level of enforcement capability.
- 12.5. Further dialogue with the PCC's office resulted in additional funding to cover the balance of £22,261. As a result all 8 bids were approved for rollout. A list of the bids has been circulated as Appendix B – *Fly Tipping Bids*. It is a requirement of the 2016/17 initiative that all projects are completed by the 31 March 2017.
- 12.6. The impact of the new activity will be assessed and reported on in due course. It is hoped that if the FTG can demonstrate effective use of the PCC's funding that further discussions can take place with respect to repeating and hopefully expanding this initiative in 2017/18.

13. Financial Implications

- 13.1. Costs related to fly tipping are significant including those associated with actual clear up operations as well as investigations and ultimately disposal.

These can vary significantly based on the amount, type and location of material(s) in question.

- 13.2. Figures submitted by the boroughs and districts to WasteDataFlow for 2015/16 estimate such costs for Hertfordshire to be in the region of £296,000 per annum, covering things like investigation costs, warning letters, statutory notices, fixed penalty notices, duty of care offences, formal cautions and costs associated with pursuing prosecutions. It is not possible to comment on the accuracy of these costs.
- 13.3. However, in the main these do not include those incurred by the County Council. As an example, a chemical fly tip dealt with by the County Council in November / December 2016 involving the illegal dumping of a 'wax like liquid substance' will result in costs in excess of £100,000 once all remediation activities have been taken into account.
- 13.4. Costs related to investigation and collection of fly tipped material will normally fall to boroughs and districts. In turn, as currently set out in law (Environmental Act 1990), if the County Council, in its capacity as a Waste Disposal Authority, disposes of fly tipped wastes, it is able to pass costs for any non-household material back to the boroughs and districts accordingly.
- 13.5. However, historic practice in Hertfordshire has seen the County Council meet the full disposal costs for all fly tipped material, with the exception of rare large scale commercial incidents. This has led to a practise of the majority of fly tipped material being incorrectly classified as street cleansing when recorded at the disposal facility. It is not therefore possible to provide an accurate figure for the cost of disposing of fly tipped waste in isolation. However, it is estimated that the volume of fly tipped waste collected was in the region of 2500 tonnes in 2015/16 at an approximate cost to the County Council of £245,000.
- 13.6. Going forward historic practices will be revisited so the real costs of fly tipping can be properly identified. Consideration will also need to be given to the potential for different routes dependent on the type and location of fly tipped materials with a view to reducing overall costs. This work is scheduled to take place during 2017 and will be led by the HWP's Heads of Waste Group.

14. Equalities

- 14.1. When considering proposals placed before Members it is important that they are fully aware of, and have themselves considered the equality implications of the decision that they are making.
- 14.2. Rigorous consideration will ensure the proper appreciation of any potential impact of that decision on the Council's statutory obligations under the Public Sector Equality Duty.

- 14.3. The Equality Act 2010 requires the Council when exercising its functions to have due regard to the need to (a) eliminate discrimination, harassment, victimisation and other conduct prohibited under the Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 14.4. Given the information nature of this report an Equalities Impact Assessment has not been prepared.

15. Conclusions

- 15.1. Fly tipping is a complex and on-going problem which requires a multi-agency approach. As such, the County Council fully supports the new approach being taken by the Hertfordshire Fly Tipping Group and endorses its integration into the Hertfordshire Waste Partnership.
- 15.2. As a partner authority in the FTG, the County Council supports the new work programme as well as the projects noted under section 12 of the report which range from pro-active campaigning to promote, highlight and reinforce key messages around the *Duty of Care* through to the deployment of new assets designed to capture fly tipping incidents with a view to prosecution.
- 15.3. Going forward, the County Council believes it is important that future actions are 'evidence based' and therefore notes the important progress made in the last 6 months with respect to the provision of data on the size and scale of the fly tipping problem in Hertfordshire.
- 15.4. The County Council also endorses the adoption of a common FPN regime supported by a refreshed definition of fly tipping whilst recognising the need for local flexibility when dealing with the wide range of circumstances that could be encountered when dealing with suspected fly tipping incidents.

Background Documents

Hertfordshire Fly Tipping Group Work Programme, attached at Appendix A.
Fly Tipping Bids Summary, attached at Appendix B.