

**This Briefing Note
will be made public
on 7 October 2019**



Briefing Note: OS/19/05

To: Overview and Scrutiny
Date: 15 October 2019
Status: Non Key
Head of Service: Amandeep Khroud, Assistant Director, Governance, Law and Regulatory Services
Cabinet Member: Councillor Stuart Peall, Cabinet Member for Enforcement, Regulatory Services, Waste and Building Control

SUBJECT: Fly-tipping in Folkestone

Background

The Environmental Protection Team are made up of 6 Officers, 3 who deal with Environmental Enforcement issues including Littering, Dog Control, Stray Dogs, Fly-posting and Unauthorised Encampments and 3 covering Environmental Protection, 1 that covers Air Quality, Planning Applications and Temporary Event Notices and 2 that cover Nuisance (Noise, Odour, Dust, Light), Beach Bathing and Private Drinking Water, Pest Control and Fly-tipping. The lead Environmental Protection Officer for Fly-tip investigations is Daniel Stone.

Fly-tipping is an illegal activity under Section 33 Environmental Protection Act 1990 (EPA 1990) and can be defined as the 'illegal deposit of any waste onto land that does not have a licence to accept it'. This can range from a small black sack of waste, electrical items, a mattress or grass cuttings and this can make the area look rundown and uncared for and causes a local nuisance. Larger scale fly-tipping can typically involve truckloads of waste, building materials, tyres, demolition works or construction site waste.

Uncontrolled large amounts of illegal waste can cause harm to the public, the local area and damage the soil quality, especially if the waste contains toxic or asbestos materials. This is a nationwide problem where the individual committing this offence has the intention to leave waste on the land and avoid any charges at waste sites.

Anyone who produces, imports, keeps, stores, transports, treats or disposes of waste has a "Duty of Care" to take all reasonable steps to ensure that waste is managed properly. The Duty of Care is dealt with under 34 of the Environmental Protection Act 1990 to ensure that it is disposed of correctly. For a householder this

includes household furniture, renovation works, grass cuttings or branches/roots etc from landscaping works.

A business or householder must ensure the person taking their waste away, is disposing of it correctly. They should ask to see a valid Waste Carriers Licence or have their own Trade Waste agreement. Otherwise, there is the risk that their property could be fly-tipped rather than correctly disposed of. If a business or householder has paid someone to remove the rubbish and not taken any steps to ensure the waste will be disposed of correctly, they may be guilty of an offence.

1 Penalties for Fly-Tipping

1.1 Fixed Penalty Notices, Fines and Prosecutions

1.2 For small fly tips and Duty of Care cases, a £300.00 Fixed Penalty Notice (FPN) is offered on the first offence where the person has admitted liability and they can discharge their duty which means the case is not taken to Court and no criminal record is made against them. They have 14 days to pay the FPN and a period of 5 years where any other offence would mean we would take them to Court without the offer of a FPN and they would be prosecuted. Failure to pay the FPN or a lack of remorse shown or refusal to provide information about who was involved when interviewing the alleged offender, would result in a prosecution against them.

1.3 A maximum penalty of £50,000 at a Magistrates Court and/or 12 months prison sentence can be awarded to the offender and unlimited fines can be imposed at Crown Court (for large commercial fly tips)

2 Statistics

2.1 National

2..1.1 In 2017/18 local authorities dealt with just under 1 million (998,000) incidences of fly-tipping in England, compared to just over 1 Million (1,011,000) reported in 2016/17. This is a reduction of around 1%.

2.1.2 Folkestone & Hythe District

Fly-Tipping Types - Calendar Year *	2018	2019
Fly Tipping Hazardous Private	1	1
Fly Tipping Investigation Trade	4	0
Fly Tipping Ongoing Investigation	0	1
Fly Tip Council Land Evidence	79	86
Fly Tip Hazard Public Evidence	18	35
Fly Tipping Other	84	90
Fly Tipping Private Land	34	30
Total	220	243

*Calendar year figures provided as breakdown only available from 01/01/2018

2.2 Enforcement action taken

2.2.1 National

2.2.2 Local Authorities carried out 494,000 enforcement actions in 2017/18, an increase of 18,000 actions (4%) from 2016/17.

2.2.3 The number of fixed penalty notices issued has continued to increase, up 20% to 69,000 from 2016/17 and up 91% on 2015/16. This is the second most common enforcement action (after investigations), and accounted for 14% of all enforcement actions in 2017/18.

2.3 Folkestone & Hythe District Council

Enforcement Action Taken	2015	2016	2017	2018	2019 (to date)
FPNs	NA	Introduced	3	4	5
CPNs	11	17	29	35	21
Prosecutions	0	1	2	2	0 (2 pending)
Formal Cautions/warnings	4	7	7	11	13 (1 pending)
Sec 108 request for information	N/A (not recorded on M3 yet)	21	72	62	82
Totals	15	46	113	114	124

3 Response to Key Areas of Enquiry

3.1 *Is there an escalation of Fly-tipping in every Ward in Folkestone?*

3.1.1 There has been an increase of Fly-tipping across the District and this is a problem that many Local Authorities are experiencing. In response the Council has provided educational work with pop-up events across the District, taken enforcement action including prosecutions, run campaigns for “Duty of Care”, intelligence led patrols, joint working with Kent Police under Operation Assist, as well as the general routine investigation work the team carry out.

3.1.2 Whilst Folkestone and Hythe District Council has seen an increase in Fly-tipping, there has been some great results with prosecutions and Fixed Penalty Notices (FPN) to show that enforcement is being taken seriously. We

have received 100% success rate of all legal cases submitted to Court and this is down to the quality of the investigations and interviews carried out. A total of 7 over the last 5 years.

3.1.3 Prosecutions are not always the best course of action as FPNs could be issued to those who show remorse and confess to the crime and this remains on their file for 5 years. It would not be in the public interest to take this matter to Court. However, if they have been found to Fly-tip again they would be prosecuted for both offences in Court.

3.1.4 Facebook is also used to identify those that offer a service to collect and dispose of household waste without using a Waste Carriers Licence (WCL). This would be typically a “Man and Van” scenario where they charge around £20 to remove waste. This has proven to be helpful in using

3.1.5 KCC are running a “Duty of Care” campaign spending £250,000 to support Kent Councils in the battle of Fly-tipping and they will do this by providing:

- 9 covert cameras to use for covert investigations on a shared basis
- KCC will apply for RIPA (Regulation of Investigatory Powers Act)
- 4 tracking devices (with the potential of more to come)
- New signage to highlight “We are watching” and to be placed into known problematic areas.
- Intelligence sharing and support with investigations

3.1.6 Training, intelligence support and media press releases will be carried out to ensure that every opportunity is taken to educate, inform and enforce. Local businesses can attend a free “Duty of Care” training session booked for January 2020 to find out what they should be doing with their waste and the issues it causes if they do not follow the correct procedure.

3.2 Do Veolia Operatives notify Managers if they find Fly-tipping?

3.2.1 We do receive reports from Veolia operatives notably when they suspect businesses are using public bins. We think there could be more reporting of locations and this is being discussed with Veolia Management.

3.3 *How many residents are using illegal waste carriers?*

3.3.1 There are no statistics available to show how many residents are using illegal waste carriers and this would be difficult to determine. However, as well as the normal enforcement investigations that are carried out, the team conducts special ‘stop and search’ operations with Kent Police which involves pulling vehicles to:-

- check paperwork for transferring and disposing of waste

- looking for any potential environmental crime that they may be involved with
- checks with Trading Standards, Department of Works and Pensions for Benefit fraud, intelligence team for any vehicles known to be involved in criminal activity and general vehicle checks.

3.3.2 Where Waste Carriers Licence (WCL) and Waste Transfer Agreement (WTA) are requested, any person stopped or investigated will have their licence checked with the Environment Agency. This can be used by householders as well as Officers and they can do so by visiting the following link to confirm it is in order:- <https://environment.data.gov.uk/public-register/view/search-waste-carriers-brokers>

3.4. *Large Item collection are now unaffordable for those without a car, living on a low wage, what are they supposed to do?*

3.4.1 The council provides a bulky waste collection service across the district and plans to continue to offer this service in the next contract. This service is charged to the household requesting the service.

3.4.2 Bulky items are available for collection at a cost of £24.50 for 1st item and £6.00 extra per additional item up to a maximum of 4 in total (£42.50). Bulky items are accepted at the Household Recycling Waste Centres free of charge.

3.4.3 Most household delivery services handling white goods or furniture also provide a removal/collection service at a small cost, or there is the option of giving items away for free via social media, so there is no excuse for fly-tipping.

3.4.4 We have used CCTV in known hotspots but the results have been disappointing. Firstly, monitoring and reviewing footage is resource intensive unless incident times can be pinpointed. Identifying individuals from footage is often difficult and many fly-tippers are 'CCTV aware'. The best intelligence often comes from local witnesses as they can identify individuals to properties or vehicles. However they have to be prepared to complete a statement.

3.4.5 Whilst charges were introduced by KCC for non-household items such as plasterboard, tiles and bricks at a cost of £4 per black sack with a maximum of 5 bags per day, it is difficult to say if this has had an impact on fly-tipping as there are not enough statistics to research. The Officers dealing with this work do not feel they have seen an increase, but more research needs to be carried out before a correct analysis can be made.

4 Expected outcomes

4.1 List of waste carriers to be provided

4.1.1 A list of waste carriers is not available as individual checks can be carried out by searching on the following website:-
<https://environment.data.gov.uk/public-register/view/search-waste-carriers-brokers>

4.2 Bringing in the 3 E's - Engage, Educate, Enforce

- Officers engage with customers daily either with a site visit or telephone call, recycling education is delivered as requested.
- Pop up events take place across the District to promote many areas of Environmental Protection and enforcement issues. Waste Management is also included in this with educational information provided and leaflets given.
- Enforcement action is taken with intelligence led information and special operations based on Hot Spots and locations identified by Officers and the public.

4.3 Instead of tiny litter picks, can you arrange a large one like 2005?

4.3.1 Litter picking is not dealt with under Fly-tipping as there is generally a planned intention under fly-tipping, to walk or drive to an area and illegally dispose of the waste to avoid being charged for its correct disposal, whereas, litter is normally caused by accident or through laziness without a planned action to discard of the item.

4.3.2 Campaigning organisation, Keep Britain Tidy (KBT), run an annual national litter picking / cleaning event each spring and F&HDC have a strong track record of supporting litter picking / cleaning events throughout the year.

4.3.3 We engage with local communities and businesses who provide support in the local area to clean the community and use social media communication campaigns to support the KBT campaign, promote litter picking generally and promote the work we do to support litter picking and increase participation.

5 Conclusion

5.1 We are responding to the increase in fly-tipping and there are a number of local and county initiatives taking place where we are getting good results often from information provided by the local community and by the information obtained by Officers, who check through the waste for vital clues and evidence.