



Chelmsford City Council Overview and Scrutiny Committee

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Fly-Tipping and Waste Enforcement – Inform and Debate

Report by:

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Purpose

This report outlines the Council's approach to dealing with fly-tipping and waste enforcement. Following a request by Overview and Scrutiny Committee that this matter be brought to members for debate.

Recommendations

That the content of the report is noted.

1. Background

- 1.1. Fly tipping is a significant national problem in the UK, with local authorities dealing with over 1.26 million incidents per year, the most common type of waste involved in these incidents is household waste, accounting for 62% of all fly tipped waste.
- 1.2. Fly tips are larger deposits of waste and are often classified as such if they are larger in size than one black bag of waste. Littering is generally classed as smaller deposits of waste, for example cigarette or fast-food litter.
- 1.3. Chelmsford City Council officers have powers to deal with littering and fly tipping under the Environmental Protection Act 1990. Community Protection Officers within Public Health and Protection Services investigate and take action on such reports to the Council.
- 1.4. Street Care staff within Operational Services remove fly tips for the Council where they are located on City Council land or on the adopted highway. The Council has no remit to remove waste off privately owned land.
- 1.5. Fly tips and litter are reported online via the 'Report it' function on our website. These reports generate a case in the back-office system, and these are then reviewed by staff in both Street Care and Public Health and Protection Services. Where no evidence of who has carried out the fly tipping is highlighted in the report and where none is present at the waste deposit the fly tip would be removed by Street Care (providing it is on City Council land or adopted highway). Where reports have highlighted a potential culprit, or is on private/other land, Community Protection Officers would pick up the case and investigate. There is also liaison between both teams on these cases in the event information on evidence is identified, or if a fly tip can subsequently be removed following investigations.
- 1.6. Associated with fly tipping is the householder duty of care. The householder duty of care requires occupiers of domestic properties to take reasonable measures to ensure that any transfer of household waste produced on their property is only to an authorised person. Failure to comply with this duty increases the risk of the household waste being fly tipped.
- 1.7. The Government publish annual fly tipping statistics [Fly-tipping statistics for England, 2024 to 2025 - GOV.UK](#) this document provides context and useful background information for Members ahead of the Overview & Scrutiny meeting.

2. Enforcement

Enforcement Powers

- 2.1 Officers hold powers under the Environmental Protection Act 1990 to deal with littering (section 87.) and fly tipping (section 33) offences. The relevant sections outlining the offence and the penalties for the offence are reproduced below.

Fly tipping:

“33 Prohibition on unauthorised or harmful deposit, treatment or disposal etc. of waste

(1) Subject to subsections (1A), (1B), (2) and (3) below and, in relation to Scotland, to section 54 below, a person shall not—

(a) deposit controlled waste or extractive waste, or knowingly cause or knowingly permit controlled waste or extractive waste to be deposited in or on any land unless an environmental permit authorising the deposit is in force and the deposit is in accordance with the licence;.....

(8) A person who commits an offence under this section is liable—

(a) Subject to subsection (9) below, on summary conviction, to imprisonment for a term not exceeding the general limit in a magistrates’ court or a fine or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine or both.”

Littering:

“87 Offence of leaving litter

(1) A person is guilty of an offence if he throws down, drops or otherwise deposits any litter in any place to which this section applies and leaves it.

(2) This section applies to any place in the area of a principal litter authority which is open to the air, subject to subsection (3) below.

(3) This section does not apply to a place which is “open to the air” for the purposes of this Part by virtue of section 86(13) above if the public does not have access to it, with or without payment.....

(5) A person who is guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.”

- 2.2 The current Government have recently announced a new package of measures to strengthen powers to deal with waste crime. There is a focus on large-scale illegal waste sites, which are dealt with by the Environment Agency, and better coordination between regulators and agencies to tackle the issues more effectively. It is likely that proposals will also include extra powers and/or stronger penalties for fly tipping at a local authority level.

Investigation

- 2.3 An investigation into a fly tip would begin with a visit to the site to assess the waste and its contents. Officers look for any evidence that may be present in the waste that may link it with an individual. This could be correspondence with a name and address, for example. If there are contact details of the person who reported the fly tip the investigating officer would contact them to ascertain if they held any evidence or intelligence on who carried out the fly tipping. This could include CCTV footage or information such as a vehicle registration. Where information is provided by members of the public, to ensure the evidence can be used, we ask that they provide a witness statement.
- 2.4 If evidence is retrieved from a fly tip, or provided by residents, that identified a potential suspect officers would invite that person to attend the offices for an interview under caution under the Police and Criminal Evidence Act (PACE). In this interview officers ask the individual about the offence and give them an opportunity to explain what happened and clarify matters.
- 2.5 Following the interview a review of evidence takes place to determine the appropriate enforcement option.

Enforcement Options

- 2.6 There are a range of enforcement options when dealing with offences for littering and fly tipping. These are:
- Warning Letter
 - Fixed Penalty Notice
 - Simple Caution
 - Prosecution
- 2.7 In order to progress to formal enforcement action sufficient evidence must be held to enable a reasonable chance of conviction. The evidence and case must pass the evidential and public interest tests to proceed. If insufficient evidence is available, no action with the exception of a warning letter can be issued.
- 2.8 One option for dealing with offences is by way of issuing a Fixed Penalty Notice (FPN). This gives the opportunity to the offender to discharge their liability for the offence by paying a fine. This stops any further action being

taken. If the FPN is not paid the Council can initiate prosecution proceedings against the perpetrator. This would result in a hearing at the Magistrates Court, and the offender could be convicted, receive a fine, and a criminal record. An FPN cannot be issued if there is insufficient evidence to proceed with a prosecution.

- 2.9 An FPN is ordinarily the course of action taken for littering offences, unless the perpetrator has been issued FPNs previously, in which case prosecution would be considered. For fly tip offences, depending on the severity of the offence an FPN could be issued, or in more serious cases prosecution proceedings begun.
- 2.10 Littering FPNs are set at £500, but the amount payable is reduced to £150 if paid within 10 days. Fly tipping FPNs are set at £1000, with the amount reduced to £750 if paid within 10 days. A Breach of Household Duty of Care FPN is set at £600, reduced to £450 if paid within 10 days. This FPN is used when someone can be proved to have disposed of their waste inappropriately but didn't carry out the depositing of waste themselves. An example of this is when people pay someone, typically an unlicensed waste carrier, to remove waste, and they go on to fly tip it.
- 2.11 To proceed to a prosecution for an offence requires the preparation of a prosecution file. This includes witness statements, exhibits (e.g. photos, evidence), and consideration of the evidence and whether it is in the public interest to proceed. This normally involves inviting in the suspect for an interview under caution where questions are put regarding the alleged offence. Once the file is prepared and signed off it is referred to Legal Services for comment in relation to if the case is legally sound, and for advice regarding whether it has a realistic opportunity of being successful. It is unfortunate that following an investigation sometimes it is not always appropriate to initiate prosecution proceedings. One example of this is when an individual may deposit their household waste in a street, or park, litter bin. While this is technically fly tipping, to take formal action against someone who has placed refuse in a bin is, in our experience, difficult to pursue through the Courts where such action has been looked upon unfavourably.

3. Current Situation and Approach

- 3.1. The issue of littering and fly tipping enforcement outcomes is a complex one. There is significant work undertaken by officers and Love Your Chelmsford in educating and discouraging people regarding depositing waste and supporting awareness campaigns regarding reducing and preventing litter/fly tipping (including the recent SCRAP campaign). With 63% of fly tipped material being household waste, resources directed to education of

householder duty of care may change behaviour more effectively than purely an enforcement approach.

- 3.2. Every fly tip is investigated to ascertain whether evidence is present that may result in identifying the individual responsible for the fly tip and/or a breach of the householder duty of care.
- 3.3. The number of FPNs issued is not always useful measure of success in dealing with litter/fly tipping as it includes no context or appreciation of the circumstances in each individual case. Comparison with other local authorities who may employ contractors to issue large numbers of FPNs for littering is also not beneficial. The issuing of large numbers of FPNs may be an indicator that there is a more significant issue and/or that the fly tipping and littering is not being prevented.
- 3.4. Comparisons between Council area is difficult as every area is different with varying degrees of enviro-crime challenges. However, to provide more context, last year we have carried out a benchmarking exercise with other Essex district councils to look at recent levels of enforcement for littering and fly tipping. Three Essex District Councils had issued no such Fixed Penalty Notices in the last year. Three had issued one FPN and two Councils had issued similar FPN numbers to Chelmsford City Council. Three Essex councils employ a private company to carry out the enforcement function and these all issued a large number of FPNs. However, many of these are not paid and are written off. For information, in the last year Chelmsford City Council have issued 3 Fly tipping FPNs, 10 Littering FPNs, 1 Breach of Household Duty of Care FPN and 1 Waste Receptacles FPN.
- 3.5. The City Council reports on fly tipping incidents every quarter to DEFRA. This reported data includes fly tips that have been cleared and/or investigated. We report on the number of incidents, the type of waste, the type of land the waste was dumped on and the size of fly tip. These figures do not include all 'reports' of fly tipping which is a higher number but includes reports of fly tips that were not present or were not fly tips in the first place. A section of data reported to DEFRA by Essex authorities is produced at Appendix 1 this shows the challenges of comparing with other local authorities due to the differences in how local authorities appear to be interpreting the submission guidance.
- 3.6. There have been issues with recording data in previous years that has skewed some of our historic data meaning that prior to 2025 there has been some underreporting of incidents. These issues have been resolved, and the recent data is considered robust. The most recent quarters and number of fly tipping incidents are listed below. There are fluctuations in levels of fly tipping over the course of a year, and these figures represent an increase in numbers on previous years. This is likely due to improved record keeping and updating of the back-office systems.

July 25 – Sept 25: 282

Oct 25 – Dec 25: 277

Jan 26 – Apr 26: 323

Apr 26 – Jun 26: 360

- 3.7. One of the consequences of having an effective and reactive street care team is that on occasion fly tips can be removed before investigations can take place. This can prevent action being taken if evidence has not been gathered. A recent initiative the Community Protection Officers have employed when dealing with fly tips is the use of 'Fly Tip Aware' tape being placed on and around accumulations of waste. This indicates to members of the public that investigations are ongoing and that the waste may need to remain in situ for slightly longer before clearance.

4. Future Actions

- 4.1. To enable the City Council to be better equipped to deal with these waste issues, two new posts in the Community Protection team have been agreed. The two new Community Protection Officers will be in addition to the five current members of staff who carry out these duties and will increase capacity within the team to deal with, and follow up on, these waste and enviro-crime enforcement issues. The recruitment process for these two new posts has commenced.
- 4.2. Essex County Council (ECC) have contacted District Councils in Essex to work together to tackle fly tipping and increase enforcement. The invitation to join this piece of work has been accepted by the City Council and we will be working with ECC and other councils to develop this initiative which hopefully will be supported by funding from ECC.
- 4.3. Chelmsford City Council officers will continue to work closely with voluntary groups like Chelmsford Litter Wombles. Their work is recognised as significant is helping to reduce the presence of litter throughout the Chelmsford City Council area.

List of appendices:

Appendix 1 - DEFRA Fly-Tipping Returns Essex Authorities 2024/25

Background papers: None

Corporate Implications

Legal/Constitutional: None

Financial: None

Potential impact on climate change and the environment: None

Contribution toward achieving a net zero carbon position by 2030: None

Personnel: None

Risk Management: None

Equality and Diversity: Impact Assessment not required.

Health and Safety: None

Digital: None

Other: None

Consultees: N/A

Relevant Policies and Strategies: None

Appendix 1

DEFRA Fly-Tipping Returns Essex Authorities 2024/25

	Incidents	Actions
Chelmsford	650	242
Maldon	383	442
Braintree	807	262
Castle Point	978	978
Brentwood	1249	1305
Rochford	665	665
Southend	2214	131
Thurrock	3037	2177
Basildon	6220	6451
Uttlesford	351	5
Colchester	4348	154
Tendring	495	498
Epping Forest	3542	478
Harlow	2546	862

