



Report of the Cabinet Member for Community

Scrutiny Programme Committee – 15th November 2022

Fly Tipping

Purpose	To brief/update the Scrutiny Committee on action on Fly Tipping
Content	This document is a summary of the current procedures in place to deal with fly tipping.
Councillors are being asked to	Consider the information provided and give views
Lead Councillor	Councillor Cyril Anderson, Cabinet Member for Community
Lead Officer	Chris Howell, Head of Service Waste Management Parks and Cleansing
Report Author	Frances Williams, Waste Enforcement Team Leader, Jeremy Davies, Group Leader Parks and Cleansing. Tel: 01792 635600
Legal Officer	Tracey Meredith
Finance Officer	Paul Roach
Access to Services Officer	Rhian Millar

1. Background

- 1.1 'Local authorities and Natural Resources Wales both have a responsibility in respect of illegally deposited waste. Local authorities have a duty to clear fly-tipping from public land in their areas and consequently they deal with the vast majority of fly-tipping on public land, investigating these and carrying out a range of enforcement actions. Natural Resources Wales is responsible for dealing with large-scale, serious and organised illegal dumping incidents which pose an immediate threat to human health or the environment'.
<https://gov.wales/local-authority-recorded-fly-tipping-quality-report-html>
- 1.2 In relation to preventing fly tipping, prevention is regarded as better than cure. It offers information and advice to those it regulates and seeks to secure co-operation avoiding bureaucracy and excessive cost. The **3 E's**, Education, Engagement and Enforcement.

- 1.3 The purpose of this protocol and procedure document is to provide information to Councillors and to promote the enforcement message and to secure efficient compliance with legislation whilst minimising the burden to Parks & Cleansing, individuals, organisations and businesses. The information within this document is intended to be applied in a wide range of situations and it explains in general terms the approach adopted by the Enforcement Team when carrying out Swansea Council's enforcement duties in relation to fly tipping.
- 1.4 Swansea Council's waste enforcement team aims to encourage citizens to play their part and recognise their contribution to protecting finite resources.
- 1.5 Swansea Council has worked hard to improve performance reducing fly tipping, including:
- blocking access to areas known to be used by fly tippers with stone boulders and barriers on both public and private land;
 - taking enforcement action where people persistently disregard kerbside collection arrangements;
 - Supporting Keep Recycling Out campaign by taking enforcement action where people persistently disregard collection arrangements
 - undertaking education and engagement activities, including an advice day at local building suppliers;
 - working with the Police to stop vehicles carrying waste in order to ascertain that the businesses are in compliance with their Duty of Care responsibilities and are registered waste carriers.
 - Clearing fly tipping incidents on council land/highway promptly within five working days.
 - Working with private land owners to facilitate removal waste and subsequent enforcement action with a view to conviction and reimbursement of costs to the landowner.
 - Working with landlords of properties to ensure Duty of Care arrangements are in place to reduce opportunistic tradespeople from flytipping waste.
 - Working with householders to ensure legal disposal of waste to waste carriers.
 - Using surveillance in areas known as fly tipping 'hotspots'

Some examples of the above are detailed in **Appendix A**.

- 1.6 Fly tipping sits in Waste Management, Parks and Cleansing Service Area, with operational clearance and control under the Group Leader of Parks and Cleansing and Waste Enforcement being under the Team Leader Enforcement.
- 1.7 Fly tipping is part of the enforcement officers role, other duties include, but are not limited to, investigating and actioning issues relating to domestic waste, commercial waste, dog fouling, littering, dog ban on beaches,

2. Monitoring, Clearance, Prevention, and Enforcement

- 2.1 Flytipping and littering costs us, approximately £2.7 million per year to clear. However, due to the amalgamation with street cleansing it is not possible to provide separate tonnages of fly tipped waste and subsequent costs.
- 2.2 Our Housing department carries out its own removal and disposal of flytipping. Waste enforcement assists when required in relation to investigations being carried out.
- 2.3 Under the Environmental Protection Act 1990 Section 33, fly tipping is a criminal offence. The removal of fly tipped waste from public land is a statutory duty. The investigation and prevention of flytipping is not currently a statutory duty.
- 2.4 Flytipping is a criminal offence and is punishable in a court of law. On conviction sentencing can include an unlimited fine and a prison sentence. The introduction of Fixed Penalty Notices (FPNs) provided a useful and proportionate alternative to prosecution in small-scale fly tipping incidents. These FPNs provide a quick, visible and effective way of dealing with certain fly tipping cases, avoids taking “smaller” scale offences to the courts, and reduces demands on officers preparing prosecution files. However, each FPN file has to be of such detail initially that should the defendant fail to pay the FPN the case would be prepared for consideration, for prosecution of the original offence. The level set for FPNs is set at £400 with £250 early repayment option.
- 2.5 Keeping our Streets and Public Open Spaces Clear of Fly Tipping
 - 2.5.1 **Reactive cleansing** – Cleansing currently has two dedicated fly tipping teams consisting of two Cleansing Operatives per team. The teams receive daily reports of fly tipping incidents via the Contact Centre. Reports are actioned, the waste searched for evidence and then removed from site. The waste is separated and recycled wherever possible. Any evidence retrieved is photographed and forwarded electronically to the Enforcement Team for further action as they see fit. Other Cleansing Operatives are actively encouraged to remove any fly tipping that they encounter during their routine duties. Fly tipping can be reported directly to the Contact Centre on 01792 635600 or by completing the online Fly Tipping reporting form at <https://www.swansea.gov.uk/reportflytipping> Fly tipping located on private land is often referred to Pollution and Private Sector Housing to consider formal intervention against the owner(s)/occupier(s) depending on the nature and extent of the waste.
 - 2.5.2 **Proactive monitoring and clearing of hotspots** – Cleansing has a list of known fly tipping hotspots. This list is a ‘live’ document in which sites are removed and new ones added as may be appropriate depending on what the proactive monitoring determines. Any evidence found is actioned as above. Fly tipping hotspots will normally be visited at least once a week as a minimum depending on the individual circumstances presented at any given time.

- 2.5.3 **Proactively discouraging fly tipping** - Cleansing has worked closely in partnership with Keep Wales Tidy (Caru Cymru Project) over the last couple of years. Five fly tipping hotspots were identified and physical measures installed to help discourage fly tipping. Physical measures include permanent signage, mesh signage, boulders, vegetation clearance etc. Early indications are positive and further monitoring is required to compare the fly tipping incident rates before and after the works were completed. It is anticipated that further sites will be rolled out over the coming years.
- 2.6 Swansea Council's Waste Management web site provides information on how to dispose of all waste in the proper manner. It also advises residents on their duty of care in regard to employing 'a person in a van'. We publicise, where appropriate, details of successful prosecutions in the press and on our and Natural Resource Wales websites. We carry out campaigns and initiatives to inform the public on the problems created by fly tipping, for example: - officers attending schools to talk to pupils, fly tipping being included on agendas at meetings of community groups and regular distribution of leaflets on fly tipping. Officers believe this will assist to bring about a change of culture in the long term.
- 2.7 We continue to support the removal of fly tipped waste from private land that is in sight of a public highway and continue to work with private landowners to discourage fly tipping on their land. This could include initiatives such as the installation of a barrier or fencing. There may be a short term cost implication to both us and the landowners. Costs, may be reclaimed by landowners on conviction of fly tipper.
- 2.8 The use of covert CCTV requires Magistrates' court authorisation with definitive criteria to be met. The use of cameras has proved unsustainable in certain areas as cameras are located and stolen or destroyed. Staff availability to view hours of recorded footage is often prohibitive. However, enforcement officers work with Community Safety and where and when cameras are available and fit for purpose, we aim to deploy using current overt CCTV legislation in place.
- 2.9 Swansea Council has the Public Protection and Waste Enforcement Policy and looks to promote good standards of enforcement, and all officers will consider and follow the Code of Practice for Crown Prosecutors, issued by the Crown Prosecution Service, when taking decisions on whether to prosecute. Environmental enforcement activities are essential to protect the environment from those, despite extensive promotional and educational activities, still cause harm to the environment through fly tipping.
- 2.10 Legislation used for dealing with waste:

Environmental Protection Act 1990 (EPA 1990)

- **Section 33** – Prohibition on unauthorised or harmful deposit, treatment or disposal etc. of waste – Flytipping

FPNs for flytipping up to £400.

- **Section 34** – Duty of Care etc. as respects to waste.

Anyone who collects, keeps, transports waste has to have a duty of care.

FPNs can be issued for no duty of care £300 reduced to £180 for early repayment.

- **Section 59** – Powers to require removal of waste unlawfully deposited.

Refers back to section 33 – does not have a licence/exemption to accept or store waste

- **Section 46 – Domestic Waste**

Householder have a duty of care to ensure domestic waste is placed, in the right place, at the right time, on the right day, in the right receptacles for collection.

Statutory notice can be served with 21 days appeal time. Only done after initial education letters sent. Dealt with on individual basis.

After 21 days continuous problems can be dealt with by way of a Fixed penalty Notice (FPN) £100 reduction to £60 under section 47ZA/B

- **Section 47 – Receptacles for commercial or industrial waste (Trade Waste)**

Businesses have a duty of care to ensure their waste does not escape or is interfered with until such day of collection.

Statutory notice can be served with 21 days appeal time. Only done after initial education letters sent. Dealt with on individual basis.

After 21 days continuous problems can be dealt with by way of a Fixed penalty Notice (FPN) £180 reduction to £90 under section 47ZA/B

- **Section 87/88 – Fixed penalty notices for dropping litter**

Fixed penalty Notice (FPN) £100 reduced to £75 if paid within 7 days

- **The Unauthorised Deposit of Waste (Fixed Penalties) (Wales) Regulations 2017**

The provision of issuing FPNs for flytipping for commercial and domestic waste. Duty of Care. Householder Duty of Care yet to be forwarded for adoption Commercial DoC already in place. £300 maximum with reduction to £150 for early repayment.

3. Conclusions

3.1 In the year from April 2021 and March 2022 there were 1628 reported instances of fly tipping, with the vast majority of these being very small scale in nature, such as 2 or 3 bags or an item of furniture.

3.2 The table below shows the Enforcement actions taken in regard to waste issues over the same period

	Statutory Notices issued	FPN issued	Paid	Unpaid/withdrawn
Flytipping EPA 1990 S33	N/A	5	5	0
Duty of Care EPA 1990 S34	N/A	34	33	1
Domestic EPA 1990 S46	154	2	1	1
Commercial EPA 1990 S47	65	5	4	1
Littering EPA 1990 S87/88	N/A	24	19	5
Dog Fouling	N/A	1	1	0
Dog Ban on Beaches	N/A	17	16	1

3.3 As much as possible of fly tipped waste is segregated for recycling, with the remainder being disposed as residual waste.

3.4 The Council is working hard to proactively reduce fly tipping through regular checking of hotspots and the introduction of physical measures such as permanent signage, mesh signage, boulders, and vegetation clearance. Early indications of reductions in fly tipping are very positive.

3.5 Expanding the use of current legislation EPA 1990 section 33ZB to deal with fly tipping via Householder Duty of Care would discourage householders from giving waste to a 'person in a van' without carrying out due diligence, which can result in fly tipping.

3.6 We are also seeking to increase presence in areas of Houses of Multiple Occupancy (HMO) to ensure tradespeople and landlords comply with Duty of Care requirements with a view to reducing flytipping in rear lanes and on the highway.

4. Integrated Assessment Implications

4.1 The Council is subject to the Equality Act (Public Sector Equality Duty and the socio-economic duty), the Well-being of Future Generations (Wales) Act 2015 and the Welsh Language (Wales) Measure, and must in the exercise of their functions, have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Acts.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.
- Deliver better outcomes for those people who experience socio-economic disadvantage
- Consider opportunities for people to use the Welsh language
- Treat the Welsh language no less favourably than English.
- Ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.

4.1.1 The Well-being of Future Generations (Wales) Act 2015 mandates that public bodies in Wales must carry out sustainable development. Sustainable development means the process of improving the economic, social, environmental and cultural well-being of Wales by taking action, in accordance with the sustainable development principle, aimed at achieving the 'well-being goals'.

4.1.2 Our Integrated Impact Assessment (IIA) process ensures we have paid due regard to the above. It also takes into account other key issues and priorities, such as poverty and social exclusion, community cohesion, carers, the United Nations Convention on the Rights of the Child (UNCRC) and Welsh language.

4.2 A copy of the IIA screening confirms that a full IIA is not required, and can be found as an **appendix** to this report. Summary of Screening:

- **Summary of impacts identified and mitigation needed (Q2)** – Positive outcomes with no mitigation required
- **Summary of involvement (Q3)** - This report covers business as usual activities, so does not require any engagement/consultation
- **WFG considerations (Q4)** – Covered
- **Any risks identified (Q5)** – None
- **Cumulative impact (Q7)** - This report covers business as usual activities, and generally results in a positive outcome for all.

5. Legal implications

5.1 There are no legal implications associated with this report other than those set out in the body of the report.

6. Finance Implications

6.1 There are no financial implications associated with this report other than those set out in the body of the report.

Background papers: None

Appendices:

Appendix A – Examples of Fly Tipping Prevention/Reduction Initiatives

- a) Banners as a Deterrent
- b) Joint Police and Waste Enforcement Operations
- c) Liaison with Waste Collection Crews and residents
- d) Commercial Waste Enforcement

Appendix B – Integrated Impact Assessment Screening

Appendix A

a) Banners as a Deterrent

A fly tipping hot spot at in Gorseinon was on a hard standing that is situated at the junction of a main street and an access lane.

This hard standing has been a hot spot for many years; historically the Council have reacted to the evidence contained within waste when searched prior to recovery. This action would tend to range from Section 46/47 letters through to Fixed Penalty Notices for the relevant offences.

Due to the escalating volume of the fly tipping a decision was made to take a proactive stance on the issue. Every domestic dwelling on adjacent streets were issued Section 46 letters with specific detail on where each property were to present their waste.

Visits were made to all Commercial businesses and Section 47 Notices served on all properties identified as not having any Duty of Care in place.

The owner of the hard standing was identified and permission was given for the council to erect mesh fencing with an educational/enforcement banner attached to warn of potential consequences of fly tipping waste at this location. In May this year the fence was erected.

There has been an immediate change in the behaviours of residents and businesses dealing with their domestic waste. There have been no reports of fly tipping or waste being presented incorrectly since this action was taken.

Whilst it is early days there is positive change in relation to this hot spot, the area continues to be monitored



b) Joint Police and Waste Enforcement Operations

In July 2021 the Enforcement Team received information about an articulated lorry that was fly tipping a large amount of used tyres on private land in the Llansamlet area of Swansea, as a result of this information they contacted the Police at the Roads Policing Unit based at Lakeside Police Station, and we jointly attended the area and conducted a search to deal with the vehicles occupants.

This particular search was negative but the Police carried out a number of enquiries and traced the vehicle a few days later and the enquiry was handed over to Natural Resources Wales.

The Enforcement Team were very keen to promote a partnership with the Police and as a result arranged an operation to target Commercial Vehicles in order to check that the users had a valid Waste Carriers Licence and the Police would check the vehicles for Mechanical Construction and Use compliance and for the drivers documentation compliance.

In September 2021 we carried out the first of these operations, we patrolled the Swansea Council area in a marked Police Vehicle and a plain Council car and stopped a range of Commercial vehicles. On this occasion a total of ten vehicles were stopped and three persons were reported for no Waste Carriers Licence offences, and two persons were reported for mechanical Construction and Use Offences.

The purpose of the operation is to prosecute offenders who are trading without a Waste Carriers Licence, as the unscrupulous persons who do not have a licence will possibly fly tip the waste committing further offences and cause major disruption to the public of Swansea.

This operation also served the purpose of educating the individuals who were dealt with and undoubtedly the message that the prosecutions and stop checks were being carried out has spread to businesses in the Swansea area, therefore preventing other offences from being committed.

We have continued with the partnership and have conducted another two operations.

In November 2021 we stopped a total of eight vehicles, one person was reported for having no Waste Carriers Licence, and the Police also seized a Stolen Transit Van that was full of scrap waste.

In May 2022 we conducted another operation where ten vehicles were stopped throughout Swansea, there were no Waste Carriers offences committed, however the Police dealt with a Road traffic offences.

The fact that no Waste Carriers Offences were discovered during the May operation suggests that our previous efforts are having a positive effect, and we intend to continue this fruitful working partnership well into the future to protect and serve the public of Swansea.

c) Liaison with Waste Collection Crews and residents

A number of Fly Tipping prosecutions have also been conducted, of note was a referral by the Refuse Collection Crew in the Townhill area where they witnessed a local resident dumping 18 black bags of rubbish on the street and subsequently returning to his property a short distance away. The enforcement team then with this evidence were able to prosecute the offender at Swansea Magistrates Court.



Fly tipping investigation took place near the city centre, Swansea where the driver of a flat bed lorry was witnessed unloading and depositing the contents of lorry on the street, he was subsequently traced and issued a FPN for £400 for the offence of fly tipping.



d) Commercial Waste Enforcement

Following enforcement/education has taken place in recent months in the city centre.

10 premises have received Section 47 Notices.

These Notices have been followed up with 9 premises being issued with 1 or 2 Fixed Penalty Notices for either breaching the Notice or failing to comply with their Duty of Care responsibilities.

Commercial areas on the outskirts of the city have also been addressed with 15 premises receiving Notices and 9 of these commercial premises receiving Fixed Penalty Notices for either breaching the Notice or failing to comply with their Duty of Care responsibilities.