



WIRRAL COUNCIL

ENVIRONMENT OVERVIEW & SCRUTINY COMMITTEE

5TH JULY 2018

REPORT TITLE	THE EXTENT AND IMPACTS OF FLY-TIPPING ON WIRRAL
REPORT OF	SENIOR ENVIRONMENTAL ENFORCEMENT OFFICER

REPORT SUMMARY

This report is intended to provide the Committee with an overview of fly-tipping on Wirral – its causes, impacts, prevalence and the work being done by the Council to reduce the number of incidents in the borough. The report will also inform Members of the action the Council has and will take against offenders including future developmental activity to combat fly-tipping.

RECOMMENDATION

Committee is requested to note the content of this report and endorse the work being done by the Council to address this issue.

SUPPORTING INFORMATION

1.0 REASONS

- 1.1 The purpose of this report is to provide an overview and update to the Committee on fly-tipping on Wirral; the causes, impacts and current remedies used to tackle this environmental offence.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 Do nothing. In the case of land and Highways for which the Council is responsible, this is not a feasible option. In addition, doing nothing would lead to excessive build ups of waste throughout Wirral.

3.0 BACKGROUND INFORMATION

- 3.1 “Fly-tipping” is a term commonly used to refer to the illegal, unauthorised and wanton deposit of waste. “Fly-tipping” itself is not a legal definition however offences deemed as “fly-tipping” can be covered by a number of pieces of legislation, the most common being Section 33 Environmental Protection Act 1990 as the prohibition on unauthorised or harmful deposit, treatment or disposal etc. of waste onto any land where no waste management licence is in operation.
- 3.2 In reality, most fly-tipping on Wirral is committed by residents disposing of waste onto highways, open land or into rear passageways. At its most extreme level, fly-tipping is committed on industrial scales by organised criminal groups, often disposing of commercial or hazardous waste for the purposes of financial gain or tax avoidance.
- 3.3 The control, investigation and ultimate eradication of fly-tipping on Wirral is important because it can have a devastating impact on the local environment and detrimentally affect the lives of Wirral’s residents. Wirral is celebrated as a beautiful place to live in and work and visit. The vast majority of Wirral’s residents want to do the right thing for where they live and protect the local environment. However there is a sizable minority of residents and visitors who do not respect Wirral’s environment and damage or defile it through irresponsible and illegal actions such as fly tipping waste.
- 3.4 Wirral Council has made a commitment through the corporate pledges set out in the Wirral Plan, to create an attractive local environment for Wirral residents and visitors. The Council recognises that one of the threats to creating such an environment is fly tipping and in particular the fly tipping of domestic waste. Therefore a key objective of the Wirral Plan is to drive behaviour change that transforms the relationship between residents and their local environment that eradicates the fly tipping of domestic waste. The Council wants to empower residents to be more responsible for the actions. This has involved making it clear that there are consequences for irresponsible and illegal actions that adversely affect the local environment.

3.5 Fly tipped domestic waste is also costly for the Council to deal with as being uncontained and uncontrolled; it results in increasing the authorities' overall waste generated and thus escalates disposal costs.

4.0 FLYTIPPING STATISTICS

4.1 For the purposes of recording the scale of the fly-tipping problem, both at a local and national level, fly-tipping incidents are recorded and reported to DEFRA by the Council through their "Flycapture" database system.

4.2 The system requires local authorities to record incidents by type ranging from single black bag, through to industrial and commercial scale offences. Incidents are given a relative costing in order to provide consistency across authorities.

4.3 It should however be noted that local authorities will inevitably adopt differing and bespoke arrangements in how they react to, measure and remove fly-tipping at a local level. This can involve differing contractual arrangements, resource allocation and clearance times. Whilst "Flycapture" can therefore be used as an aid to recording and estimating the assumed impact of fly-tipping, caution must be exercised when using it as a benchmarking tool as costs may be skewed when seeking to compare one authority with another.

4.4 Wirral Council reports through Flycapture, however uses its own CRM system as a definitive means of capturing and recording local incidents and actions. **Figure 1** (below) shows the total number of recorded incidents of fly-tipping for the period 2010-2018. There is no identifiable explanation for the decrease in activity during the 2011-12 period, however annual figures have remained relatively stable over the remaining years.

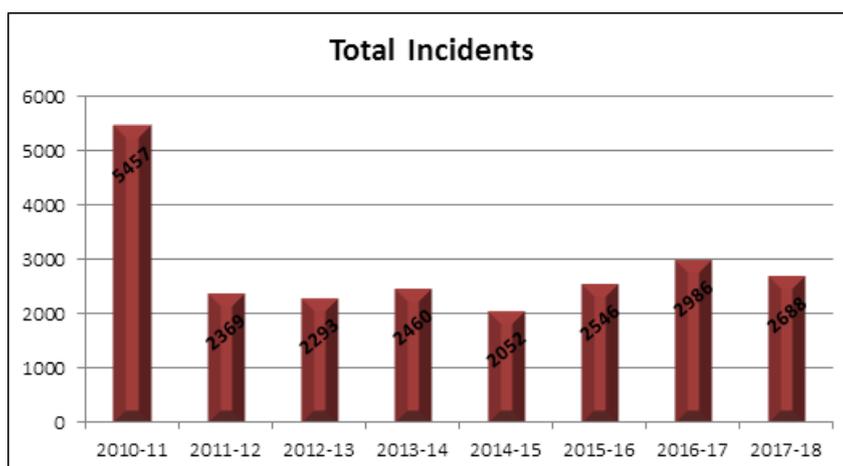


Figure 1 – Wirral Total Recorded Fly-tipping Incidents 2010-2018

4.5 The emphasis surrounding fly-tipping is often placed upon business and industry being responsible for a lot of the fly-tipping problems in England and Wales. Whilst it is the case that many parts of the country have been victims of repeated and sustained commercial fly-tipping activity, Wirral tends to suffer more with fly-tipping originating from domestic premises. This does not mean that Wirral is immune from commercial fly-tipping, as officers investigate many incidents of commercial origin and have succeeded in bringing a number of successful prosecutions against businesses. It is more the case within the borough that the majority of fly tipping incidents occur in rear passageways or on our highway. **Figure 2** shows that on average in Wirral, between 70 and 90% of all reported incidents take place in these 2 areas alone.

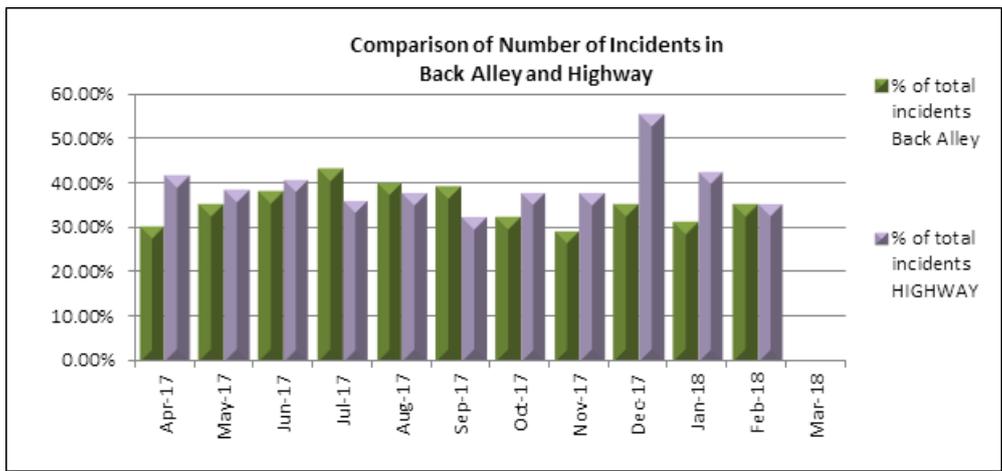


Figure 2 – Location of Fly-tipping incidents Passageways & Highways

4.6 Responsibility for Fly-tipping

4.6.1 Section 89 of The Environmental protection Act 1990 places a duty on a local authority to keep highways and relevant land for which it is responsible “clean” and free from litter and refuse insofar as is practicable. In relation to highways and relevant land, this duty is undertaken on Wirral by Biffa through the Streetscene Services Contract awarded in 2006.

4.6.2 The contract is not designed to facilitate the removal of waste from all land, nor even from all Council estates. Relevant landowners are ultimately responsible for the condition of their estate therefore where fly-tipping occurs, it is not necessarily the responsibility of the Council to remove it. In the event that the Council enters onto private land and removes waste, the Council could itself be committing an offence by doing so.

4.6.3 There are however a number of statutory powers available to the Council to pursue landowners to facilitate removal of waste from their estate. The Council’s Environmental Enforcement Teams, Planning Teams and Environmental Health divisions have powers available to them depending on the location and type of waste that has been deposited.

4.6.4 In **Figure 3**, we can see the most common types of land upon which fly-tipping is encountered, together with the responsible party. Council officers will often make contact with landowners to advise them of their responsibility as regards their land however it should not be assumed that this will necessarily lead to immediate and expedient clearance of the affected area. In the event that the legal process is followed, there can often be lengthy delays before any action is taken and a recurrence of the problem is not uncommon.

Private Land e.g. Business Premises	Statutory Undertaker e.g. Network Rail, Scottish Power	Council Highways, footpaths etc	Rear Passageways	Council land (other) e.g. parks, beaches etc	Unmanaged land/no identified occupier	Rivers/watercourses
<ul style="list-style-type: none"> Responsibility of landowner. Council does not clear 	<ul style="list-style-type: none"> Responsibility of Statutory Undertaker. Council does not clear 	<ul style="list-style-type: none"> Responsibility of Council. Biffa will clear within contract SLA 	<ul style="list-style-type: none"> Council has scheduled passageway cleansing programme every 4 weeks 	<ul style="list-style-type: none"> Responsibility of controlling department e.g. Leisure Services, Schools etc 	<ul style="list-style-type: none"> Council will seek to trace ownership or may clear under Grotspot programme 	<ul style="list-style-type: none"> Environment Agency may clear to prevent flood risk

Figure 3 – Responsibilities by land type

4.6.5 Likewise, in the event that the Council does eventually step in and remove the waste following the legal process, cost recovery for such action is seldom successful.

4.6.6 In the case of large scale fly-tipping, pollution, unauthorised waste disposal sites or commercial fly-tipping for financial gain, it will typically be the responsibility of the Environment Agency to use their extended powers to deal with the offence.

4.6.7 There is no universal operation to remove fly-tipping from the highway within the Biffa/Wirral contract. Each constituency area within Wirral has a dedicated Neighbourhood Cleansing Team that will respond to and remove fly-tipping within the agreed five day service level agreement. These crews are also responsible for various other cleansing functions including the emptying of litter bins and some routine cleansing. The direct cost of fly-tipping removal cannot therefore be disaggregated from the overall contract sum. There will however be a cost to the Council via the waste disposal levy of disposing of fly-tipped waste that could otherwise have been re-used or recycled through legitimate collection services.

4.6.8 Biffa do however operate three collection / cleansing crews dedicated to the removal of waste from passageways throughout the borough where waste has been dumped illegally.

4.7 Investigation of Fly-tipping

4.7.1 Any fly tipping that is reported to the Council or discovered by Council officers is investigated. The investigation does not always result in a site visit by an officer, a preliminary desk top investigation is first conducted to assess the likelihood of obtaining usable evidence.

- 4.7.2 A major source of the fly-tipping investigated on highways and private land in Wirral is waste that is passed to unauthorised or unscrupulous waste carriers who then do not dispose of it properly. Residents and businesses wishing to dispose of waste contact, or are contacted by, people offering waste removal services and pay them to remove their waste without taking appropriate steps to establish that they are authorised to accept it. The waste carrier then fly-tips the waste rather than pay tipping fees at an authorised disposal site.
- 4.7.3 There is a legal duty of care on both businesses and residents to ensure that their waste is only passed to someone who is authorised to accept it. Failure to do so may constitute an offence. If waste was not passed to unauthorised carriers in the first place, they could not fly-tip it. This is the basis of a recent Keep Britain Tidy campaign 'Crime not to Care' which aims to address this widespread problem through increased awareness and reduce the amount of waste passed to potential fly-tippers.
- 4.7.4 The majority of waste investigated in alleyways comes from adjacent residential properties and is usually excess domestic waste or bulky items dumped by residents. Some landlords or letting agents clear houses after a tenant has vacated by dumping whatever the tenant left into the alleyway. These are less frequent but can be large deposits, sometimes completely blocking passage along the alleyway.



Waste dumped in alleyway at end of tenancy.



Investigated bag of waste thrown out by resident

- 4.7.5 In order to progress an investigation evidence of a reasonable standard is required. This could include an item found within the waste indicating where it was from or an eyewitness account of the deposit occurring.
- 4.7.6 Where names and/or addresses are discovered in a fly-tip, an investigation is undertaken into who has disposed of the waste and from what address/premises. It may be that the person implicated had undertaken the act of fly-tipping themselves or that they had passed waste to another person

for disposal. Even when an address is found within waste it is not always possible to establish who had actually fly tipped it.

4.8 Investigating Fly-tipping from vehicles

- 4.8.1 Where a vehicle has been used to carry out fly-tipping and a vehicle registration mark (VRM) has been obtained, details of the current registered keeper of the vehicle may be requested from DVLA.
- 4.8.2 The records kept by DVLA are not infallible and may on occasion be incomplete or out of date. It is the case that a VRM may be obscured or altered by a person engaged in a criminal activity or that a vehicle may be purposely registered incorrectly to avoid detection.
- 4.8.3 DVLA set minimum evidential standards that must be met before such a request may be made. These include an actual observation of an offence occurring from a vehicle; circumstantial evidence such as the presence of a vehicle in the area that a fly-tip was later discovered is not acceptable to DVLA and an enquiry would not be permitted in those circumstances.
- 4.8.4 In cases where a member of the public has witnessed a deposit from a vehicle and noted the registration mark DVLA require a signed witness statement to be taken from the witness prior to any request for keeper details being made.
- 4.8.5 If CCTV footage of an incident involving a vehicle has been obtained this must contain both a clear and unambiguous image of the registration mark and of the waste being fly-tipped from the vehicle.
- 4.8.6 If DVLA suspect that their system has been used inappropriately, either for “fishing” searches when the whole VRM was not known or where insufficient evidence exists to link a vehicle to a crime, they will suspend access to their services and undertake an investigation. This would result in the Council being unable to obtain any data from the DVLA for the duration of the suspension or indefinitely if the service is withdrawn after investigation.
- 4.8.7 DVLA will charge the Council the costs involved in undertaking any investigation and audit resulting from a suspension in addition to a reconnection fee if the service resumes.
- 4.8.8 Automatic number plate recognition (ANPR) is a system for logging the passage of vehicles past a specific point by use of a camera. It does not record footage or supply details of vehicle ownership. Where ANPR is used keeper details must still be sought from DVLA, satisfying their normal evidential requirements as above.
- 4.8.9 The use of surveillance by the Council is governed by the Regulation of Investigatory Powers Act 2000 (RIPA). Authorisation must be granted by a specified senior Council officer and approved by a Justice of the Peace before surveillance may be undertaken. There is a requirement to establish the necessity and the proportionality of any surveillance. The Council is inspected

by the Office of Surveillance Commissioners to ensure compliance with the appropriate legislation and regulations.



Covert CCTV footage of Wirral residents dumping household waste.

4.8.10 The Council enforcement team utilise specialised, encrypted, solid state recorders and high resolution cameras when undertaking surveillance. These must be powered either by a fixed power feed, e.g. from a lamp column or building, or batteries. In remote areas it is usual to utilise batteries, which require regular charging, and to leave the equipment disguised in undergrowth. This can leave equipment vulnerable to theft or vandalism. Although low light cameras are used these still require some level of background light to function effectively.

4.9 Enforcement options and punitive actions

4.9.1 There are a range of options available to deal with offences of fly-tipping including fixed penalty, caution and prosecution. The Council recently increased the fly tipping Fixed Penalty Notice amount to £400 with no discount to bring it in line with other local authorities. In 2018/19 to date 16 fixed penalty notices have been issued in relation to incidents of fly-tipping.

4.9.2 An individual that is prosecuted and found guilty of an offence of fly-tipping may receive a sentence which can include compensation, confiscation, custody, community order, fine or a conditional discharge. The sentence may be suspended. The most recent sentences handed down to defendants in Council fly-tip prosecutions consisted of unpaid work or a low level fine and compensation orders. Defendants accused of fly-tipping are permitted to elect to have their case heard in the Crown Court which can significantly delay cases and lead to increased costs.

4.9.3 The Council is proactively seeking to reduce the amount of business waste that is fly-tipped by increasing checks on businesses to ensure that they are compliant with the necessary regulations regarding waste disposal. The Environmental Enforcement Solution provider will be approaching businesses and requiring them to supply details of how they dispose of their waste. Businesses that fail in their duty of care may be subject to a fixed penalty notice.

4.10 Clearing of untidy land and “Grotspots”

4.10.1 The Council has some statutory powers to require landowners to clear land which is defaced to such an extent that the amenity of the area is adversely affected. Many landowners will comply with requests or Notices to remove waste and tidy sites, however some may be unwilling or unable to find the funds to do so. If a landowner does not comply with a Notice requiring them to improve the condition of land they may be prosecuted and/or the Council may undertake clean-up work in default.

4.10.2 In the past, funds to undertake works in default were unavailable and only the option of prosecution was available. In such circumstances waste might remain on the land at the end of the process. However, as a result of the increased environmental enforcement activity since the Council entered into partnership with an external enforcement provider in 2015, funding has been released for a “Grotspot” programme to clear problem areas of private or unmanaged land defaced by fly tipping. In 2017/18 12 such problem sites were cleared by the Council.



Clearance of derelict garage and open land near New Ferry Road, New Ferry. 2017/18 Grotspot.

4.10.3 Funding generated by environmental enforcement action has again been made available for a Grotspot programme in 2018/19 and as sites are identified action to improve the local area can be undertaken. Two such sites have been cleared already this financial year.

5.0 FINANCIAL IMPLICATIONS

5.1 The management of fly-tipping – removal, enforcement and disposal – places additional financial burdens on the authority. Investigation, enforcement and removal increase the officer and contract cost requirements whilst disposal costs increase where waste is not disposed of or recycled through the correct waste streams thereby adding to the cost of the Waste Disposal Levy that the Authority pays to the Merseyside Waste and Recycling Authority.

6.0 LEGAL IMPLICATIONS

6.1 Section 89 of The Environmental protection Act 1990 places a duty on a local authority to keep highways and relevant land for which it is responsible “clean” and free from litter and refuse insofar as is practicable. There is no legal requirement for the Council to clear fly-tipping from land not in its ownership.

7.0 RESOURCE IMPLICATIONS: ICT, STAFFING AND ASSETS

7.1 Enforcement against fly-tipping offences is undertaken using a team of five officers from within existing staffing resources. The removal of fly-tipping and subsequent clean up incorporates a significant resource cost into the Biffa Streetscene contract.

8.0 RELEVANT RISKS

8.1 In the event that the Council did not remove fly-tipping from its own land and highways, the authority could risk being in breach of its statutory duties. Public health and perceptions of a local area are also impacted by the presence of fly-tipping so both resident satisfaction and investment and growth could be impacted accordingly.

9.0 ENGAGEMENT/CONSULTATION

9.1 There are no implications under this heading.

10.0 EQUALITY IMPLICATIONS

10.1 There are no associated equality implications.

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APPENDICIES

None

REFERENCE MATERIAL

None

SUBJECT HISTORY (last 3 years)

Council Meeting	Date