

**TEIGNBRIDGE DISTRICT COUNCIL
OVERVIEW and SCRUTINY
22nd September 2020
PART I**

Report Title	Fly Tipping in Teignbridge
Purpose of Report	To inform members of the powers, responsibilities and initiatives regarding fly tipping
Recommendation(s)	The Committee RESOLVES to: (1) Note the contents of the report
Financial Implications	The financial impacts are considered in section 5.1 of the report. Email: martin.flitcroft@teignbridge.gov.uk
Legal Implications	There are no legal implications as the report is for information only. Email: karen.trickey@teignbridge.gov.uk
Risk Assessment	The risks to staff involved are managed carefully and are acceptable. The investigation of fly tipping is a high profile service and there is a reputation risk if the correct procedures are not followed. David Eaton, Environmental Protection Manager Email: david.eaton@teignbridge.gov.uk
Environmental/ Climate Change Implications	The Council's approach to fly-tipping prevention and mitigation are detailed in the report. Actions by the council seek to prevent contamination of land and ensure waste is collected and disposed using licenced waste treatment facilities. William Elliot, Climate Change Officer Email: william.elliott@teignbridge.gov.uk
Report Author	David Eaton, Environmental Protection Manager Email: david.eaton@teignbridge.gov.uk
Portfolio Holder	Cllr Alistair Dewhurst
Appendices / Background Papers	Overview and Scrutiny Committee 7 th February 2020 Minute 16 Overview and Scrutiny Committee 3 rd March 2020 Minute 35

1. BACKGROUND

1.1 Following a Councillor question to Overview and Scrutiny committee on the 7th February 2020 information was provided in answer to the following questions.

- What recent year-on-year trends have been observed regarding fly-tipping incidents in Teignbridge? Specifically, for each of the last 4 years,
- what are the numbers of:
 - i) fly-tipping cases reported to Teignbridge DC;
 - ii) fly-tipping cases actively investigated;
 - iii) prosecutions/fines arising from fly-tipping incidents.

1.2 Councillor Patch asked a supplementary question referring to the decrease in fly-tipping cases actively investigated from 641 in 2016/17 to 161 in 2019/20 to date, and the formal process in place to undertake prosecutions, the involvement of the Police and what preventative measures were in place. It was agreed that a report be presented to the next meeting of the Committee for consideration, and which would incorporate the answer to the Councillor supplementary question referred to at the meeting.

2. RESPONSIBILITES OF THE COUNCIL REGARDING FLY TIPPING

2.1 The main legislation to control fly tipping is contained within sections 33, 34 and 59 of the Environmental Protection Act 1990. Section 33 makes it an offence to deposit or knowingly cause or knowingly permit fly-tipping. Section 34 places a duty of care on all persons concerned with controlled waste who must ensure that the waste is managed properly, recovered or disposed of safely, does not cause harm to human health or pollution of the environment and is only transferred to someone who is authorised to receive it. This definition includes small single items dumped by individual householders up to large scale commercial activities where the offender is attempting to avoid the disposal costs at a licenced waste disposal site.

2.2 Fly tipping has a number of significant impacts, causing environmental damage, social environmental damage where the visible fly tipping creates an environment that encourages further fly tipping. In some cases it is a larger scale

criminal activity which is defrauding householders who have paid for their waste to be disposed of correctly.

2.3 The Environmental Protection Act 1990 gives powers to both local authorities and the Environment Agency to tackle fly tipping. The Environment Agency is a national organisation and tackles larger and more organised environmental crime. The work of the Environment Agency includes dealing with illegally operating waste sites and unlicensed transfer yards. The Environment Agency investigates the larger scale incidents of fly tipping involving hazardous waste and incidents involving organised gangs of fly tippers

2.4 The Environmental Protection Act 1990 places a duty on the Council to keep clean council land or a public highway. On private land the land owner/management company is responsible for clearance.

3. INVESTIGATION AND ENFORCEMENT PROCESS

3.1 Officers employ both proactive and reactive strategies to address problems of fly-tipping. Proactive measures include the monitoring and surveillance of hotspot locations subject to regular fly-tipping and the use of publicity campaigns. Reactive measures will involve the investigation of incidents of fly-tipped waste to determine whether evidence can be gathered to take action

3.2 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.

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.

3.3 If there is no visible evidence the service request is passed to the Waste and Cleansing team for removal if it is on council land or the public highway. If during the

removal of the waste evidence is uncovered the team will seize the evidence to allow further investigation.

3.4 Where names and/or addresses are discovered in a fly-tip, an active 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.

3.5 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. 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.

3.6 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.

3.7 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.

3.8 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.

3.9 If the officer has sufficient evidence to suggest that an offence has been committed contact will be made with the individual. There are a number of actions that can now be taken dependant on the response of the individual.

- No Further Action taken
- Offence of fly tipping admitted and a Fixed Penalty Notice (FPN) issued
- Offence of breach of householder's duty of care admitted and a fixed penalty notice issued.
- Offence not admitted and prosecution case recommended
- Repeat offender and recommend prosecution

3.10 Once an FPN is issued then proceedings for the offence cannot be issued for a period of at least fourteen days from the date of issue. If the FPN is discharged (paid) within this period, this precludes any further action being taken in relation to that particular offence against the recipient of the FPN.

3.11 The current fixed penalty notices fines are as follows;

- Unauthorised deposit of waste (fly tipping) £400 with no discount for early payment
- Failure to furnish documentation (Waste Carriers Licence) £300
- Failure to produce authority (Waste Transfer Notes) £300

3.12 Covert surveillance will only be undertaken in line with the requirements of the Regulation of Investigatory Powers Act 2000 ('RIPA') and Home Office's Codes of Practice on Covert Surveillance, and the Office of Surveillance Commissioners Procedures and Guidance. The decision to carry out directed surveillance will only be taken after consultation with the council's Senior Responsible Officer for RIPA 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.

4 INITIATIVES REGARDING FLY TIPPING

4.1 Multi Agency Working

The Council officers regularly work with colleagues from neighbouring district councils, the Environment Agency, Police and trading standards in the investigation of offences. There are agreed procedures for intelligence sharing which assists in the identification of wider trends and offence patterns.

4.2 Householder responsibility

The council has undertaken a number of campaigns to highlight the duty on householders who are required to take reasonable measures to ensure that household waste produced on their property is passed on to an authorised person. Reasonable measures should include making a check with the Environment Agency that the person to whom they gave their waste is a registered waste carrier.

4.3 Clean Devon

Officers from the Council are active members of the Clean Devon partnership. This is a multi-agency task force to combat fly tipping. Many of the county's leading agencies will be working together in a crime-busting partnership known as the Clean Devon task force. The aim of the partnership is to send a clear message to fly tippers that their behaviour will not be tolerated.

It brings together organisations from across Devon, including environmental and business groups, emergency services, government departments, local authorities, community groups and voluntary services, into a single partnership

Partners collate and share intelligence and are working to introduce the latest technology to help identify the culprits and seek to investigate and prosecute illegal behaviour. It will also help identify high risk areas and enable each of the partners to target their resources better, to quickly clear up hot spots.

5 IMPLICATIONS, RISK MANAGEMENT & CLIMATE CHANGE IMPACT

5.1 Financial

The management of fly-tipping including removal, enforcement and disposal places additional financial burdens on the authority. Investigation, enforcement and removal increases the officer and disposal cost where waste is not disposed of or recycled through the correct waste streams. Currently the enforcement function operates within the approved budget.

Any Fixed Penalty Notice fines are only used within the service budget as required by legislation.

5.2 Legal

The Council had a legal duty to investigation fly tipping and take appropriate action in accordance with our enforcement policy. All investigation work is required to meet the provisions of the Police and Criminal Evidence Act 1984 (PACE) and related codes and the Regulation of Investigatory Powers Act 2000 (RIPA).

The Council is also under a duty 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.

5.3 Risks

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.

5.4 Environmental/Climate Change Impact

Due to the variable composition of waste and location of fly-tips, fly tripping can result in a range of environmental impacts. Section 3 of the report identifies that all incidences of fly-tipping reported to the council or identified by a council officer are investigated. Collection of fly-tipped waste by the Council on council owned land and highways will prevent the effects of waste on the environment and ensure that waste is diverted to licenced waste disposal facilities. The enforcement of penalties for fly

tipping, as covered in Section 3, and awareness campaigns, as set out in Section 4 will act to prevent fly-tipping from occurring in the first instance.

6 CONCLUSION

The Council has robust procedures to investigation offences of fly tipping where sufficient evidence is available. The Council takes an active part in a number of multi-agency initiatives to raise the profile of fly tipping, encouraging reporting and educating householders about their legal responsibility.