

Agenda Item

Report No.
ES20317

London Borough of Bromley

PART ONE - PUBLIC

Decision Maker:

**PUBLIC PROTECTION & ENFORCEMENT PDS
COMMITTEE
ENVIRONMENT & COMMUNITY SERVICES PDS
COMMITTEE**

Date: PP&E PDS Committee on Tuesday 14th November 2023

ECS PDS Committee on Thursday 16th November 2023

Decision Type: Non-Urgent Non-Executive Non-Key

Title: **FLY-TIPPING ACTION PLAN UPDATE (And Fixed Penalty
Notice Charges)**

Contact Officer: Dean Laws, Environmental Investigation Manager

Chief Officer: Colin Brand, Director of Environment & Public Protection

Ward: All

1. REASON FOR REPORT

- 1.1 This update report details actions that have been undertaken by Neighbourhood Management since the last annual Fly-tipping Action Plan update.
 - 1.2 This report is being presented to the PPE PDS Committee Meeting to review recent enforcement activities.
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2. RECOMMENDATION(S)

- 2.1 That Members note and comment on the content of the Fly-Tipping Action Plan, suggesting future activities for consideration by the Fly-Tipping and Enforcement Working Group where applicable.
- 2.2 That the Portfolio Holder be recommended to agree the updated fixed penalty charge amounts.

Impact on Vulnerable Adults and Children

1. Summary of Impact: The reduction of fly-tipping and other associated Enviro-Crime will lead to a positive impact for all service users and has no specific impact on vulnerable adults and children.
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Corporate Policy

1. Policy Status: Existing Policy
 2. Making Bromley Even Better Priority: For residents to live and prosper in a safe, clean and green environment great for today and a sustainable future
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Financial

1. Cost of proposal: £250k
 2. Ongoing costs: Non-Recurring Cost
 3. Budget head/performance centre: Earmarked Reserve for Members' Initiatives – Fly-tipping and Enviro-crime
 4. Total current budget for this head: n/a
 5. Source of funding: Earmarked Reserves
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Personnel

1. Number of staff (current and additional): 4
 2. If from existing staff resources, number of staff hours: 144
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Legal

1. Legal Requirement: A fixed penalty notice may be issued for certain offences. The notice must require payment of a specific amount and the amount must be between the prescribed minimum and maximum. The Council must therefore set the amount.
 2. Call-in: Not Applicable
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Procurement

1. Summary of Procurement Implications: Procurement of prevention measures and environmental campaign activity will be in line with Contract Procedure Rules and Financial Regulations. Where highway related works cannot be procured through the existing Highways Maintenance contract, these projects will be procured through a mini-competitive tender exercise.
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): Local residents and visitors
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? N/A
2. Summary of Ward Councillors comments: N/A

3. UPDATE

- 3.1 As part of the Council's Public Protection and Enforcement Portfolio Plan 2023/24, there is a commitment to keeping the borough's streets clean and green and to reduce litter, dog fouling and fly-tipping through programmed contracted works, education and enforcement activity. Targets have been set to reduce the number of fly-tipping incidents in the borough to less than 3000 per annum.
- 3.2 Review of reports received has led to a new focus on targeting hotspots utilizing CCTV. In the past 12 months the Environmental Investigation Team have deployed CCTV at seven locations, securing vital evidence against individuals who choose to fly-tip within the Borough
- 3.3 Details of all vehicles linked to fly-tipping have been shared with neighbouring authorities via Intelligence Reports, allowing legitimate sharing of information between local authorities. This process has led to the receipt of information from colleagues at other authorities that has assisted in effective targeting of several individuals
- 3.4 An example of this approach occurred following receipt of intelligence from colleagues at Sevenoaks District Council and Kent County Council which showed that an area within St Mary Cray was suffering from large deposits of waste blocking country lanes, which was on the border with Sevenoaks who were also seeing a similar issue.
 - Due to a review of this information a cross-border project was agreed, resulting in the creation of 'Operation Terminus'. From October 2022 until January 2023 CCTV cameras were deployed by Kent County Council at locations across the target area which secured vital CCTV evidence that led to a successful prosecution at Bromley Magistrates Court on Thursday 7th September 2023.
- 3.5 On Thursday 7th September 2023 a trial was heard at Bromley Magistrates Court. The case was built entirely on circumstantial evidence relating to deposits at East Hall Road on Tuesday 1st November 2022 and Thursday 8th December 2022. The main evidence used at trial was secured by CCTV which was deployed at East Hall Road by Kent County Council; this was further supported by CCTV from a local store and evidence found within the first fly-tip. The case against the defendant was proved with sentencing adjourned until Wednesday 11th October 2023 whereby the defendant was sentenced to pay a fine of £2,640, victim surcharge of £374.32, compensation for clearance of £681.68, forfeiture of vehicle used in the offence and a Criminal Behaviour Order.
- 3.6 The forfeited vehicle will be sent to auction and revenue generated from the sale will be used to purchase further resources to support the Enviro-crime team's work, investigating fly-tipping offences within the borough.
- 3.7 The Member's Fly-Tipping initiative fund was used to procure Artificial Intelligence (AI) cameras for use in an urban setting and covert cameras for deployment in rural settings. The AI cameras have been deployed at Chislehurst High Street public car park and Oast House Way, St Mary Cray since July 2023. The AI CCTV continually scans landscape, and reports any significant change direct to officers who can review images for potential fly-tipping. This CCTV equipment captured footage of fly-tipping at Chislehurst recycling site on Monday 4th September 2023 which resulted in the seizure of a 3.5 tonne Luton van on Sunday 24th September 2023. A case file is being prepared ready to lay charges at Magistrates Court.
- 3.8 Since September 2022 the team have secured the following enforcement outcomes
 - 13 Verbal Warnings

- 15 Warning Letters
- 83 Community Protection Warnings
- 14 Formal Notices
- 88 Fixed Penalty notices (43 litter FPNs served for low level fly-tip, 24 Duty of Care for waste FPNs, 21 fly-tipping FPNs)
- 8 Vehicle Seizures
- 4 Simple Cautions
- 22 Successful Prosecutions

3.9 As way of comparison the team secured the following enforcement action between 1st September 2021 – 31st August 2022

- 34 Warning Letters
- 6 Formal Notices
- 13 Fixed Penalty Notices (9 litter FPNs served for low level fly-tip, 4 fly-tipping FPNs)
- 2 Vehicle Seizures

4. PENALTY NOTICE CHARGES

4.1 On Friday 7th July 2023, The Government announced details of changes to the upper limit fines for Fixed Penalty Notice levies, with the following changes introduced under the Anti-Social Behaviour Action Plan:

- The maximum amount those caught fly-tipping could be fined will increase from £400 to £1,000
- The maximum amount those who litter, or graffiti could be fined will increase from £150 to £500
- The maximum amount those who breach their household waste duty of care could be fined will increase from £400 to £600

4.2 At present Fixed Penalty Notice fines are set as:

- S87 Environmental Protection Act 1990 Litter £80
- S33 Environmental Protection Act 1990 Fly-tip £400
- S34 Environmental Protection Act 1990 Householder Duty Of Care £200
- S34 Environmental Protection Act 1990 Business Duty Of Care £300 reduced to £180 if paid within 10 days

4.3 Delegated authority is sought from the Public Protection and Enforcement Portfolio Holder to agree the amount payable for each notice to:

- S87 Environmental Protection Act 1990 Litter increase to £100
- S33 Environmental Protection Act 1990 fly-tip increase max penalty to: £1000 tipper load of waste, £800 small van load of waste, £600 car full of waste, £400 boot full of waste and £200 bulky item
- S34 Environmental Protection Act 1990 Householder Duty Of Care £200: no change
- S34 Environmental Protection Act 1990 Business Duty Of Care £300: remove the discount payment only

4.4 The proposed changes provide a sliding scale of enforcement fitting with each individual offence. Change to s33 Environmental Protection Act 1990 removes the 14 days of payment so

it is proposed that the payment timeframe should change to 28 days payment for all FPNs issues under this section.

- 4.5 A Contract Change Notice has been applied to the Parking Services contract held with APCOA. This change has resulted in the creation of a new team within the contract whose focus will be enforcing against littering, Duty of Care, Dog Control and Duty of Care offences. The team will consist of 1 Admin Officer, 1 Senior Neighbourhood Enforcement Officer and 2 Neighbourhood Enforcement Officers. Mobilisation is ongoing with planned commencement of contracted work from late November 2023, which will provide additional frontline officers with delegated authority to issue FPNs on the Council's behalf for enviro-crime offences.

5. IMPACT ON VULNERABLE ADULTS AND CHILDREN

- 5.1 The removal and reduction of fly-tipping waste and other associated enviro-crime will lead to a positive impact for all service users and has no specific impact on vulnerable adults and children.
- 5.2 It is necessary to have due regard to the Public Sector Equality Duty (PSED), which sets out the need to eliminate unlawful discrimination, harassment and victimisation, to advance equality of opportunity, and to foster good relations between people who share a protected characteristic and people who do not share it.
- 5.3 Some individuals may find it more difficult to pay the increased amount of a fixed penalty notice. Some of those people may have protected characteristics (e.g. the young, who may be less likely to have savings and who may be less likely to be in employment due to being in full-time education). As detailed in section 3.9 above, issuing a fixed penalty notice is only one of several outcomes available. Fixed penalty notices are also not targeted at offenders with certain protected characteristics.
- 5.4 As a consequence it is not anticipated that updating the amounts would adversely affect any of the PSED objectives.

6. POLICY IMPLICATIONS

- 6.1 The Corporate Strategy "Making Bromley Even Better" 2021-2031 provides three objectives for the service to meet under Aim 4 "For residents to live responsibly and prosper in a safe, clean and green environment great for today and a sustainable future".
- Progress our broader community safety and public protection goals, including tackling nuisance behavior such as noise, fly-tipping and graffiti
 - Sustain a clean, green and tidy environment continuing to improve the street scene across the borough and town centres' for our residents and visitors
 - Protect and improve the environment through effective and responsible enforcement addressing issues, including environmental protection, pollution, planning and parking enforcement

7. FINANCIAL IMPLICATIONS

- 7.1 The annual cost of fly-tip removal is a fixed price sum which is included as part of the Veolia Street Environment Contract, which commenced in April 2019. The set fee is regardless of

quantities and, based on fly-tips cleared to date, is in line with Defra benchmarked costs for other local authorities.

- 7.2 The disposal of the fly-tipped waste is undertaken through the Veolia Waste Disposal Contract via the Council's Waste Transfer Station's. Costs of disposal have been benchmarked and are also in line with the Defra figures.
- 7.3 Activities set out within the Fly-Tipping Action Plan (unless otherwise stated) are funded through the Members' Fly-Tipping Initiative Fund. The fund initially totalled £250k and at the time of writing this report, £155,000 had been spent, with a further £12,135 committed.
- 7.4 There is a remainder of £95,000 within the Members' fund. Future expenditure will be reviewed and prioritised by the Working Group in consultation with the Portfolio Holder for Environment, and Members, with full consideration given according to the impact they are likely to have on preventing and reducing fly-tipping in the borough. Alternative funding will need to be identified for any schemes that cannot be funded through the Fly-tipping Initiative Fund. The financial impact of this cannot be determined at this time.
- 7.5 Under the current Defra guidelines for fixed penalty notices, all generated income must be ring-fenced for enforcement initiatives and in the first instance it is proposed that any sums recovered would be used to procure new equipment/resource to support Bromley's action against fly-tippers.

8. LEGAL IMPLICATIONS

- 8.1 Fly-tipping is defined as the deposit of waste on land otherwise in accordance with an environmental permit, contrary to Section 33(1)(a) of the Environmental Protection Act 1990.
- 8.2 It is a criminal activity which carries a fine of up to £50,000 and/or 12 months' imprisonment upon summary conviction at the Magistrates Court; if indicted to the Crown Court the fine is unlimited and/or a sentence of up to 5 years' imprisonment can be imposed. If a fixed penalty notice is issued and paid in full and in time, the offender can no longer be prosecuted. It is therefore an alternative to taking people to court for generally low-level cases.

9. PROCUREMENT IMPLICATIONS

- 9.1 The actions identified in this report are provided for within the Council's Contract Procedure Rules, and the proposed actions can be completed in compliance with their content

10. CUSTOMER IMPACT

- 10.1 Ongoing engagement and enforcement projects will help reduce litter and waste accumulations within the Borough, in line with the ambitions as detailed in section 6.1 above

Non-Applicable Sections:	Personnel, Transformation/Policy Implications, Carbon Reduction/Social Value Implications, Property Implications
Background Documents: (Access via Contact Officer)	Making Bromley Even Better