

CEREDIGION COUNTY COUNCIL

Report to:	Healthier Communities Overview and Scrutiny Committee
Date of meeting:	22 September 2021
Title:	An explanation of the procedure for dealing with incidence of fly-tipping within Ceredigion County Council
Purpose of the report:	To inform Scrutiny of the procedures and working methods to deal with problems of fly-tipping in Ceredigion.
For:	Scrutiny
Cabinet Portfolio and Cabinet Member:	Councillor Gareth Lloyd – Public Protection

Background

The act of fly-tipping is a serious crime that poses an immediate threat to the environment, animals, local communities, and the landscape of Ceredigion that depends on agriculture and tourism.

Fly tipping is defined under section 33 of The Environmental Protection Act 1990 as the deposition of Waste onto land without authorisation conferred through an environmental permit

Flytipping is often, and easily confused with misrepresented waste (waste presented on the wrong day, in the wrong container, or in the wrong place for collection. Also it is sometimes confused with littering which is classified as less than a bin bag).

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.

The duty applies to any person who produces, imports, carries, keeps, treats or disposes of controlled waste or as a broker has control of such waste. This duty may be breached when the waste is ultimately found to be fly-tipped. Section 59 provides powers to require the removal of waste unlawfully deposited.

Enforcement

The requirement for effective fly tipping enforcement is clear. The principle objective is to prevent detrimental impacts on the natural environment and residential amenity such as harm to wildlife, pollution to terrestrial and aquatic environments. The causing of harbourage to pests such as rats, public nuisance and detriment to the pleasantness or desirability of an area. Fly tipping of certain material such as asbestos and dead animals may also pose a public health risk. A cigarette for example would take approximately 1000 years to decompose into the environment.

Indirectly fly tipping and other waste offences such as littering can cause a detrimental impact upon tourism and in an area which is subject to regular fly tipping the value of houses may be affected. Fly tipping by persons operating an illegitimate business of collecting other people's waste under the auspice of proper disposal can also undermine and legitimate businesses who carry and dispose of other people's waste legitimately.

Effective fly tipping enforcement is also essential in reinforcing public opinion that the enforcing authority is showing a commitment to maintaining the environment. Publicity of successful fly tipping prosecutions is the number one deterrent in preventing future incidents. Effective fly tipping enforcement can act as a preventative measure to would be fly tippers who will realise that there is a clear risk of being caught and subsequently punished should they deposit waste illegally in Ceredigion.

An additional enforcement option available to a Local Authorities in Wales since 2017 is the power to issue a fixed penalty of £200 (£120 if paid within 10 days) to a perpetrator of a fly tipping offence. This additional provision has been most welcomed and is effective means of dealing with low level or first time offences with little resource expenditure in undertaking the enforcement.

In some very low level offences a formal warning letter will be issued. This action will most likely be reserved for instances of waste deposition with little to no environmental damage or criminality.

The decision on which enforcement option to take is very much in line with the general considerations stipulated in the council's enforcement policy. Such factors will include, whether the perpetrator admitted to the offence at the earliest opportunity and whether the offender does not have a history of enforcement. However there is a need to consider factors relevant to the deposition such as the size of the waste and its likely impact on the environment.

Fly Tipping Procedure

1. The authority employs 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. Reactive measures will involve the investigation of incidents of fly-tipped waste to determine whether evidence can be gathered to take action under sections 33 and/or 34 of the EPA, or section 2 of the RDA.

2. When planning the surveillance of hotspot locations and particularly when using remote cameras, the requirements of RIPA need to be met, this means that we must erect signage advising that monitoring may take place.
3. When investigating complaints of fly-tipping, the local authority shall determine whether the waste falls within the categories for local authority action under a memorandum of understanding (MOU) with Natural Resources Wales (NRW). The MOU may specify quantities, types and locations of fly-tipping where NRW could take responsibility for investigating, such as large-scale and hazardous waste deposits and where there is disposal in watercourses or where there is a risk of pollution to watercourses.
4. Upon receipt of a complaint relating to the fly-tipping of waste, the investigating officer should obtain as much information as possible (see also the 'Investigation of Complaints and Service Requests' procedure) which should include the following:
 - Location of waste
 - Nature and type of waste
 - Date of when the waste was found
 - Whether the fly-tipping was witnessed, and if so, whether the witness is prepared to give a statement
 - Whether there are any known details relating to the vehicle registration number of the vehicle used to fly-tip the waste
 - A description of the person who fly-tipped the waste if the incident was seen
 - Any known details relating to who owns or occupies the land and whether they are likely to know about the fly-tipping or allowing it to take place
 - Whether there are any obvious distinguishing details on or amongst the waste, e.g. name of a company, invoice or address details.
5. The investigating officer should visit the site where the waste is deposited and corroborate as many of the above details as they can. The officer would also:
 - Take photographs of the waste in situ
 - Examine the waste where possible for evidence of the person responsible or source of the waste, having regard to the officer's own health and safety i.e. don't go through the waste without adequate protection
 - Place any evidence found, e.g. letters, etc., in an exhibit bag and seal it
 - Visit the complainant to collect any evidence they may have and obtain a statement where applicable.

Enforcement options available to the local authority

Action under sections 33 and 34 of the Environmental Protection Act 1990

- Householders must still ensure that they dispose of their waste in a manner which does not cause pollution of the environment (section 33 (1)(c))
- Small, innocuous deposits are excluded
- Where the fly-tipping is from a motor vehicle, the person in control of that vehicle shall be deemed to have knowingly caused the depositing of the waste
- There are defences of taking all reasonable precautions, all due diligence and emergency action to avoid danger to the public

6. The investigation shall try to determine the source of the waste, and the stages of its processing and carriage, to determine whether there have also been breaches of the duty of care requirements of section 34 of the EPA .
7. The Waste (Household Waste) Duty of Care (England and Wales) Regulations 2005 introduced a new duty on householders from 21 November 2005. Under this duty, householders 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 Natural Resources Wales that the person to whom they gave their waste is a registered waste carrier. However, there is not a requirement for the householder to complete and retain a written description of the waste (the 'transfer note').
8. The Household Waste Duty of Care (Fixed Penalties) (Wales) Regulations 2019, enable a local authority to issue a fixed penalty notice (FPN), offering a person the opportunity of discharging any liability to conviction for the offence of failing to comply with section 34(2A) of the EPA, that imposes a duty relating to the transfer of household waste only to certain authorised persons. The amount of fixed penalty is £300 or £150 for early payment within ten days.
9. The penalties for offences under sections 33(1)(a) and (b) are an unlimited fine or a maximum prison sentence of twelve months upon summary conviction for an offence or unlimited fine and up to five years' imprisonment if convicted upon indictment. The penalties for conviction under section 33(1)(c) for a person (other than an undertaking or an establishment) is an unlimited fine on summary conviction or on indictment.
10. The Unauthorised Deposit of Waste (Fixed Penalties) (Wales) Regulations 2017 amended the Environmental Protection Act 1990 by introducing a new enforcement power for fly-tipping offences, namely the issue of a fixed penalty notice (FPN) for offences under section 33(1)(a).
11. The penalties for breach of the duty of care requirements is an unlimited fine on summary conviction in a magistrates' court or on conviction in the Crown Court (section 34(6) of the EPA).

Levels of Fly tipping in Ceredigion

The figures below relate to all incidents reported to the authority Public Protection team, both public and private.

- 375 incidents were logged in 2020-2021
- 308 incidents were logged in 2019-2020
- 324 incidents were logged in 2018-2019
- 243 incidents were logged in 2017-2018

106 incidents have been logged so far -1 April 2021 – 18th August 2021.

Partnership Working.

The authority participates in Flytipping Action Wales which pulls together Local Authority and National Resources Wales (NRW) to produce resources, training, and a platform to share best practice on enforcement. Development of using mobile applications based tools that may assist in identifying hotspots, and cross boundary issues have been undertaken by the group. Officers are currently looking at the feasibility of utilising the “flymapper” app for Ceredigion based complaints to assist with our investigations, and to feed into the broader data being used to map fly-tipping across Wales

The Public Protection Service also work closely with Local NRW Officers on identifying and prioritising cases, and determining who will lead on investigation, in accordance with the fly-tip matrix.

Internally, liaison with colleagues in Highways and Environmental Services is key to ensure that they remove items in their area of responsibility. Officers have historically had a good working relationship to ensure that exchange of relevant information occurs in a timely manner to address issues. Arrangements are in place to set up an operational officers group to investigate and facilitate further improvements in how we work together across services to minimise the negative effects of fly-tipping on our communities.

Keep Wales Tidy (KWT)

Recent changes in how KWT operate have resulted in a shift towards behaviour change and social responsibility, they have embraced the slogan “Caru Ceredigion”, and adopted it as “Caru Cymru” we have recently employed an officer who will be working with KWT and officers to promote this approach locally alongside local groups and our own original version.

Caru Ceredigion

It is recognised that behaviour change is key to preventing fly tipping. Key messages around positive behaviours are promoted via social media and publicity to encourage correct behaviours. The Caru Ceredigion ethos is inclusivity, and encourages all residents to take responsibility for their own local environment. So it becomes second nature for everyone to “do the right thing”.

Adjacent Local Authorities

Officers, where required, liaise with officers of surrounding LA’s where cross boundary issues have been discovered, such as where perpetrators are based in one Authority area, but fly-tip in the other. In such cases it will be determined who will lead the investigations on a case by case basis.

Reactive Enforcement Vs Proactive/ Intelligence led Enforcement:

Reactive enforcement is responding to fly-tipping reports and investigating after the event.

Proactive/ Intelligence led enforcement involves utilising surveillance at Identified “hot spots” in accordance with permissible surveillance techniques. – This utilises advances in CCTV technology to leave cameras in situ periodically at such identified sites.

Recent Success of Reactive Enforcement

Year	FPNs	Simple Cautions
2018/19	2	0
2019/20	2	0
2020/21	0	0

Recent Proactive Enforcement Success

Year	FPNs	Simple Cautions
2018/19	5	0
2019/20	6	0
2020/21	2	1

There are barriers to the enforcement of fly-tipping. As a criminal offence then the burden of proof must be beyond all reasonable doubt. However with the improvements in the availability and cost of CCTV technology, the ability to catch perpetrators is improving.

Summary

Fly tipping is:

- Blight on communities
- Detrimental to environment and wildlife
- Adversely impacts amenity and public perception of the area.

It may also have impacts on public health and safety.

The Public Protection team works with both internal and external stakeholders who have an interest in fly-tipping, and waste. There has been an increase in fly-tipping reported in 2020-2021, and this maybe due to the pandemic and the impact on normal operation of the civic amenity services.

Has an integrated impact assessment been completed? If not, please state why

The report is for information to scrutiny on the fly-tipping legislation.

Wellbeing of Future Generations:

Public Protection is a statutory duty of the authority and contributes towards the Well-being goals within the Well-being of Future Generations Act (Wales) 2015.

Collaboration: Public Protection collaborate extensively with partner agencies including Public Health Wales, Hywel Dda Health Board, other Local Authorities, Dyfed-Powys Police, Welsh Government.

Involvement: Public Protection enforcement activity begins with engagement and encouragement and promotes compliance with legislation.

Prevention There is an emphasis on prevention as processes ensure that a number of checks and safeguards and schemes of education are publicised locally and nationally.

Integration Public Protection activity is in line with the objectives of health partners and makes a contribution to a number of the Wellbeing goals within the Well-being of Future Generation (Wales) Act 2015and

Recommendation(s):

That scrutiny consider the content and accept the report for information.

Reason(s) for decision:

In order to comply with statutory requirements and to ensure proper and effective enforcement of the legislation and to improve public health.

Overview and Scrutiny:

Members of the Healthier Communities Overview and Scrutiny Committee have been asked to consider the content and implications of this report.

Policy Framework:

Corporate Strategy 2017-2022

Corporate Priorities

- Investing in People's Future

- Promoting Environmental and Community Resilience

Finance and procurement implications:

None

Legal implications:

None – existing obligations

Staffing implications:

None

Property/asset implications:

None

Risk(s):

Reputational damage – fly-tipping is an emotive issue. It also has environmental and public health risks.

Statutory Powers:

Outlined in the report.

Background Papers

Corporate Lead Officer:

Alun Williams (Policy & Performance)

Reporting Officer:

Heddwyn Evans (Environmental Health Manager)

Date:

24 August 2021