

Environmental Enforcement - Fly-tipping and Flyposting

Committee name	Residents' Services Select Committee
Officer reporting	Joanne Howells, Place Directorate
Papers with report	None
Ward	All

HEADLINES

This report outlines the legislative information, process and guidance used by the ASB Team for investigating offences related to fly tipping and fly posting (which includes To Let Boards).

RECOMMENDATIONS

That the Residents' Services Select Committee notes the content of this report and seek clarifications from officers, as necessary.

SUPPORTING INFORMATION

Fly-tipping is defined as the 'illegal deposit of any waste onto land that does not have a licence to accept it' and is an offence under s.33(1) (a) Environmental Protection Act 1990.

'Waste' is defined as *'any substance or object which the holder discards or intends or is required to discard.'*

Controlled waste is defined as household, industrial and commercial waste or any such waste. Industrial waste means waste from a premises used for agriculture. Commercial waste is that which is produced by a premises used wholly or mainly for the purposes of a trade or business.

All residents have a duty of care to take all reasonable measures available to ensure they only transfer household waste produced on their property to an authorised person/carrier. When a resident appears to have failed to comply with their duty of care, knowingly causes or knowingly permits the deposit of their waste, they commit an offence.

For example:

- Where fly-tipped waste can be traced back to a householder who is found to have failed to take reasonable steps to ensure that they transferred the waste to an authorised person;
- Where an unauthorised carrier is found to be carrying waste that was directly transferred to them by a householder;
- Where a householder is found to be transferring their waste to an unauthorised

person at a site that does not have a permit or exemption.

An authorised person may still fly-tip waste, so tracing fly-tipped waste to a household does not necessarily demonstrate a breach of the duty of care and residents should be given an opportunity to demonstrate they took reasonable steps to determine the person that took their waste was authorised to do so.

A householder giving their waste to a friend or family member to dispose of would be in breach of the duty of care. However, it would only be appropriate and in the public interest to issue an FPN/prosecute in this and similar circumstances where there is evidence the friend or family member has disposed of the waste illegally. A householder's waste can still be found fly-tipped or in the possession of an unauthorised carrier, even if they meet their duty of care.

However, if a resident proves they took all reasonable precautions and exercised all due diligence to avoid the commission of the offence then enforcement action cannot be taken.

All such offences are required to be proved to the criminal standard, with the burden of proof being beyond all reasonable doubt. Therefore, evidence from a sighting, property within a black bag or a label on property on its own is insufficient evidence on which to proceed.

However, where there is sufficient evidence, officers can issue Fixed Penalty Notices (FPN) of £400 or, in circumstances which include deliberate transfer of waste to an unauthorised person in the knowledge that it would be fly-tipped, or when someone is a persistent offender with a record of not paying fixed penalties then a prosecution through Court is appropriate.

A person who commits such offences is liable

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine or both

Estate Agent Boards

On the Public Highway, and / or fixed to street furniture –

- Breach of the Highways Act 1980 sec.132
- Issue an FPN (£100) and request the agent remove the sign within 48 hours. If the sign is not removed we would remove the sign ourselves.
- Repeat offenders (that is 3 or more FPN's issued to the same Estate Agent) we would prosecute under the above Highways Act (maximum fine £2500).
- Non-payment of FPN results in a prosecution.

On private land or LBH Housing Land –

- Contact the agent and request they remove the board within 48 hours

- If the board is not removed issue an FPN (£60/£100) under the Town & Country Planning Act 1990 s224 (3)
- Repeat offenders that is 3 or more FPN's issued to the same Estate Agent we would prosecute under the Town & Country Planning Act 1990 s224 (3) (maximum fine £1000).
- Non-payment of FPN results in a prosecution.

Fly posting

On the Public Highway, and or fixed to street furniture –

- A tasking form to EET to remove the fly-post and issue an FPN as appropriate.
- Breach of the Highways Act 1980 sec.132
- Repeat offenders that is 3 or more FPN's issued to the same Company/person we would prosecute under the above Highways Act (maximum fine £2500).
- Non-payment of FPN results in a prosecution.

However, if the flyposting is a phone number i.e. 'cash for cars' it is very difficult with our current method of checks to identify names & addresses for prosecution. We call the number, and the person answering can often be very vague, refuse to divulge personal details, and officers, therefore, will only agree to visit the caller or to meet at a neutral location.

Other types of fly post would involve a desk top search to try to identify the company/person and issue either words, of advice and or an FPN as appropriate.

On private land or LBH Housing Land –

If the sign has been placed on the land without permission from the landowner then it is a fly-post. If the land or premises owner has consented to the poster or sign, then this is not a fly post. It may contravene Planning regulations which we would then refer to Planning Enforcement Team.

If permission has not been sought -

- If the land owner is the local authority, i.e. Housing land a tasking form to EET to remove the fly-post an FPN (£60/£100) under the Town & Country Planning Act 1990 s224 (3)
- Repeat offenders that is 3 or more FPN's issued to the same company/person we would prosecute under the Town & Country Planning Act 1990 s224 (3) (maximum fine £1000).
- Non-payment of FPN results in a prosecution.

PERFORMANCE DATA

The normal method of reporting Fly tipping and fly posting is through the contact centre where a task is raised and responded to by an ASBET officer. Where multiple offences of aggravating factors such as type, or quantity of fly tips/fly posts are identified then a complex case officer is identified to assist and take on a prosecution case

Fly tipping

The ASBET team has had success in this area with large scale fly tips gaining convictions this year amounting to 24 months of prison time and compensation to the tune of £5750 plus court fines of £900.

In addition, proactive action is undertaken, which involves work with the Boroughs CCTV unit to identify offences together with the utilisation of ASBET officers and uniformed enforcement officers (EET) to identify offenders.

Not all CCTV footage is actionable, however, ASBET has introduced a system of intelligence target packages to assist with the identification and enforcement of fly tipping offences. This involves EET Officers visiting addresses identified from CCTV evidence to identify offenders and issue on the spot FPN's.

Using this system, has resulted in an increase in detected offences and the issue of 50 Fixed Penalty Notices so far this year. Fines range from £100 for littering to £400 for Fly tipping. ASBET has set a target to identify 13 offences and offenders per month which could achieve an annual income generation of £60,000, which does not include Court prosecution or compensation orders.

Fly posting

From September 2021 to date the ASB Team has processed 74 court cases related to non-payment of fines for Fly posting, which includes 'To Let' Boards.

RESIDENT BENEFIT

- Clear message that Hillingdon Council takes a zero-tolerance approach
- Reduction offences
- Cleaner and healthier environment

FINANCIAL IMPLICATIONS

No financial implications.

LEGAL IMPLICATIONS

Unlawful deposit of controlled waste – Section 33(1) (a) Environmental Protection Act 1990

Resident appears to have failed to comply with their duty of care, knowingly causes or knowingly permits the deposit of their waste - Section 34(2A) of the Environmental Protection Act 1990.

Highways Act 1980 sec.132

Town & Country Planning Act 1990 s224 (3)

BACKGROUND PAPERS

Nil.