

## **Flytipping in Midlothian**

**Report by: Ian Johnson, Head of Communities and Economy**

### **1 Purpose of Report**

This report is to inform board members of the enforcement powers available regards flytipping under the Environmental Protection Act 1990 (as amended) and to advise on the measures that are available to a variety of agencies including Midlothian Council, Police Scotland and Scottish Environment Protection Agency (SEPA) under that Act.

### **2 Background**

**2.1** Fly-tipping is the illegal dumping of waste and can vary significantly in quantity from a single bag of household waste to tonnes of construction and demolition waste, tyres etc. It is a serious criminal offence under the Environmental Protection Act 1990 (EPA) which, upon conviction, carries a fine of up to £40,000 and/or imprisonment.

Section 33 of The EPA, as applies in Scotland, states that a person shall not:

- (a) deposit controlled waste, or knowingly cause, or knowingly permit controlled waste to be deposited in or on any land unless a waste management licence, authorising the deposit, is in place and the deposit is in accordance with the licence;
- (b) treat, keep or dispose of controlled waste, or knowingly cause or knowingly permit controlled waste to be treated, kept or disposed of—
  - (i) in or on any land, or
  - (ii) by means of any mobile plant,

except under and in accordance with a waste management licence;

- (c) treat, keep or dispose of controlled waste in a manner likely to cause pollution of the environment or harm to human health.

**2.2** Where an individual is identified as having caused, or permitted, flytipping to occur, Section 33A of the EPA1990 states that the following persons may take enforcement action and issue fixed penalty notices;

- an authorised officer of the local authority in the area of that authority
- a police constable
- an authorised officer of a waste regulation authority i.e., SEPA in Scotland.

- 2.3** A fixed penalty notice, for flytipping, offers the opportunity to the recipient of discharging any liability to conviction for the offence, by payment of a monetary penalty of £200. The recipient of a fixed penalty notice has 14 days in which to pay the fine. The legislation also allows for fines up to £40,000 and / or imprisonment for a period up to six months upon summary conviction. The Regulatory Reform (Scotland) Act 2014 gives SEPA the power to issue fines of between £500 and £40,000 in relation to environmental crimes without having to take offenders to court. SEPA also has powers to accept 'enforcement undertakings' in a wider range of circumstances, giving environmental offenders the opportunity to make an offer to correct their behaviour and make amends.

### **3. Current Enforcement Position**

- 3.1** Fly-tipping is unsightly and can pose a significant threat to people, wildlife, the environment and the local economy and undermines legitimate waste businesses where unscrupulous operators undercut those operating within the law. Midlothian Council regularly receives reports of flytipping from a variety of sources including directly from members of the public and via the Dumb Dumpers hotline etc.
- 3.2** Fly-tipping costs significant sums of money to clear up every year and the Council actively investigates reported instances of fly-tipping on public ground to seek to establish evidence of who dumped the waste and / or who it originally belonged to, and then take appropriate action. The local authority deal with most cases of fly tipping on public land, whilst SEPA will investigate and enforce against larger, more serious and organised illegal waste crimes.
- 3.3** Incidents may be dealt with in a variety of ways including, where there is sufficient evidence to identify the perpetrator;
- requiring the individual(s) to collect and remove the flytipped material and deliver it to a civic amenity site
  - by the issue of a £200 fixed penalty notice (FPN), or
  - in more serious cases referral to the Crown Office Procurator Fiscal Service with a view to prosecution.

The Local Authority undertake the removal of flytipped material from public ground.

- 3.4** In terms of flytipping on private ground;
- rubbish deposited on private property becomes the responsibility of the land owner to ensure it is removed.
  - landowners / occupiers that remove waste (including waste dumped illegally by a third party) from their property to another's land, unless that land has a waste management licence, authorising the depositing of such waste, are committing the offence of flytipping in terms of Section 33 of the Act.
  - Section 59 of the EPA provides the waste regulation authority, (SEPA) or the waste collection authority, (the Council) powers to serve notice and require the occupier, or in certain circumstances the owner, of land on which flytipping has taken

place to remove the waste from the land and take steps to eliminate or reduce the consequences of the waste. In such circumstances the occupier has the right of appeal and the court shall quash a notice if satisfied that the appellant neither deposited, nor knowingly caused, nor knowingly permitted the deposit of the waste.

#### **4. Moving forward**

##### **4.1** The reported incidents of flytipping in Midlothian are increasing. The Council's Environmental Health Service has limited resources to address this.

Currently the Council is developing a programme with regards to fly-tipping that will seek to reinforce and inform Midlothian residents and visitors that flytipping in Midlothian is unacceptable and all possible steps to identify and deal with offenders will be taken. Information includes:

- i) enforcement action will be taken where there is sufficient evidence,
- ii) the need for householders to ensure that anyone engaged to remove waste is a licensed carrier and that full company details and a written receipt are obtained before handing over money,
- iii) the fact that deposited waste which can be traced back to an individual will be held as their responsibility unless they can provide full evidence of who they transferred this waste to,
- iv) the erection and / or replacement of signage at identified problem hot spots,
- v) investigation of the wider use of CCTV in hot spots to deter and subsequently identify and prosecute perpetrators,
- vi) the solutions for waste disposal that exist in Midlothian; civic amenity sites / bulky uplifts,
- vii) alerting the public, regards how to report witnessed incidents of flytipping,
- viii) seeking to identify any underlying causes of increased dumping and thereafter put any available steps in place to deviate from illegal behaviour, and
- ix) ensuring landowners and occupiers are aware of their legal responsibilities.

Co-operation from all relevant agencies including Police Scotland and the Crown Office Procurator Fiscal Service (COPFS) with a view to securing and thereafter publicising prosecution cases will be critical to success. Engagement with Police Scotland has commenced and formal engagement with COPFS is planned.

#### **5 Report Implications**

##### **5.1 Resource**

Within Midlothian Council the primary enforcement responsibility for flytipping offences rests with the Environmental Health function. Environmental Health operates as two principal teams, the Food &

Safety Team and the Public Health Team. All officers across both teams are authorised for all enforcement tasks where qualifications, training and competencies allow.

Flytipping enquiries are part of the more than 3000 service requests received each year, and this is in addition to routine programmed inspection and enforcement work.

The Council's approved financial strategy ( February 2018) has required a service review of Environmental Health , the expected outcome of which will be a reduction in field inspection capacity of around 35%.

## **5.2 Risk**

It is recognised that areas of flytipping attract additional flytipping and there is a risk that if locations are not addressed promptly the situation will deteriorate.

## **5.3 Single Midlothian Plan and Business Transformation**

Themes addressed in this report:

- ☒ Community safety
- ☐ Adult health, care and housing
- ☒ Getting it right for every Midlothian child
- ☒ Improving opportunities in Midlothian
- ☒ Sustainable growth
- ☐ Business transformation and Best Value
- ☐ None of the above.

## **5.4 Key Priorities within the Single Midlothian Plan**

The management of flytipping across the Midlothian area will contribute to the principal aim "Midlothian - a great place to grow".

## **5.5 Impact on Performance and Outcomes**

Performance criteria will require to be reviewed in accordance with the flytipping campaign criteria to continue to include:

- investigation / assessment of 100% of reported cases of flytipping on public ground
- removal of flytipping and proper disposal of material from public land with an agreed timescale.

## **5.6 Adopting a Preventative Approach**

As indicated above the Council are currently developing a campaign with the aim of reducing fly-tipping and will adopt measurement criteria to assess the success.

## **5.7 Involving Communities and Other Stakeholders**

Community Councils and other organisations will be kept informed of the campaign and will be afforded an opportunity to engage with it.

## **5.8 Ensuring Equalities**

An EqIA has not been completed for the report but will be conducted as part of the above mentioned review of flytipping management and enforcement.

## **5.9 Supporting Sustainable Development**

A reduction in flytipping will significantly contribute to ensuring the well-being and quality of life for people in Midlothian whilst improving the natural and built environment.

## **5.10 IT Issues**

There are no identified IT issues arising from this report.

## **6. Recommendations**

The Board is recommended to;

- i) note the legislative powers available to Midlothian Council, Police Scotland and SEPA regards flytipping,
- ii) note the current programme being developed by the Council to review flytipping enforcement by focusing limited resources most effectively; and
- iii) consider how Police Scotland and other agencies can most effectively contribute to addressing the ongoing issues around flytipping.

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