

Key Decision Required	No	In the Forward Plan	No
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CABINET

16 JUNE 2017

REFERENCE REPORT FROM THE SERVICE DEVELOPMENT AND DELIVERY COMMITTEE

A.1 DECLINE IN FLY TIPPING PERFORMANCE

(Report prepared by Mark Westall, Katie Sullivan and Linda Trembath)

BACKGROUND

At its meeting held on 3 April 2017 the Service Development and Delivery Committee were informed about the decline in fly tipping performance by the Council's Head of Environmental Services (John Fox) and Street Scene Officer (Jon Hamlet).

The following areas were covered:

- (1) The varying levels of fly tipping – a black bin bag to a tipper load;
- (2) The Council's target for clearing 90% of all reported fly tipping incidents within 72 hours;
- (3) Clearing carried out by Veolia, who the Council had a contract with;
- (4) Reasons why performance may vary;
- (5) Grouping of workload where possible to help performance;
- (6) Statistics;
- (7) Difficulties/issues experienced; and
- (8) Causes of delays.

COMMITTEE RECOMMENDATIONS AND COMMENTS TO CABINET

It was **RECOMMENDED** to Cabinet that:

- (a) the Service Development and Delivery Committee being concerned about the extent of fly-tipping, which is a criminal offence, around the District request Cabinet to investigate the extent of the Council's surveillance powers and the extent of the penalties the Council could expect to be imposed if a prosecution is successful; and
- (b) an analysis be undertaken to understand the cost of surveillance versus possible fines that could be imposed.

PORTFOLIO HOLDER'S COMMENTS AND RECOMMENDATIONS TO CABINET

COMMENTS:

I thank SDDC for its recommendation.

Fly-tipping is the dumping of waste in or on any land without a licence or knowingly causing or permitting that waste to be dumped in such circumstances: it

is a criminal offence.

On conviction in the Magistrates' Court an offender is liable to a term of imprisonment not exceeding 12 months, or a fine not exceeding £50,000, or both.

On conviction in the Crown Court an offender is liable to a term of imprisonment not exceeding 5 years, or an unlimited fine, or both.

Fixed penalty notices (FPN) can be issued to offenders. In issuing FPNs or prosecuting, the burden of proof is on the Authority issuing the FPN or prosecuting and, as these are criminal offences, the standard of proof is high and requires that the prosecution prove the case "beyond all reasonable doubt" or "so that you are sure". Therefore, suitable evidence is necessary to prove the Council's case.

A power by constables or authorised officers of an enforcement authority to search and seize vehicles used in the fly-tipping is available following which there is a duty on the authority to deal with the seized property in accordance with the appropriate regulations.

Covert surveillance is carried out without the subject's knowledge that they are being watched, whereas overt surveillance is performed using devices that are visible and obvious, and with appropriate signs being displayed.

Covert surveillance falls in to two categories and is regularised by Regulation of Investigatory Powers Act 2000 (RIPA):

- (i) intrusive surveillance which can only be carried out by the police or other law enforcement agency, e.g. HMRC; or
- (ii) directed surveillance which is covert but not intrusive and is undertaken for the purpose of a specific investigation or operation. Covert surveillance must be authorised, both internally and externally on application to a Magistrate, and must be for the purpose of investigating crimes which, for example, carry a term of imprisonment of 6 months or more. Surveillance for which authority is sought cannot be commenced until Judicial authority has been given.

Overt Surveillance falls outside of RIPA however, before undertaking the same, best practice advises that details of the surveillance operation are authorised and details of the investigation are recorded including expected duration, any premises, vehicles or equipment that may be used.

The Council has in place a Covert Surveillance Policy and Procedure Manual, adopted by Cabinet in 2015 and procedures in place to record and use overt surveillance.

RECOMMENDATIONS TO CABINET

- (a) that SDDC be thanked for its recommendation; and

(b) to support the Portfolio Holder for Environment chairing an officer working group set up to identify fly-tipping hot spots, discuss proactive enforcement tools including use of overt surveillance, engagement with Town and Parish Councils and more publicity to raise awareness of the public's responsibilities in arranging disposal of waste.