

Report to Neighbourhoods Select Committee

Date of meeting: 17 November 2015

Subject: Fly-tipping clearance & enforcement

Officer contact for further information: Jim Nolan

Committee Secretary: Adrian Hendry



Recommendations/Decisions Required:

- (1) That members consider the current position regarding the clearance of fly-tipped waste and consider if any further action is required in light of continuing large fly-tips on private land, that include ditches at the side of the public highway.**
- (2) Members specifically consider if the Council should provide any financial support for private land owners who are the victims of littering and fly-tipping crime and incur costs of waste clearance.**

Report:

1. The Environment & Neighbourhoods (EN) team are responsible for enforcing waste law across the district. The EN team log all incidents of fly-tipping and then prioritise investigations to try and trace the source of the waste and fly-tipper.
2. Enforcement investigations are not limited to land that the Council is responsible for clearing. Investigation of fly-tipping on private land will often receive a higher priority, because the costs of clearance can have a significant impact on an individual land owner and a successful prosecution of an offender provides an opportunity for the landowner to seek to reclaim clearance costs.
3. The responsibility for clearance of fly-tipped waste falls on the landowner. EFDC incurs considerable costs clearing fly-tipped waste from the public highway as part of the Council's responsibility to keep the highway clear of litter and refuse. The Council also has to clear fly-tipped waste from other land that it owns or manages, with localised fly-tipping in bin stores and green areas of housing land of particular concern.
4. Essex County Council will also clear some fly-tipped waste that causes a full obstruction of the highway, as part of their duty to maintain the free passage of the highway and remove hazards. EFDC clears the vast majority of waste from the public highway and only call on ECC to clear waste when specialist equipment is required and/or the highway completely obstructed. Occasionally the decision on clearance responsibility can cause some disagreement and delay in clearance, with both ECC and EFDC aware of the impact fly-tipping can have on their waste clearance budgets, albeit both from taxpayers money.
5. The Council does not provide any financial assistance to private land owners to clear fly-tipped waste from their land. The possibility of doing so has been considered in the past, but in general it is been accepted that the financial burden on the taxpayer of doing so makes this prohibitive, even if one decided that the principle of spending taxpayers money to clear privately owned land should be adopted. Concerns have also been raised that if the Council started to pay for clearance of waste from private land that this may encourage an unscrupulous land owner to dispose of their own waste by this means, or even encourage fly-tipping at the Council's expense.

6. The cost of removal and legal disposal of fly-tipped waste can be substantial especially if the waste is dumped in ditches where it cannot sometimes be easily removed or if the waste contains asbestos or other unknown hazardous material. Some landowners are placed under considerable financial burden if they have to clear waste from their land, especially if they have no means to deal with the waste clearance themselves as part of their management of a larger piece of land in their ownership.

7. The issue of waste clearance from private land has recently been highlighted with large scale fly-tipping in the vicinity of Laundry Lane, Nazeing. Considerable amounts of waste have been tipped in the ditches to the side of the public highway. The ditches form part of the adjacent private landowner's responsibility to maintain. In general that is always the case unless the ditch has specifically been installed by the highway authority and maintenance adopted. The private land owner in Laundry Lane has in the recent past cleared waste from the ditches under pressure from Essex County Council, who were concerned about flooding of the highway. The private landowner is now faced with the prospect of further clearance costs, although at this time it appears that ECC are not seeking to require the waste to be removed.

8. On most occasions EFDC will not seek to require fly-tipped waste to be removed from private land, but we will encourage private landowners to remove waste that is unsightly, may lead to nuisance or vermin problems or may lead to significant flooding. ECC adopts a similar approach. They will ask landowners to maintain drainage ditches, but if there is a significant risk to flooding on the highway and a potential hazard to users, ECC may require clearance. There are occasions where EFDC or ECC will have to consider using powers to require the victims of fly-tipping to remove waste from their land, at the expense of the private landowner.

9. Officers occasionally receive requests from private landowners asking the Council to clear waste from their land. This can especially be the case when the fly-tip is on the boundary between the public highway and the private land, which may have resulted from a vehicle standing on the highway but tipping directly onto the neighbouring land.

10. Although officers clearly sympathise with the victims of fly-tipping crime and will endeavour to trace the perpetrator and seek to reclaim any costs incurred, we do not have any budget or approval to assist private landowners financially with clearance costs. Some landowners believe that the Council should assist with clearance and it is the Council's responsibility to take the financial burden of the crime.

11. We have also had occasions where private landowners have cleared their private ditches of fly-tipping and/or windblown litter, deposited this on the public highway or highway verge and expect the Council to accept the financial burden of clearing the waste. This has caused some conflict with private landowners, but to date landowners have been persuaded that they must return and clear the waste or potentially face prosecution proceedings for depositing waste illegally on somebody else's land (i.e. fly-tipping). EFDC and ECC will tolerate the deposit of manageable amounts of mud and silt waste onto a highway verge, that will quickly be overgrown (and do not require clearance), but not significant amounts of litter and other waste that looks unsightly and is possibly hazardous. Deposits on the carriageway will not be tolerated.

12. Without significant additional budget provision allocated for clearance of private land, there is no scope for officers to provide any assistance to private landowners. If budget was provided, officers would have to be approved to provide financial assistance to private landowners. Steps would have to be taken to severely restrict any financial assistance EFDC may be willing to provide to avoid encouraging or opening the "floodgate" for future claims.

13. Officers recognise the financial limitations the Council operates under and are not recommending any change in the current procedure. However, we seek member's views and instructions on the matter, in light of recent incidents in Laundry Lane and challenges to this approach.

Reason for decision:

The Council does not clear waste from private land at the expense of the Council. This means that private land owners, who are the victims of fly-tipping or wind blown litter, carry the full financial burden for clearance. Some private landowners have challenged the validity of this position.

Options considered and rejected:

Seek additional budget to provide a free or subsidised waste clearance service from private land.

Consultation undertaken:

This report has been developed after discussions with private landowners who have been victims of fly-tipping/litter and discussions with EFDC officers involved in the investigation and removal of waste.

Resource implications:

Budget provision: Any decision to provide a free or subsidised waste clearance service for private land has the potential for significant budget implications, even if one designed a service with tight restrictions to access the service. It is hard to predict the potential financial burden as it appears that fly-tips on private land are under-reported and clearance costs can vary substantially. The district has many privately owned rural sites with the potential for fly-tipping and miles of privately owned land drainage ditches running alongside the public highway.

Personnel: Any decision to provide a free or subsidised waste clearance service for private land would result in additional work to administer requests, obtain quotes for clearance, deal with contract issues, etc.

Land: The provision of a Council clearance service for private land would undoubtedly speed up the clearance of some incidents of fly-tipped waste, improve land drainage and reduce the impact of fly-tipping crime on private landowners.

Community Plan/BVPP reference: N/a

Relevant statutory powers: None

Background papers: None

Environmental/Human Rights Act/Crime and Disorder Act Implications: None

Key Decision reference: (if required): N/a