

Committee: Standards and General Purposes Committee

Date: 7 November 2019

Subject: Environmental Enforcements update

Lead officer: John Bosley, Assistant Director of Public Space

Lead member: Councillor Tobin Byers, Cabinet Member for Adult Social Care, Health and the Environment

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Recommendations:

To review and comment on the current status of environmental prosecutions as outlined in the report

1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. The Committee, on the meeting of the 9th September 2019, has requested a regular update is provided on the outcomes of environmental enforcements, namely the progress made in prosecuting fly-tipping occurrences within the borough.
- 1.2. It was also noted that further work could be made and prove to be beneficial in publicising and naming persons that have been proven guilty of committing environmental offences.
- 1.3. The management and delivery of enforcement investigations and preparing enforcement actions is managed through the Waste Enforcement Team and prosecutions of cases is managed in partnership with the South London Legal Partnership.
- 1.4. In addition to fly-tipping incidents, the team also manage the successful environmental enforcement contract delivered through the service provider, Kingdom Security. The collective management of both littering offences through the environmental enforcement contract and the in-house investigations of fly-tipping incidents comprises environmental enforcements that are managed within the Public Space enforcement team.
- 1.5. Strategically and supported by the Cabinet Member, the enforcement team has recently developed a borough Fly-tipping Strategy to aid in underpinning a sustained focus on improving enforcement outcomes and raising awareness across the borough of this issue.

2 SCOPE OF ENFORCEMENT POWERS

- 2.1. Waste within the public realm and, in a limited way, on private land is managed by the control of how waste is managed, from containment, collection and even disposal to limit the impact on the local environment.
- 2.2. These powers are useful in tackling blighted areas within our communities that suffer from the improper storage of, or a lack of, a professional waste management service to dispose of wastes that are generated from businesses and residential properties.

- 2.3. Fly-tipping is the common term used to describe waste illegally deposited on land without an environmental permit. The offence of fly-tipping and the additional offences of 'knowingly causing' or 'knowingly permitting' fly-tipping are set out in Section 33(1)(a) of the Environmental Protection Act 1990. Fly-tipping is a criminal offence that is punishable by an unlimited fine or 12 months' imprisonment or both if convicted in a Magistrates' Court. The offence can also attract an unlimited fine and up to five year's imprisonment or both if convicted in a Crown Court.
- 2.4. Locally, the prevalence of fly-tipping incidents has been on the increase and is comparable to the national increase that has occurred over the last few years.

Fig 1. National Increase in Fly-tipping

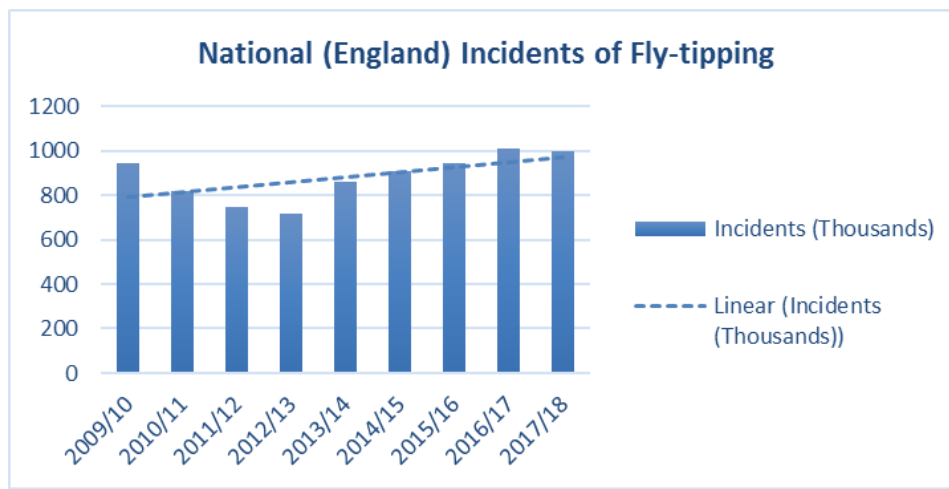
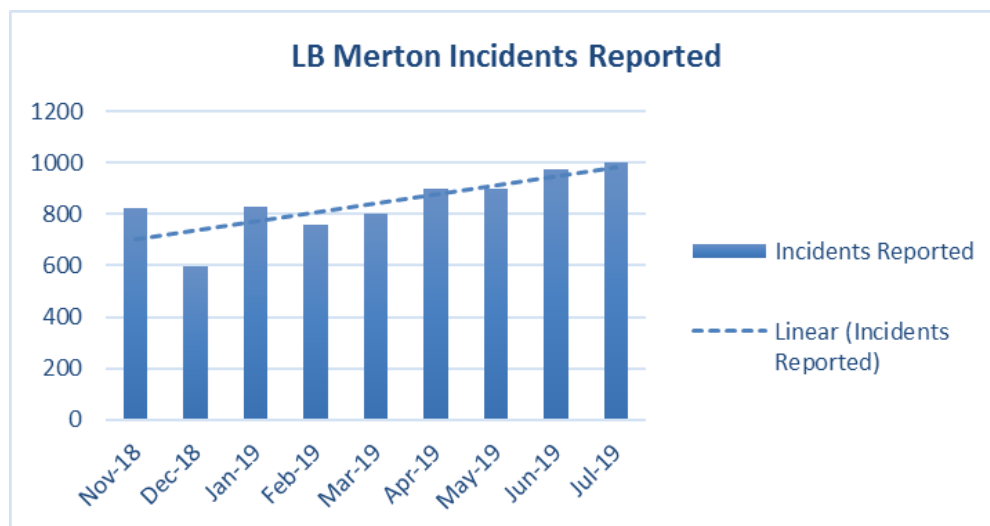


Fig 2. Local Increase in Fly-tipping



- 2.5. It is also important to note that the amount of potential evidence being observed by the enforcement team within illegally dumped waste has been on the decline. It is typically observed locally that only 1 out of 25 incidents may have sufficient evidence that can aid in formal prosecution.
- 2.6. For example, addressed mail has been a traditional form of evidence with smaller scale fly-tipping incidents, but the increase of paperless systems (i.e. billings systems and emails) have seen a combined decline in addressed post of 22% since 2013.

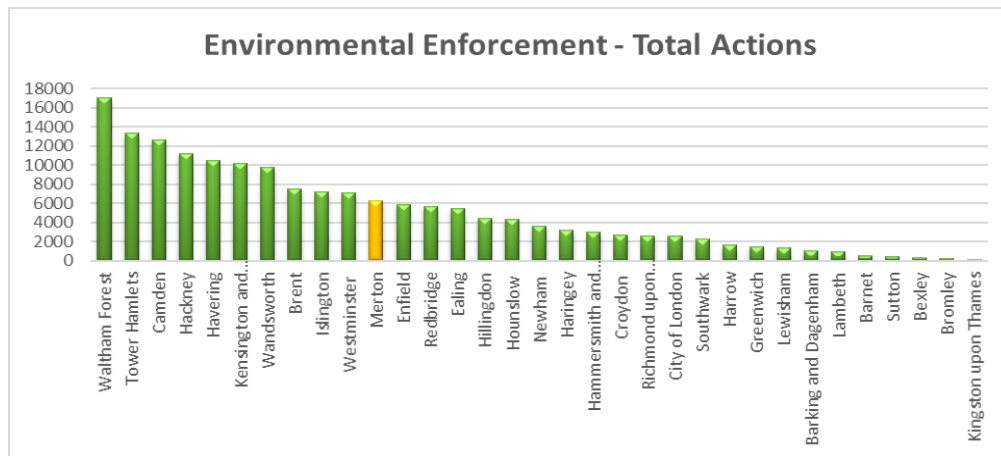
- 2.7. In order to combat the increases in fly-tipping and improve our public spaces, the integrated enforcement approach deployed allows the service the capacity and focus to both deliver a broad litter enforcement presence whilst retaining the knowledge and expertise to support waste engagement advice and support, formal investigations into fly-tipping incidents with a focus on prosecutions and multi-agency operations (e.g. vehicle stop and searches) to combat illegal transporting of waste. In a support capacity and being developed through the emerging draft Fly-tipping Strategy, the service is working with our partner service providers (i.e. Veolia) to assist in intelligence gathering, both in terms of the locations and modified operational methods that secure evidence from illegal waste deposits to further support potential prosecutions.
- 2.8. The role of the Council's enforcement service provider is to provide enforcement services through delegated authority under the Environmental Protection Act 1990, Anti-Social Behaviour Act Crime and Policing Act 2014 and Clean Neighbourhood & Environment Act 2005. The overall core business of this contract is the patrolling and issuing of Fixed Penalty Notices (FPN's) for related environmental offences. Looking forward, we are currently developing a procurement strategy to re-procure these services due to the current contract reaching the end of its term. The revised procurement strategy proposes a broadening of the scope of enforceable functions be to include other offences such as, graffiti, fly-posting, dog control offences, alarm noise (no nominated key-holder), Noise Act offences, nuisance parking, abandoning a vehicle, unauthorised distribution of free literature on designated land along with evidence gathering from domestic fly-tipping (abandoned waste).
- 2.9. As part of an increased service offer and to ensure that we maximise the benefits of an external resource it is proposed that we also include areas of work which can be delivered through a schedule of rates. This will include but not limited to:
- Enforcement of Merton's Public Space Protection Orders (PSPOs) with and without police/wider LBM support
 - Issuing of Community Protection Warnings and Community Protection Notices for issues matters where a FPN cannot be used
 - The collation and provision of intelligence to the Safer Merton and wider Community Safety Partnership including the provision of photos, witness statements and other evidential requirements
 - Working with Safer Merton officers and representatives of the Police force in tackling knife crime and inspecting known locations for the storage of illegal weapons.
 - Providing enforcement and security resource for medium to large scale events held in the borough such as music festivals and sporting events.

Current Performance

- 2.10. Our enforcement service performs well within London in actively enforcing environmental crimes. In figure three, the Council's regional position demonstrates our sustained approach to enforcing environmental offences. In figure four which demonstrates the use of FPNs by boroughs across

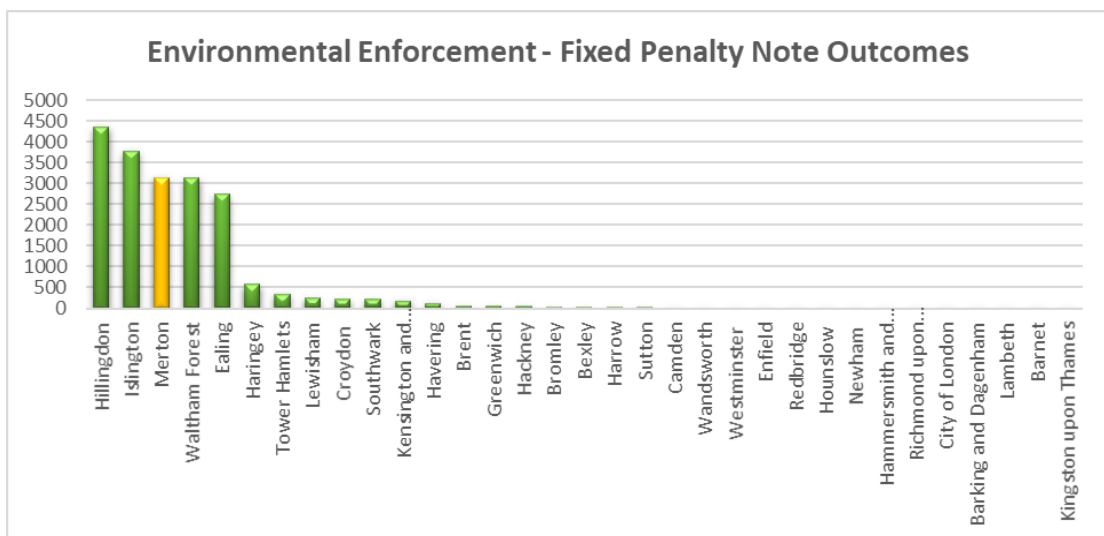
London, it is even more evident that the service is robust in enforcing either through formal prosecutions supported by the issuing of FPNs rather than being reliant on sending and recording warning letters as a deterrent.

Fig.3 DEFRA recognised enforcement actions



Source: DEFRA 2018/19

Fig. 4 Fixed Penalty Notice enforcement actions



Source: DEFRA 2018/19

- 2.11. It should be noted that within the enforcement service, the use of body-worn cameras is often limited, but essential in providing evidence and security to our Service Provider when issuing FPNs for littering offences. The success of our enforcement is primarily driven through evidence gathering and not being reliant on the sole use of CCTV. However, CCTV is helpful in cases where a motor vehicle is involved and its use can often act as a strong deterrent when used correctly. The covert use of CCTV is strongly regulated through the Regulation of Investigatory Powers Act 2000 (RIPA) which requires a strong burden of evidence on the effectiveness and public worth of using directed surveillance.
- 2.12. In 2018 / 19 our service provider issued in excess of 6,600 Fixed Penalty Notices (FPNs) for littering offences and we have benefitted from a high payment rate of 72%.

- 2.13. In order to maintain our high payment rate of 72%, the service provider prepares a case file of alleged offenders who have not discharged their liability and paid the notice fee. These cases are escalated through the Single Justice Procedure (SJP) to conclude the formal procedure. However, there are some that are 'written off' as personal details provided and / or address information had been erroneously supplied by the alleged offender.
- 2.14. On average 40 cases per month are reviewed by the management team under the deed of delegation and a legal pack is produced for the magistrate's consideration.
- 2.15. The court normally determines a case 4 weeks after the papers are issued. The outcome does vary depending on individual circumstances however on average the court would normally recommend a £220 fine, a victim surcharge of £30 and award cost of an additional £150. Totalling £400 per case.
- 2.16. Between April 2018 to July 2019, 340 prosecutions for littering offences have been processed through the SJP. The outcome of these cases have been published on the Council's website along with supporting articles in the Councils Magazine My Merton where offenders have been named and shamed.
- 2.17. Between April 2018 and July 2019 there were 5 successful prosecutions for fly-tipping. The total amount of fines imposed on conviction for these cases was £3053, and costs awards made to the Council totalling £3248.
- 2.18. The table below is a summary of the enforcement actions taken by the Council's team with a focus on fly-tipping. It is important to note that within this year, a further three prosecution cases are pending, 17 cases are being evaluated for potential prosecutions and five fly-tipping FPNs are in process.

	Financial Year 2017/18	Financial Year 2018/19	Financial Year 2019/20 (to date)
Prosecution Cases	2	8	3
FPNs issued (Fly-tipping)	33	35	19
Vehicle Seizures	1	1	5

Publication and Promotion of Prosecutions

- 2.19. The Council's website currently has an information page of previously successful prosecutions which informs the Public on the number of FPNs and prosecutions undertaken, including those related to littering. The content of this webpage is being reviewed and updated. Please find this page - [link here](#).
- 2.20. As part of the development of a wider awareness of fly-tipping across the borough, the enforcement team has been working with the internal communications team to explore enhancements of our communication of environmental enforcements and is examining the possible development of a video page where CCTV footage is made available displaying possible environmental crimes in order to appeal for information on who the alleged

offender may be.

A working example of this is operated by Barking & Dagenham Council and can be found at https://www.youtube.com/watch?v=FUE_quGwcac

- 2.21. It should also be noted that the above would require extensive consideration from a data protection perspective and through consideration of any legal issues, but we would work with Council's that operate similar schemes to ensure best practice is applied.

3 ALTERNATIVE OPTIONS

- 3.1. None for the purposes of this report

4 CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1. None for the purposes of this report

5 TIMETABLE

- 5.1. To reissue updated progress of environmental enforcement activity to the Committee as determined.

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1. Our service provider's business model has been designed to be effectively cost neutral for the Council. The model works on the basis that the full operation cost of the service is covered by the contractor. All money received from the issuing of FPN is collected on our behalf by the contractor and transferred to the Council, however within the model Kingdom Security are paid a fix percentage for the issuing of FPN.

7 LEGAL AND STATUTORY IMPLICATIONS

- 7.1. The legal frameworks that support the regulatory and enforcement functions undertaken by the Council are extensive, nuanced and often times complex.
- 7.2. Following the principles as outlined in the Council's Overarching Enforcement Policy; actions that are delivered by enforcement need to have sufficient supporting evidence to prove that there was a breach of legislation upon which enforcement action can be taken.
- 7.3. All investigations that are carried out are required to have regard to the following legislation and in accordance with any associated guidance or codes of practice^{3.4} applicable to the service area.
- Police and Criminal Evidence Act 1984
 - Criminal Procedure and Investigations Act 1996
 - Criminal Justice and Police Act 2001
 - Human Rights Act 1998

- 7.4. The Environmental Protection Act 1990 provides the Council with the power to take enforcement action regarding fly-tipping and littering. Fly tipping is the illegal dumping of liquid or solid waste on land or in water. The waste is usually dumped to avoid disposal costs. There is no comprehensive definition of litter but it does include cigarette ends and chewing gum. It will also include small miscellaneous items of waste that does not constitute fly-tipping. There is no clear distinction between fly-tipping and littering and each case will be judged on its own merits and appropriate enforcement action can then be taken.
- 7.5. Enforcement options include the power to offer fixed penalty notices an alternative to prosecution, or to prosecute for offences under the Environmental Protection Act 1990. The matters set out in this report are in accordance with the statutory provisions that apply.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1. The Council's Overarching Enforcement Policy as per section 7.2 states 'Regard shall be given to the relevant legislation, codes and policies which protect the rights of the individual and guide enforcement action, (These include the Human Rights Act 1998, Data Protection Act 2018, Code for Crown Prosecutors, Corporate Customer Services Strategy and the Council's Equality and Diversity Policy).

9 CRIME AND DISORDER IMPLICATIONS

- 9.1. The policies and approaches to enforcement across the Council are outlined within the report.

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 10.1. None for the purposes of this report.

11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

12 BACKGROUND PAPERS

- 12.1. The Council wide enforcement policy can be found - [link here](#).
- 12.2. The Council's draft fly-tipping strategy can be found - [link here](#).

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