

Committee: Standards and General Purposes Committee

Date: 12 March 2020

Wards: All

Subject: Environmental Enforcements update

Lead officer: John Bosley, Assistant Director of Public Space

Lead member: Councillor Tobin Byers

Contact officer: Charles Baker, Waste Strategy and Commissioning Manager

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Recommendations:

1. To review and comment on the further update of environmental prosecutions as outlined in the report.
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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. The Committee, at the meeting on the 7 November 2019, received a report on the outcomes of environmental enforcements being made by the Public Space enforcement team and service provider, Kingdom.
- 1.2. The Committee has requested that regular updates are presented regarding environmental enforcement actions being undertaken by the Division. The following detail outlines the actions that have been achieved during the course of this year.
- 1.3. The management and delivery of enforcement investigations within the Division is currently being reviewed which has been stimulated by the preparation and implementation of the *Fly-tipping Strategy* and a staffing restructure.

2 ENFORCEMENT OUTCOMES

- 2.1. Local Authorities are required to report fly tipping & environmental enforcement actions and incidents to the Department for Environment, Food and Rural Affairs (DEFRA) on an annual basis, which aids in providing a regional and national overview of the key indicators and actions being taken to combat these incidents.
- 2.2. The Public Space divisional outturn to with respect to enforcement outcomes has been positive. In the latest full year data (2018/19), we rank very highly within the London region for the robust actions we take regarding the issuing of Fixed Penalty Notices (FPNs) and the subsequent actions for non-payment through the single justice procedure.
- 2.3. However, we will be reviewing our business processes within 2020/21 to determine if we can further improve our performance in the preventative enforcement measures associated with reviewing Duty of Care provision by businesses, pursuant to Section 34(9) of the Environmental Protection Act

1990, to determine and be assured that businesses have safe and sufficient systems in place to manage their waste.

- 2.4. The service will also be reviewing the process of recording and issuing warning letters to potential offenders where evidence has been gathered from incidents but further formal procedures or the issuing of FPNs is prohibited. This will also include reviewing data capture methods with our service provider, Veolia.
- 2.5. As previously noted in the last report, the success of issuing more warning letters to improve education and deter environmental crimes is dependent on the quality of available data. The recently reviewed success rate of identifiable data that would enable further enquiries was determined to be at the ratio of 1 out of 25 incidents, thus limiting the potential data vital for making marked improvements in this area.
- 2.6. The following table with data from reported outcomes to the Department of Food, Environment & Rural Affairs (DEFRA) across London in 2018/19 (Appendix 1) summarises the Council's performance and demonstrates the current effectiveness of the enforcement team within London.

Table 1. LBM performance ranking within London (2018/19)

Total Incidents	14
Total Actions	4
Warning Letter Actions	15
Statutory Notice Actions	19
Littering Fixed Penalty Notices issued in conjunction with fly-tipping	1
All Other Fixed Penalty Notices issued	4
Total Fixed Penalty Notice Actions	2
Duty of Care Inspection Actions	11
Formal Caution Actions	2

- 2.7. Locally and within this current year, we have observed an overall decrease in the number of littering offences that have been recorded through our service provider, Kingdom. We have yet to draw any firm conclusion on the forward trend, but as smoking and the litter associated with this activity decreases, it is natural to project a drop in the number of enforcement actions delivered. We will also be working with the service provider within the new enforcement service contract to determine the additional value that can be gained by including further potential enforcement actions within other areas such as dog fouling in parks & open spaces.
- 2.8. The following data table provides a Ward-by-Ward analysis this year of the FPNs issued regarding environmental enforcements. The incidents range from littering, fly-tipping, breaches of waste duty of care and dog fouling.

Table 2. Ward analysis of FPNs issued (2019/20)

Wards	Apr-19	May-19	Jun-19	Jul-19	Aug-19	Sep-19	Oct-19	Nov-19	Dec-19	Jan-20	Feb-20
Abbey	29	11	29	48	47	46	28	27	71	33	25
Cannon Hill	1	0	0	0	12	0	0	0	0	0	2
Colliers Wood	26	12	11	76	58	133	120	87	71	62	30
Cricket Green	4	0	1	2	9	0	2	3	4	1	2
Dundonald	8	2	3	0	3	4	0	0	1	1	1
Figges Marsh	37	19	27	38	24	17	26	24	28	14	20
Graveney	12	7	21	46	5	10	2	1	7	17	43
Hillside	7	5	6	0	10	10	3	6	3	7	3
Lavender Fields	0	0	1	1	3	1	0	1	0	2	0
Longthornton	0	0	0	1	1	2	2	0	0	0	0
Lower Morden	0	0	4	0	0	3	0	0	0	1	0
Merton Park	103	78	127	162	281	137	159	160	93	62	63
Pollards Hill	0	1	2	0	0	4	1	0	1	0	0
Ravensbury	6	0	2	3	6	9	1	0	2	0	2
Raynes Park	0	2	0	1	1	11	1	2	0	0	0
St Helier	2	3	1	5	2	2	8	1	0	2	0
Trinity	205	197	297	103	118	94	69	43	58	38	77
Village	0	0	6	1	0	0	11	5	0	1	0
West Barnes	0	0	2	0	0	0	1	0	0	0	0
Wimbledon Park	5	1	0	0	1	6	0	3	0	0	2
Total FPNs	442	293	442	481	564	483	430	356	334	231	266

- 2.9. In the above, the higher volume items within the Colliers Wood, Trinity and Merton Park Wards are associated with littering offences and representative to areas with heavy footfall, especially in the areas near to transport interchanges. Whereas, the 20% of the enforced activity in the Figges Marsh Ward was focused around a CCTV supported enforcement activity which has yielded £20k in penalty payments by offenders in lieu of prosecution.
- 2.10. The environmental enforcements associated with the issuing of FPNs this financial year have yielded fines that total approximately £460k. While it is positive to have a sustained delivery model to support enhanced environmental enforcements, the costs of managing fly-tipping and street cleansing resources far exceeds any values that can be garnered through the issuing of FPNs and undertaking prosecutions.
- 2.11. The current non-payment rate of FPNs issued by the service provider is 10.6%, and the subsequent cases where payment was not received are prepared and escalated through the Single Justice Procedure (SJP) to conclude the formal enforcement. However, there are some that are 'written off' as personal details provided and / or address information had been erroneously supplied by the alleged offender.

Table 3. FPNs referred for prosecution through SJP

	FPNs Issued	Number sent for Prosecution through SJP		FPNs Issued	Number sent for Prosecution through SJP
April	409	31	October	399	49
May	280	44	November	317	46
June	422	47	December	318	37
July	460	48	January	220	26
August	547	39	February	265	30
September	445	35	March	0	0

- 2.12. 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 has been reviewed and updated. Please find this page - [link here](#).
- 2.13. As part of the development of a wider awareness of fly-tipping across the borough, the enforcement team will be working on an enhanced communications plan for implementation in 2020/21. The previous design scheme associated with fly-tipping (pic. 1 below) will be reviewed to reenergise the targeted promotion of enforcement.

Pic. 1 Current fly-tipping promotional scheme



- 2.14. Since the last report in November, we have successfully had a prosecution regarding a fly-tipping incident in Merton. The case (LBM v. Matthew James Wells) was heard on the 11 February 2020 at Lavender Hill Magistrates Court regarding the offenders breach of s.33 (Environmental Protection Act 1990). The offence occurred on the 12 June 2019 and the offender offered a guilty plea and was fined £960 with further charges of £860 for prosecution costs and £96 victim surcharge applied.
- 2.15. It should also be noted that the length of time taken to successfully prosecute this case which was aided by evidence gathered by CCTV and the Officer's investigative interview.
- 2.16. In addition to this successful outcome, the enforcement team, since September 2019, have undertaken 18 interviews under the Police and Criminal Evidence Act 1984 codes of practice (PACE); issued four (4) Home Office cautions; issued 39 official Warning Letters; and undertook 19 stop and searches of vehicles pertaining to the transfer of waste.

3 ALTERNATIVE OPTIONS

- 3.1. None for the purposes of this report

4 CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1. Commencing in January, the Public Space division is currently undertaking a restructure to review, propose and implement changes on how the staff are deployed to deliver improvements in the management of our street environment and open spaces.
- 4.2. This restructure also includes the staff associated with the enforcement functions mentioned within the rest of this report. The new proposals

regarding enforcement will involve the expansion of the enforcement remit to a team of front-line officers who also undertake contract monitoring and management functions and the re-focusing of a core group of enforcement officers who will deliver focused enforcement actions.

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 FPNs 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 FPNs.

7 LEGAL AND STATUTORY IMPLICATIONS

- 7.1. 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 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

- 7.2. 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.

- 7.3. 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](#).