



## SCRUTINY COMMITTEE

Thursday 25 March 2021

### REVIEW OF WASTE MANAGEMENT – PART 1

#### EXECUTIVE SUMMARY

1. This report provides Scrutiny Committee with information about fly tipping and reporting of environmental crimes.
2. The purpose of the review is to respond to concerns raised by members, namely: *'to address many issues and problems that have been covered in the media in the previous six months, some historic, many of which have been exacerbated by the Covid-19 lockdown'*.

Is the report Open or Exempt?	
<b>Wards Affected:</b>	All
<b>Cabinet Member:</b>	Councillor James Mallinder, Cabinet Member with responsibility for The Environment
<b>Supporting Officers:</b>	Kerry Blair Head of Operations 01502 523007 <a href="mailto:Kerry.blair@eastsoffolk.gov.uk">Kerry.blair@eastsoffolk.gov.uk</a> Andrew Reynolds Environment Protection Manager 01502 523113 <a href="mailto:Andrew.reynolds@eastsoffolk.gov.uk">Andrew.reynolds@eastsoffolk.gov.uk</a> Daniel Wareing Environmental Sustainability Officer 01394 444747

## **1 INTRODUCTION**

- 1.1 This report has been prepared in response to a request from the Scrutiny Committee that a range of waste related issues are considered by members.
- 1.2 The Committee requested information on a number of issues, including:
- Enforcement
  - Flytipping
  - Littering
  - Contamination
  - Public realm and civic pride
- 1.3 This report specifically deals with issues relating to fly-tipping and enforcement. A further report, covering contamination, collection issues, littering and public realm, will be brought to Scrutiny in June 2021.

## **2 THE MAIN ISSUES AND CONCERNS TO BE CONSIDERED BY SCRUTINY COMMITTEE**

### **Reporting of environmental crimes – the complexities of the Environmental Protection Team and the Environment Agency – who does what and how?**

#### **2.1 What is “fly-tipping”?**

- Fly-tipping is the unauthorised deposit of a controlled waste on land, without authorisation.
- Contrary to popular belief, whether land is in private or public ownership is not material to this definition. In both situations, fly-tipping is a criminal offence, subject to an equal level of investigation and enforcement.
- Depositing litter is a separate offence created by the Environmental Protection Act. In practical terms, this may be construed as the unauthorised deposit of waste; however, littering is generally held to apply only to smaller deposits and DEFRA guidance provides advice on the appropriate application of these provisions in different circumstances
- Leaving waste out for collection other than in a wheelie bin (‘side waste’) may also be construed as unauthorised deposit of waste and dealt with as ‘fly-tipping’; however, specific legal provisions exist for controlling that practice and these are used in preference to the fly-tipping provisions, since they provide a very specific mechanism for requiring waste to be left out for collection at a time and in a manner which conforms to the criteria necessary to facilitate the operation of an efficient waste collection service.
- There is an important distinction between fly-tipping on private and public land, however, in that the relevant authorities have an obligation to maintain their land in a clean condition, so far as is practicable. Hence, we have an obligation to remove waste fly-tipped on land under our control. We do not have any such obligation to do so from private land. That is the landowner’s responsibility.

#### **2.2 What isn’t “fly-tipping”?**

- Waste deposited on private land by, or with the consent of the landowner is not 'fly-tipping'.
- Waste deposited on land with the consent of the landowner may fall under some form of regulatory control, however:
  - If the waste is deposited, stored or otherwise processed as part of a business, the person responsible may need a licence from the Environment Agency.
  - Depending on the scale of the activity, the landowner may need planning consent from the relevant planning authority.
  - If the pile of waste attracts flies or vermin or issues effluvia, dust, smoke, or odours which have an unreasonable effect on the wider public then it may need to be controlled under one or more of several enactments designed to control these types of nuisance or detriment to the community.
  - If the presence of the waste on the land causes significant detriment to the visual amenity of the area, it may need to be the subject of action by planning enforcement officers under the provisions of s215 of the Town & Country Planning Act 1990

### **Contaminated Land**

- 2.3 District authorities have a duty to identify and act in relation to "Contaminated Land" under Part 2A of the EPA 1990. "Contaminated" in this context means there is a significant possibility of significant harm (SPOSH) arising to one of four "specific receptors", water courses and aquifers, people, ecosystems, and buildings. SPOSH is defined by reference to technical guidance published by central government. District authorities maintain a register of land in their area which has been declared "Contaminated". At East Suffolk Council, we also maintain records of sites where it is believed there is a risk of contamination arising from previous uses, but which falls short of SPOSH. We refer to these records when we consider proposals for changes of land use through the development control process (applications for planning permission) to ensure that SPOSH does not arise because of development.

### **Air pollution**

- 2.4 May be broadly divided into two areas of concern: first, the role of the Council in monitoring and controlling 'big picture' air quality issues. This is the process by which we monitor the district for key air pollutants in accordance with tightly defined methods according to national guidance published by central government. Where concentrations of specified pollutants are found to exceed set levels, it triggers a process designed to identify the cause and apply solutions. These activities are referred to as "Local Air Quality Management". The second broad area of local authority involvement in Air Pollution control is governed by a legislative framework intended to enable local authorities to control acute incidents of air pollution arising from localised sources such as chimneys or bonfires.

### **Pollution of watercourses**

- 2.5 Pollution of watercourses falls under the control of the Environment Agency who manage a system of 'discharge consents' to regulate the discharge of potential pollutants to water courses or the ground. The Environment Agency also respond to pollution incident reports if pollution incidents to watercourses and the sea (where the pollution originates from the land).

### **Informal tips/dumps**

- 2.6 Informal tips/dumps – Transport, handling, processing, and storage of waste are all dealt with by the waste licensing regime enforced by the Environment Agency. The system of waste licensing is intended to ensure the Environment Agency can exercise a degree of control over everyone involved in generating, transporting, handling, processing, and disposing of waste. District Councils have no direct role in waste licensing. The Environment Agency operate a national incident reporting ‘hotline’ telephone number which should be used for reporting suspected unlicensed waste operations. The local authority is often the first port of call for reports of this type of activity, possibly because the local authority is perceived as a much more accessible and local service than the Environment Agency. We do pass details of such reports to the Environment Agency, but we strongly encourage direct reporting to Environment Agency by members of the public to simplify communications between the complainant and the regulatory agency able to exercise control.

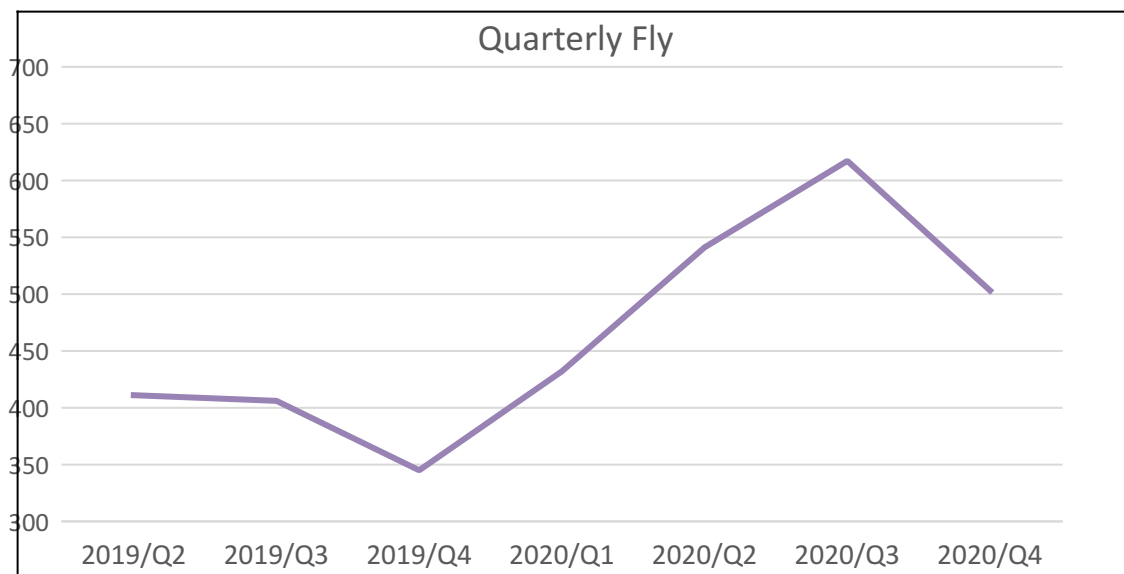
### **Community Engagement**

- 2.7 East Suffolk Council and the former SCDC and WDC have encouraged community engagement in volunteer litter picking activities for many years, through the provision of sacks, loanable equipment such as hoops, sticks and tabards, and making arrangements for the collection of the bagged litter, all through the council’s partner Norse. For a number of years this encouragement was augmented through the incentive scheme Love East Suffolk which provided small monetary donations funded by Norse to a charity or community group nominated by each group participating as well as running a draw for a larger donation to be made to a small number of nominated recipients. Whilst the incentive scheme Love East Suffolk, and the loan of returnable equipment, is currently suspended due to Covid, Norse has continued to support those volunteers who use their own equipment to pick litter in the community through providing sacks and making arrangements to remove the litter gathered.
- 2.8 The Greenprint Forum has promoted volunteer litter picking activities initiated by its Plastic Action Champion volunteers on a number of occasions via its quarterly newsletter, including the winter 2020/21 edition, and the summer 2020 edition, and the Greenprint Forum actively promotes the activities of local volunteers on an ongoing basis via its social media platforms. The Greenprint Forum also used the spring 2020 newsletter to communicate positive messages around correct disposal of garden waste at a time when the Recycling Centres were closed, garden waste collections were suspended and concern over possible fly tipping was high.
- 2.9 The Greenprint Forum also organises annual participation of volunteers from the network in the Great British Spring Clean “beach watch” survey contributing to the national survey and campaign run by the Marine Conservation Society and coordinated locally by the Suffolk Coast & Heaths AONB, though our involvement in this was cancelled in 2020 due to Covid and this took place most recently in September 2019, in Southwold.
- 2.10 The Council itself has arranged a number of voluntary lunchtime litter picks for its staff based at East Suffolk House and Riverside, most recently in March 2020 in both Melton and Lowestoft.

### **Fly tipping Increases**

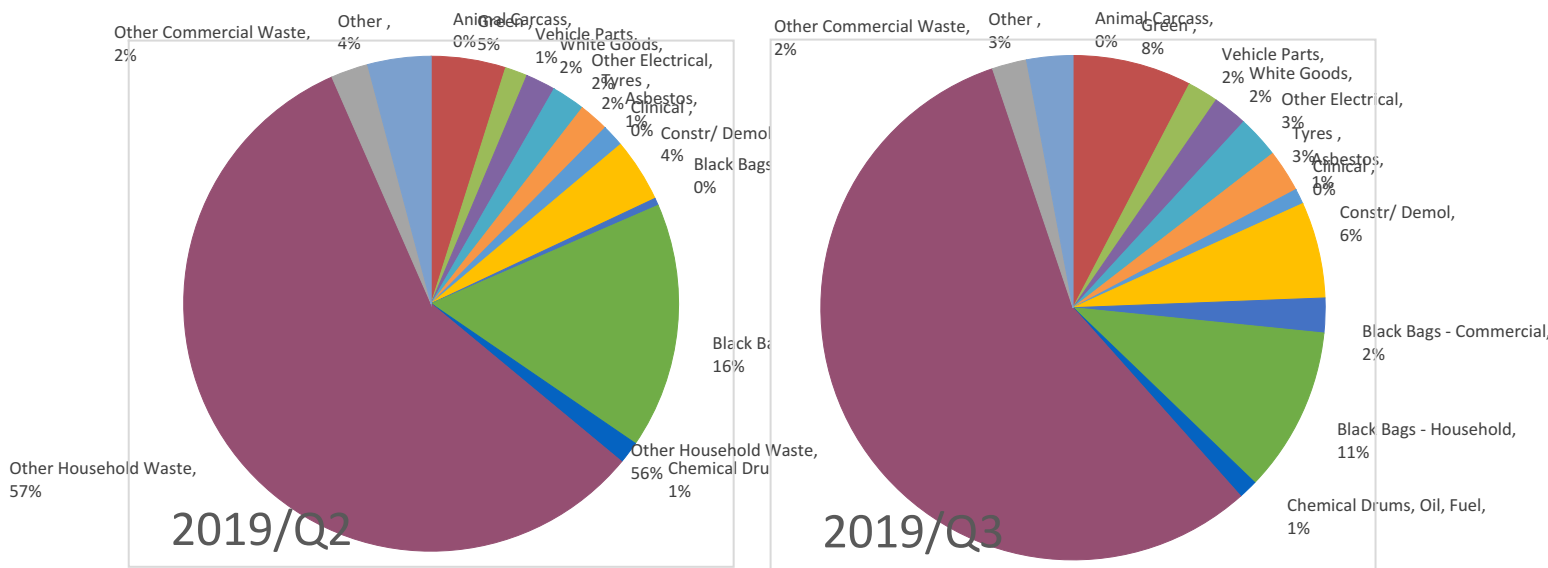
- 2.11 Quarterly totals of reported incidents of fly-tipping in East Suffolk since 1 April 2019 show a significant rise. This is consistent with reports from around the country of an increase in incidents attributable to ‘lockdown’.

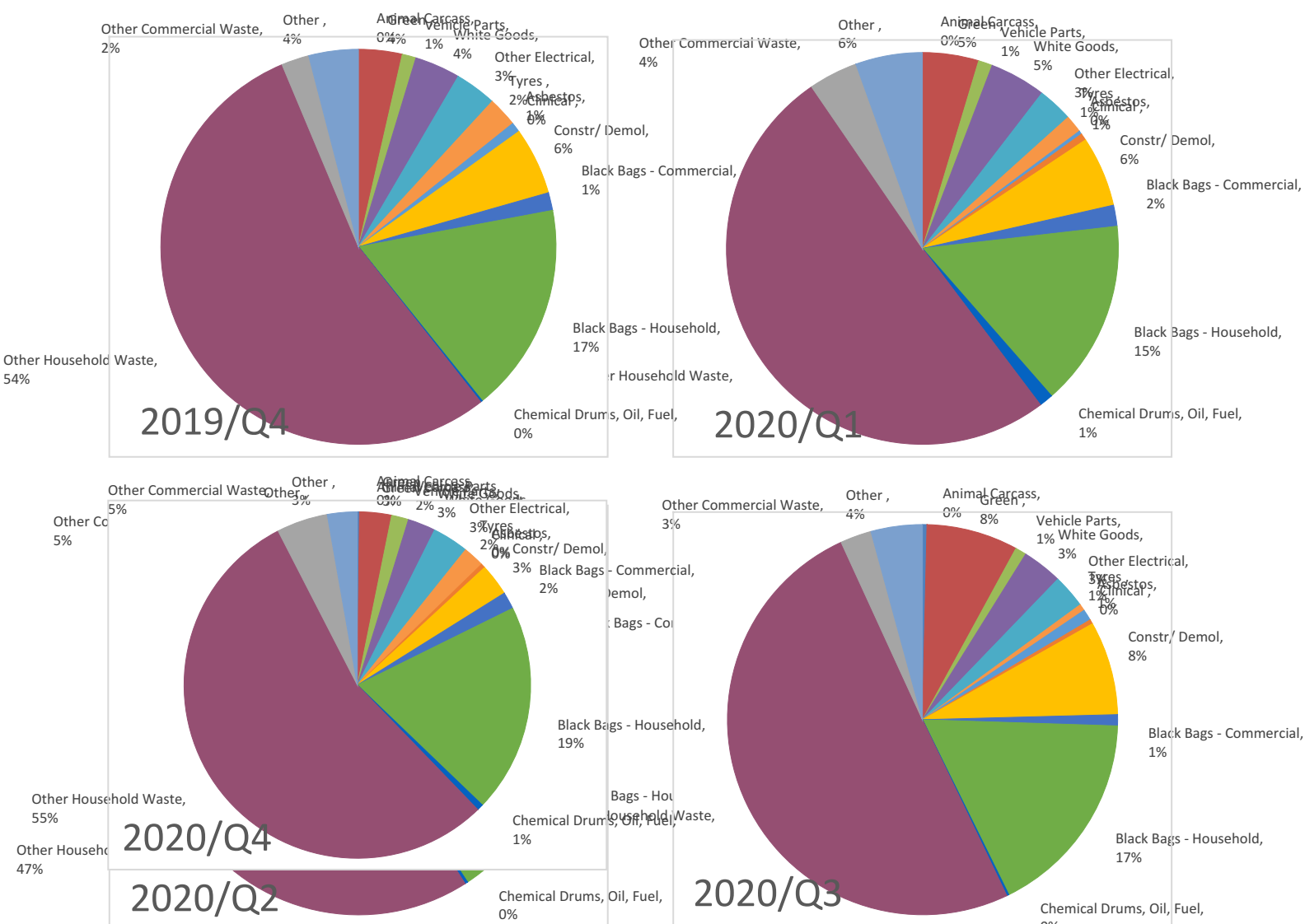
Fig.1 Quarterly total reported incidents of fly-tipping in East Suffolk since 1 April 2019



2.12 The largest categories of fly-tipped waste are typically household in origin. This has not changed.

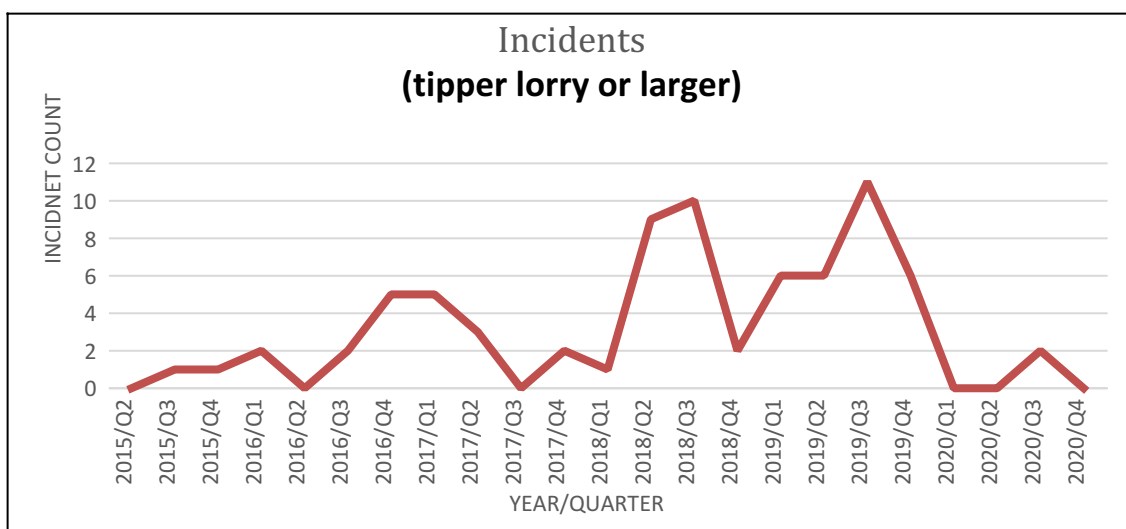
Fig.2 Composition of fly-tipped waste by Qtr.





- 2.13 Unsurprisingly, more fly-tipping is reported in more densely populated areas.
- 2.14 A recent 'Panorama' (BBC) investigation highlighted shortcomings in the waste licensing system and provided evidence that it was failing to achieve satisfactory controls over the waste industry which, as a result, suffered from the activities of 'organised crime'.
- 2.15 Evidence offered in support of this included data from DEFRA which showed significant increases in larger fly-tips, suggesting the commercialisation of the illegal waste disposal industry. That trend is broadly reflected across the East Suffolk district over the past 6 years, up to the commencement of movement restrictions associated with the Covid19 pandemic.

Fig.3 Large tips in the East Suffolk Geographical area since 2015



- 2.16 The same source reports a government source as stating that reforms to the waste licensing system are being planned.

#### **The role of a Waste Regulation Authority**

- 2.17 East Suffolk Council is a “Waste Regulation Authority” (WRA) and a “Waste Collection Authority” (WCA). The duties of a WCA are fairly self-evident and fulfilled on ESC by our contractor. The duties of a WRA include investigation and enforcement of waste offences, including the unauthorised disposal of waste, AKA ‘fly-tipping and this role s also fulfilled by our contractor.
- 2.18 Fly tipping is a criminal offence, punishable by unlimited fines and imprisonment. The standard of investigation and evidence required to see an unlawful fly-tipping incident through from discovery to investigation and conviction is the same as for any matter which finds its way to the criminal justice system. Evidence must be gathered in accordance with the relevant law and accompanying codes of practice. The principal legislation covering these areas is the Police and Criminal Evidence Act 1984 (PACE), the Investigatory Powers Act 2016 and the Criminal Procedures Investigations Act 1996 (all as amended) offered which proves the offender’s guilt ‘beyond reasonable doubt’.
- 2.19 Lesser offences involving first-time offenders tipping small quantities of relatively innocuous waste with minimal or easily reversible damage to the environment can be processed by a WRA by using a system of ‘Fixed Penalty Notices’ (FPNs). A FPN is issued, requiring the offender to pay a relatively small sum of money to the WRA. The correct terminology for this is *“an opportunity to discharge liability for prosecution, by payment of a fixed penalty”*. Payment of a FPN does not attach any criminal record to the offender, although, if the same offender is prosecuted through the courts for a similar offence within a reasonable time, previous FPNs may be cited after conviction and before sentencing, in support of securing stiffer penalties.
- 2.20 Fixed penalty offences available to ESC in respect of waste and related environmental matters waste matters are as follows:

Offence and Act	Payment time limits (days)	Full amount	Early payment amount	Maximum Fine on prosecution
Depositing litter - S. 87/88 EPA 1990	10/14 days	£80	£60	£2,500
Unauthorised deposit of waste (Fly-tipping) – S.33ZA EPA 1990	10/14 days	£200	£120	Unlimited
Failure to produce waste documents (Waste carrier licence) S 34(5) and Regulations made under it/34(6)/34A EPA 1990	10/14 days	£300	£180	Unlimited

Failure to produce authority to transport waste ("waste transfer note") - S.5/5B Control of Pollution (Amendment) Act 1989	10/14 days	£300	£180	£5,000
Graffiti and/or Fly posting S.43 Anti-social Behaviour Act 2003	10/14 days	£80	£60	Unlimited
Vehicle abandonment S2A(1) Refuse Disposal and Amenity Act 1978	10/14 days	£200	£120	£2,500
Nuisance parking – S. 6(1) CNEA 2005	10/14 days	£100	£60	£2,500
Failure to comply with a Public Space Protection Order (ASBC&P 2014)	10/14 days	£80	£60	£1,000
Breaching the terms of a Community Protection Notice S48 Anti Social Behaviour, Crime and Policing Act 2014	10/14 days	£80	£60	£2,500
Failure to comply with duty of care under S34(2A) (household waste) S.34ZA. EPA 1990	10/14 days	£80	£60	Unlimited

## 2.21 Role of the Environment Agency in relation to waste

- In addition to their role in licensing waste activities, the Environment Agency also have a role in enforcing against offenders. Their role overlaps with that of the district authorities. The overlap is managed by reference to a waste enforcement protocol, which represents broad terms of agreement about which agency is responsible for what types of activity. In broad terms, the Environment Agency take responsibility for larger waste offences, where organised crime may be involved; where is potential for significant pollution of water resources or where there are links to offenders across district and county boundaries suggesting the existence of a 'bigger picture'.

## 2.22 Collecting and collating data about waste

- In common with other WRAs and WCAs we are required by law to submit monthly returns to a national reporting process called "Waste Data Flow". This is achieved by logging on to a website and entering data in a tightly defined format. This process is common to all district authorities in England & Wales and the resulting data provides a foundation for central government policy decision.
- Gathering this data requires information about reported fly-tips to be categorised in a standardised way, hence, the methods of categorising the type and quantity of the wastes and the type of location where it was tipped are all reported and categorised according to a set of codes devised centrally.
- An audit of ESC data collection processes in 2019 identified differences between waste statistics from different sources, partly arising from differences in processes between the predecessor authorities. Having implemented all the actions relating to waste data required by the audit, we are now in a position where ESC data on fly-tipping is derived from a single reliable source which is being used for the process of internal and external reporting and for other enquiries such as from the press or through the Freedom of Information process.
- Having established a robust source of information for these purposes, we are working towards further improving those work recording methods with the aim of establishing an equally robust system of reporting for the purposes of performance monitoring and management.

2.23 In addition to the role fulfilled by ESC in specifically pertaining to waste collection and regulation, there are a range of other statutory functions created for purposes related to managing the cleanliness and tidiness of our living environment, or 'street scene'. These include provisions to deal with graffiti, flyposting, abandoned vehicles, 'nuisance parking', stray dogs and dog fouling. (NB 'nuisance parking' in this context refers specifically to selling and repairing vehicles on the street).



## **Education**

- 2.24 The Greenprint Forum's Plastic Action campaign launched in 2018 has so far recruited over 70 volunteers to act as Plastic Action Champions. Their role is to encourage others in their networks through engagement, communication, and organising activities, to make positive changes on the three core themes of: reducing their dependence on single-use plastic (with a focus on plastic, but with flexibility to talk about resource consumption in general); improving the quality of recyclate placed in the kerbside recycling bins; and taking action when rubbish escapes into the environment as litter.
- 2.25 This has included the production of a Plastic Pollution learning resource kit for schools, which formed the basis of a programme of school visits by ESC officers in conjunction with Plastic Action Volunteers to deliver lessons in schools, with the resources also being made available online in order to be accessible to teachers and home educators during lockdown.
- 2.26 The Plastic Action Campaign also generated a Yellow Fish campaign which took place in Felixstowe, Lowestoft, and Woodbridge during 2019 to raise awareness that litter dropped in streets making its way via surface water drains to natural watercourses and beaches and encourage people not to use roadside gullies and drains as places to drop their litter. This campaign engaged directly with householders, businesses, and community groups.
- 2.27 ESC officers and/or Greenprint Plastic Action Champion volunteers also attend (when social distancing restrictions permitted) public events such as Suffolk Show, Siren, Art on the Prom, First Light Festival, Aldeburgh Food Festival, Latitude, Folk East, and various other smaller parish fairs and fetes to communicate the plastic action core messages through advice and conversation with adults and interactive fun learning activities for children. Larger events such as Latitude are often carried out in cooperation with the Suffolk Waste Partnership to maximise impact and scope of interactions and ESC officers continue to liaise closely with SCC waste officers to identify opportunities to develop collaborative resources and initiatives to communicate all relevant messages.

## **National and Cross-Boundary Campaigns**

- 2.28 STAG the Suffolk Fly tipping Action Group is a joint agency group, replicated across the country (under a variety of abbreviations) comprising the Waste Regulation Authorities (Districts), The Waste Regulation Authorities (County) The Environment Agency and the Police. This group was initially set up through the Suffolk Waste Partnership and funded by DEFRA and also initially involved the NFU and the CLA in Suffolk.
- 2.29 This group's objective is to coordinate regulation and education approaches across the county and feed into to national campaigns where additional funding may be obtained. The normal attendance by the waste Regulation authorities is from the enforcement staff and staff involved in the operational side of waste. Such campaigns include SCRAP.



## SCRAP – In Suffolk

- Project run by 'STAG' after £3,000 funding secured from the SWP
- The aim of the project was to raise awareness of flytipping and the importance of using registered waste carriers
- Campaign partners were approached and agreed their support
- Suffolk SCRAP campaign was intended to be predominately a social-media based project
- Success would be measured by the reach of the campaign

- 2.30 Presently East Suffolk's engagement is via an Environmental Protection Officer and a NORSE Waste Management Officer to agree on best enforcement approaches, however there is no or little input regarding educational campaigns such as SCRAP, production of statistics or discussing approaches to obtain funds for national campaigns such as the recent WRAP (Waste and Resources Action Programme) – grant scheme for litter bins.



### Capital Grant Scheme Launches

Litter Bin Infrastructure - a capital grant scheme for the purchase of litter bins, open to local authorities in England - is launched today. Applicants are expected to have an existing litter strategy in place but can apply for grants of between £10,000 - £25,000. For more info and to submit an application for funding visit [wrap.org.uk/bininfrastructure](http://wrap.org.uk/bininfrastructure).

- 2.31 Our increased involvement in this group would mean a possible source of additional finance and resources for campaigns and emphasise our enthusiasm to tackle the fly tipping issue.

### **True costs to private landowners and to the local authority of the clear up**

- 2.32 Waste Data Flow statistics (referred to above under "Collecting and collating data about waste") are used by central government to estimate the costs of fly-tipping. This is achieved by apportioning a centrally determined and nationally applied estimate of the costs of dealing with each incident reported and the actions taken in response. The national application of these estimates ensures that cost comparisons between different parts of England and Wales are calculated on the same basis and hence, represent a valid basis for comparison.
- 2.33 These figures are often quoted (and often disclosed in response to FOI enquiries). They are likely to differ from the "actual costs" collated & supplied by Norse. And different again to the contract amounts we might pay Norse for undertaking that service.
- 2.34 **The role of ESC colleagues in Waste Regulation functions**
- 2.35 Since 2006, ESC officers have had no formal role in ESC waste regulatory functions other than as "Contract Managers" and at the peripheries, where the waste activities impinge on core Environmental Health Legislation (nuisance, rats, detriment etc.) and Planning Enforcement matters (TCPA 1990).

ESC Environmental Protection team officers are being increasingly and frequently drawn into Waste Regulatory matters, providing significant expert advice, support and assistance to the individual Norse Waste Management Officers, since the required level of expert advice, support and assistance is not provided by Norse. These interactions

include:

- advice and support around the legal formalities required when undertaking criminal investigations (discussed above in *“The role of a Waste Regulation Authority”*),
- provision of equipment and support during the planning and conduct of recorded interviews.
- advice on availability and application of alternative statutory provisions for enforcement, including managing the interface between waste/‘street scene’ matters and wider Environmental Protection legislation.
- liaison with other ESC teams where appropriate (e.g., planning enforcement)
- conducting investigations and enforcement in-keeping with ESC enforcement policies
- ensuring records are maintained in a manner consistent with the law, good practice, the requirements of ESC.
- providing reliable reports on waste regulation activities carried out on behalf of ESC.

**Supporting private landowners who are the victims of fly-tipping – providing a service to remove and store articles from private land for a period, prior to disposal.**

- 2.36 Subject to the statutory controls outlined above (*“What isn’t fly-tipping”*) landowners are entitled to keep their possessions on their land without interference from the local authority. Removing such items without reference to some statutory power to do so could be unlawful and give rise to claims of theft, trespass, criminal damage etc. as well as civil claims for damages.
- 2.37 The effects are damaging to the environment in that it gives an impression of a run-down area and leads to copycat activities & a downwards spiral of lack of neighbourhood, pride, investment, environmental standards, anti-social behaviour, crime, poverty etc. (*“broken window syndrome”*).
- 2.38 Any unsightly or detrimental consequences of a landowner failing to act could be addressed through the statutory controls identified above, assuming resources allow.
- 2.39 Providing a service to remove waste, free of charge, would undoubtedly resolve many of the problems of fly-tipping and environmental consequences; however, it is likely that such an initiative would become the preferred route for all sources of waste, including (or especially?) significant commercial sources of the types of waste which are difficult and expensive to deal with. Any proposal involving providing free disposal routes for waste which fails to protect against this certain eventuality would be open to exploitation, inevitably becoming overloaded and unsustainably expensive to operate.

### **3 HOW DOES THIS RELATE TO THE EAST SUFFOLK STRATEGIC PLAN?**

**Minimise waste, reuse materials, increase recycling.**

- 3.1 We will minimise waste generated throughout the district, encourage the reuse of materials, and increase our recycling rates.

- 3.2 We want everyone to be proud of where they live and we will support this by helping communities come together around a shared sense of purpose, responsibility, place, care and respect for each other.

#### **Review service delivery with partners**

- 3.3 We will ensure the services we deliver through partnership and outsourcing arrangements are the most cost effective and streamlined way of delivering the service.

### **4 CONSULTATION**

- 4.1 This report has been compiled in discussion with Norse Commercial Services.

#### **APPENDICES**

<b>Appendix A</b>	Fly Tipping Incidents, 2020/21 Quarter 3
<b>Appendix B</b>	Fly Tipping Actions, 2020/21 Quarter 3
<b>Appendix C</b>	Fly Tipping Clearance, 2020/21 Quarter 3
<b>Appendix D</b>	Other Complaint Performance, 2020/21 Quarter 3
<b>Appendix E</b>	Written Questions by the Scrutiny Committee and Answers

#### **BACKGROUND PAPERS**

None