



Report to TECC Select Committee

Date: 16th November 2021

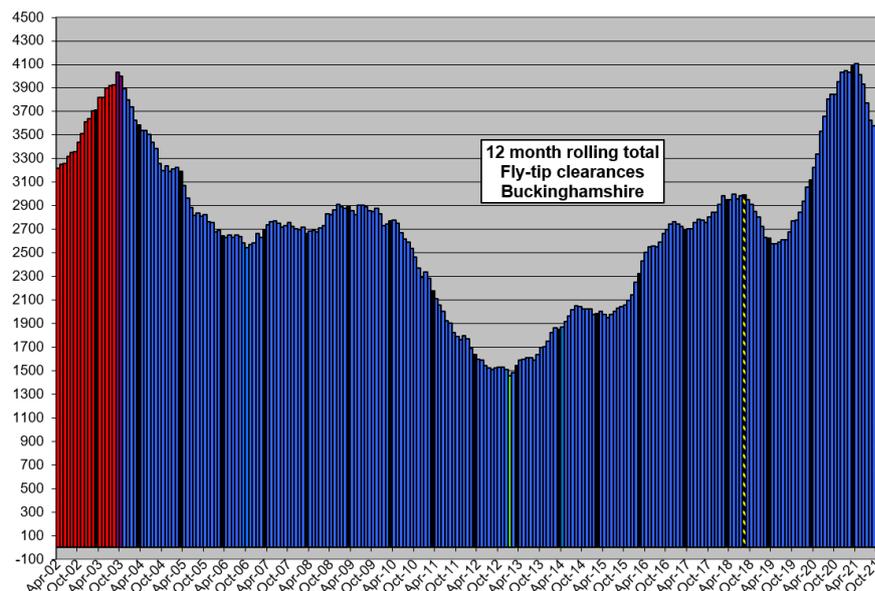
Title: Fly-tipping Update – Clearances from public land (non-highway)

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Recommendations: To note the updates within the report.

Background

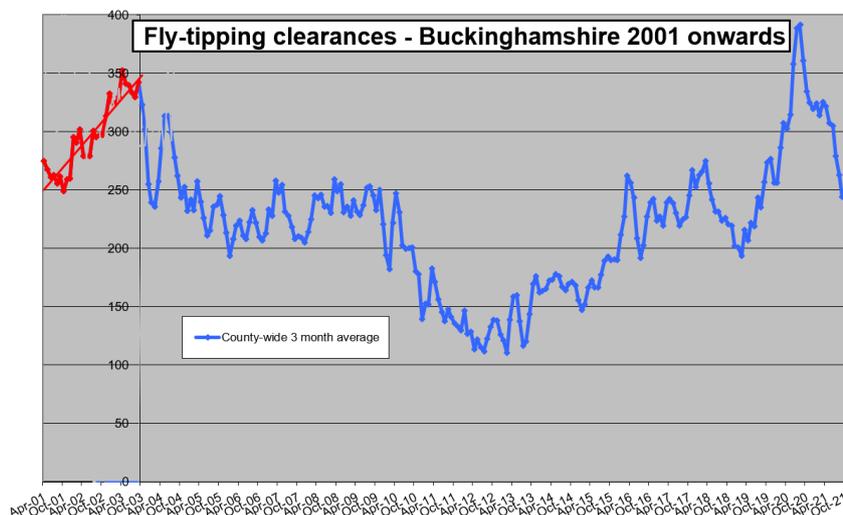
1.1 The fly-tipping trend graph for Buckinghamshire shows that fly-tipping levels rose during the Pandemic period, but they seem now to have peaked and to be reducing towards pre-Covid levels. The pandemic period has been a challenging period due to the additional offending and available resources. The below graph shows the 12 month rolling totals of 'clearances' from public land (non-highway):



1.2 August 2018 is coloured black and yellow for reference purposes as it was the launch of the successful campaign, “SCRAP Fly-tipping”. It can be seen that fly-tipping was reduced in Bucks for the year following that launch but climbed back towards the previous rising trend before the onset of the Pandemic. March in every year is coloured black also for reference, the minimum of Jan 2013 is highlighted in green

and the rising trend prior to the establishment of an Enforcement Team (in 2003) is coloured red.

- 1.3 We have consistently seen that over half of waste dumped in Bucks (by incident number) has been brought into the county from elsewhere. Data since 1 March 2020 shows that **90 of 131** cases resulting in enforcement action (**68.7%**) **involved waste brought into Bucks**. This is by incident number as tonnage data is not available. The commercial nature of the imports means that the percentage by weight would be yet more skewed towards the 'import' side.
- 1.4 **51 of the 131** incidents (%) involved 'trade' waste, and **68 (52.3%)** were entirely household waste which would have been free to recycle at the 9 Household Recycling Centres (HRCs) which Buckinghamshire Council (BC) provides. This means that 91.5% of the dumping incidents were unaffected by the small charges BC raises against non-household wastes. This is supported by an independent review that was commissioned into this subject: <https://wrap.org.uk/sites/default/files/2021-09/fly-tipping-rates-and-HWRC-charging.pdf>
- 1.5 The pre-Pandemic fly-tipping trend (rising steadily from 2012) follows a national trend for English authorities. This is unsurprising given the high proportion of waste imports to Buckinghamshire - notably from West London and Slough. Anecdotally, we read that the entire country was hit by a significant rise in fly-tipping during the Pandemic, but national data for the period is not yet available. In Bucks, we recorded a 31% rise in dumping comparing financial year 2020/21 with 2019/20 (4089 vs 3116).
- 1.6 The subsequent graph is based on a 3-month rolling total rather than the 12-month total above. This gives the graph a 'spikier' pattern, but it shows that the main peak of dumping during the Pandemic has passed, with the peak values shown on this graph in July and August of 2020 (which are the highest numbers ever recorded in Buckinghamshire):-



- 1.7 The values remain higher than we would wish to see, but recorded levels *are now reducing rather than rising*.
- 1.8 The pre-Pandemic rising trend in dumping levels means that the current rolling 3-month total lies somewhere near the level we could have expected (had there been no Pandemic) and we are working to reduce that underlying level.

Enforcement Responses (2020-2021)

- 1.9 The Enforcement Team investigates illegal dumping by examining dumped waste for evidence of where it came from, taking statements from eyewitnesses to dumping incidents and by using surveillance. We also use privately supplied CCTV footage where available. Examining dumped waste is always available to us as a low-cost option and it results in many convictions and the service of fixed penalty notices (FPNs). These enforcements may be against the person who dumped the waste but may also be against the waste producer if they were negligent in their 'duty of care' regarding their waste when transferring it to a waste carrier. The team delivers its enforcement response at a current net cost of £464,865 for this financial year.
- 1.10 Despite the various Lockdowns, the Enforcement Team operated across Buckinghamshire without pause throughout the Pandemic, seeing strong results despite the restrictions.
- 1.11 The courts were unable to process cases as usual during parts of the Pandemic and in fact no dumping cases were heard at court in Buckinghamshire from 19 March until 5 August 2020. On average prior to that Buckinghamshire had convicted better than one a week for 10 years.
- 1.12 It is widely publicised that the courts were under enormous pressure, but despite this the BC Legal Team managed to prosecute 46 cases successfully during 2020. This compares with 47 in both 2018 and 2019. Twenty-four additional convictions have been obtained so far in 2021, with others listed. This is an excellent result for the BC Legal Team which has also managed to address much of the Covid-related backlog.
- 1.13 In total the offenders in these cases were ordered to pay £36,543 in fines and the courts awarded £47,010 in costs. Two dumping offenders were given immediate prison sentences of 12 and 21 months. Two offenders were disqualified from driving. In one of the cases, a joint prosecution with Slough Borough Council, the offender was ordered to forfeit 4 of his vehicles which had been seized by Slough. In 2021 two offenders received significant suspended prison sentences (of 84 days and 26 weeks) and a further serious case awaits sentencing at Aylesbury Crown Court.
- 1.14 In 2020 the Council adopted powers to issue fixed penalty notices (FPNs) at £400 (the national maximum allowed by Government) for smaller scale offences, including

where householders employ waste carriers without making the required checks on credentials. The first FPNs were issued by BC in August 2020 and 30 were issued in 2020 in total. Fifty-two FPNs have been issued so far in 2021 and this is the sole income stream into the Enforcement team following the centralisation of legal costs and their associated court cost award.

- 1.15 The vast majority of FPNs are paid swiftly, but occasionally they are not paid at all. BC policy is to investigate these cases fully and any unpaid FPNs are prosecuted at court. One example of a case following failure to pay FPN went to court and the offender was ordered to pay a total of £1,776 in fines and costs, substantially more than the £400 he could have paid for the minor offence he committed (or £300 if he had paid within 2 weeks).
- 1.16 When the FPN payments and victim surcharges (imposed by the courts) are taken into consideration the total bill to the dumping offenders exceeded £100,000 in 2020. It was the third highest total bill to the dumpers we have recorded in the Enforcement Team's 18-year existence. So far in 2021 the bill to the dumpers has been £58,719 (at 14 October 2021).
- 1.17 In 2021 the BC implemented the power available to it as a unitary authority to seize vehicles used for fly-tipping from locations in High Wycombe and in Chesham. Both vehicles had been used for fly-tipping (at Little Marlow and at St Leonards) and were left unclaimed. Neither vehicle was in any condition to be passed on to another user and so both were crushed having had any potentially polluting fluids removed. This represents a strong additional capability which is now fully available to the council in appropriate circumstances.
- 1.18 Buckinghamshire Council, together with over 150 local authorities and 10 professional bodies, sent a joint open letter to the Sentencing Council to consider tougher fines and sentences for fly-tipping offenders. Our collective suggestions involve the following:
 - Court fines to exceed the cost of Fixed Penalty Notice (FPN) fines and include costs incurred by both the public purse and the police in bringing a fly-tipper to court.
 - Costs related to the clean-up of fly-tipping on private land and restoration of that land would be included in fines paid by those who are prosecuted.
 - When deciding the level of fine, fly-tipping would be looked at by the court as an offence first, and not at the person and their ability to pay first. Means testing should be used to ascertain what type of fine(s) to give, and not how much they should pay.
 - If a defendant cannot pay the fine in full, or in part, it is strongly recommended that community-based sentences are more widely used and available across all offence categories.

- More use of suspended prison sentences which has been proven to be a strong deterrent to serial fly-tipping offenders in Buckinghamshire.
- Anyone convicted of a second fly-tipping offence is given a custodial sentence rather than another suspended sentence.

Communications Campaigns

1.19 While dumping levels are still elevated, BC investigations and enforcement work gives a direct downward deterrent pressure on illegal dumping. We are still working with a broad group of authorities under the SCRAP Fly-tipping campaign (which now has 100+ members). The campaign messages continue to provide excellent guidance across many areas to influence those who transfer waste to 'rogue' waste carriers to ensure that they know the questions to ask and to urge traceable payments and the avoidance of cash in their transactions. These messages were re-circulated in Bucks during September 2021 by BC social media platforms.



Priorities

- 1.20 To continue with an enforcement response capability meeting the council's priority of at least one prosecution a week.
- 1.21 Continue to seek to influence more London authorities (and DEFRA itself) to bring in measures to reduce the outflow of waste which has become a major contributor to the dumping we face. Fly-tipping is one of the 'signal' crimes - where people see it and feel there is either less chance of detection, or more acceptability in commission. That was particularly true during the Pandemic.
- 1.22 Continue to seek to influence the Ministry of Justice and Sentencing Council to consider tougher fines and sentences for fly-tipping offenders
- 1.23 Our next priority is to undertake a planned covert surveillance operation to proactively target commercial dumpers which had to be temporarily deprioritised during the Pandemic. This relates to a determined focus on repeat offenders and organised groups utilising authorised surveillance tactics. Details cannot be discussed on this forum due to the sensitivity of the tactics involved, however, results will be publicised in due course.

Background papers:

Waste & Resources Action Programme (WRAP) report on 'The relationship between fly-tipping rates and HWRC charging' (June 2021): <https://wrap.org.uk/sites/default/files/2021-09/fly-tipping-rates-and-HWRC-charging.pdf>

