

## **Place Overview and Scrutiny Panel – Monday 14<sup>th</sup> August 2023**

### **Subject: Fly tipping and littering enforcement**

#### **Current service provision**

##### **Littering/dog fouling control**

Littering and dog fouling enforcement is operated under a contract, managed by the Public Protection team in Environment and Operations. The first contract for the service was let in 2017, with 2 further contracts following until the latest contract commenced. The current contractor is District Enforcement, who have 3 staff operating the service. The current contract commenced 9th May 2022, with the contract running for over a year and has been extended by 1 year, with an option to extend for a further year if required. The contractor issues all Fixed Penalty Notices (FPNs) for littering and dog fouling on behalf of the Council, with appeals to the Service Lead for Public Protection. Failure to pay FPNs can lead to prosecutions, which are via the Council's Legal Services team.

##### **Fly tipping enforcement**

The Environment team includes for the management and delivery of in-house of fly tipping enforcement. The team comprises of an Assistant Manager, who also manages the pest and dog control service, 4x Environmental Crime Officers (ECOs) and an apprentice. The team investigates, enforces and prosecutes waste offences, working closely with the Council's Legal Services team. There is also a fly tip removal team that operates not just removing fly tipping, but also assisting the ECOs with investigations at the time of removal, passing evidence along to the ECOs. An additional resource provided by the Council from 2022, sees an adopted back street clearing team performing the same function as the fly tipping team, but routinely visiting adopted back streets on a cyclic basis every 6 to 7 weeks. This team again provides evidence to the ECOs for further investigation.

##### **Littering legislation**

Section 87 and 88 of the Environmental Protection Act (1990) states that if a person drops, throws, deposits or leaves anything so as to cause defacement in any land open to the air, they could be committing a littering offence. Litter includes all smoking, drinking and food related waste including cigarette butts and chewing gum.

District Enforcement patrol throughout the whole Borough and will issue a Fixed Penalty Notice (FPN) to anyone caught littering.

**Who can be fined?** Anyone aged 17 years and above who is caught dropping litter by an authorised officer.

**Where can you be fined?** It is an offence to drop litter anywhere in the open air, regardless of who owns the land. This includes rivers, lakes and drainage systems. The exceptions to the offence include if the littering is authorised by law or done by or with the consent of the owner, occupier or other authority or person having control

of the area. There are no excuses for dropping litter. There are over 1,000 litter/dog bins within the borough. If there is not a litter/dog bin nearby, individuals should act responsibly and take their litter home.

The current fine level in Blackburn with Darwen BC for littering is £75.

Nationally, the Fixed Penalty Notice maximum level for littering was £150, but from July 2023, this has been raised nationally to £500. Failure to pay will result in prosecution, which may lead to a fine of up to £2500.

### **Dog Fouling legislation**

If you fail to clean up after your dog, you are committing a criminal offence under the Clean Neighbourhoods and Environment Act 2005 and could be issued with a Fixed Penalty Notice (FPN).

The law allows the Council to give anyone seen not clearing up after their dog an on-the-spot fine called a fixed penalty notice (FPN).

The FPN level in Blackburn with Darwen for dog fouling £100, but if you are prosecuted in court for dog fouling, this could lead to a potential fine of £1,000 for a second dog fouling offence or a failure to pay the Fixed Penalty Notice, a fine up to the value of £2,500.

Dog fouling nationally, the maximum FPN level is £100

### **Fly tipping**

Nationally, from the latest DEFRA information, for the 2021/22 year, local authorities in England dealt with 1.09 million fly-tipping incidents. Most fly-tipping incidents, says the Defra report, are household waste the sum of 'black bags' and 'other', which in 2021/22 accounted for 61% of all incidents. The majority of this was household waste.

Fly tipping in the United Kingdom is defined as 'The illegal discarding or deposit of waste materials and rubbish products on land or water contrary to the Environmental Protection Act 1990.'

The Environment Agency and local authorities are empowered to deal with fly-tipping offences in the United Kingdom. If you get caught illegally dumping garbage on land or water, the maximum penalties and fines for fly-tipping depend on the legal system used to deal with your prosecution.

Perpetrators could face a fine up to £50,000 and a prison sentence of 12 months for a summary conviction. Conversely, maximum fines are unlimited with prison terms up to five years if perpetrators are convicted in a Crown Court.

Legislative powers used by Blackburn with Darwen for waste offences and where appropriate FPN values used by the Council include:

<b>Power</b>	<b>Description</b>	<b>Fines</b>	<b>FPN</b>
S108 Environment Act 1995	General Investigatory Powers	Unlimited	No
S43 Anti Social Behaviour Act 2014	Power to require abatement of persistent or continuing conduct detrimental to quality of life of others	£2500 individuals Unlimited - Bodies	£100
S80 Environmental Protection Act 1990	Power to require abatement of nuisance prejudicial to health	Unlimited	No
S59 Environmental Protection Act 1990	Power to require removal of fly tipped waste	Unlimited	No
S4 Prevention of Damage by Pests Act 1949	Power to require removal of matter likely to attract/give harbourage	£1000	No
S6 Prevention of Damage by Pests Act 1978	Power to remove things intentionally abandoned on land in the open air	£1000	No
S47 Environmental Protection Act 1990	Power to specify how commercial waste is stored and placed		£100
S78 Public Health Act 1936	Power to clear land serving two or more properties	None	No
S3 Refuse Disposal and Amenity Act 1978	Power to remove abandoned vehicles		£200
S33 Environmental Protection Act 1990	Prohibition on unauthorised or harmful deposit, treatment or disposal etc. of waste	Unlimited/Prison	£400
S34(2)(a) Environmental Protection Act 1990	Take reasonable steps to secure waste is transferred to an authorised person	Unlimited	£200
S34 Environmental Protection Act 1990	Storage of waste must be secure	Unlimited	£300

S1 Control of Pollution Act 1989	Offence of transporting controlled waste without a license	Unlimited	£300
S87 Environmental Protection Act 1990	Offence of dropping and leaving (littering)	£2500	£75

In July 2023, the maximum limits for Fixed Penalty Notices for fly tipping and duty of care waste offences has increased (current Blackburn levels in brackets):-

The maximum amount those caught fly-tipping could be fined will increase from £400 to £1,000 (£400)

The maximum amount those who breach their household waste duty of care could be fined will increase from £400 to £600 (£200).

### **Current Performance of services in Blackburn with Darwen**

**Littering and Dog Fouling:** Number of fixed penalty notices issued since the contract began May 2022:

Littering = 1577

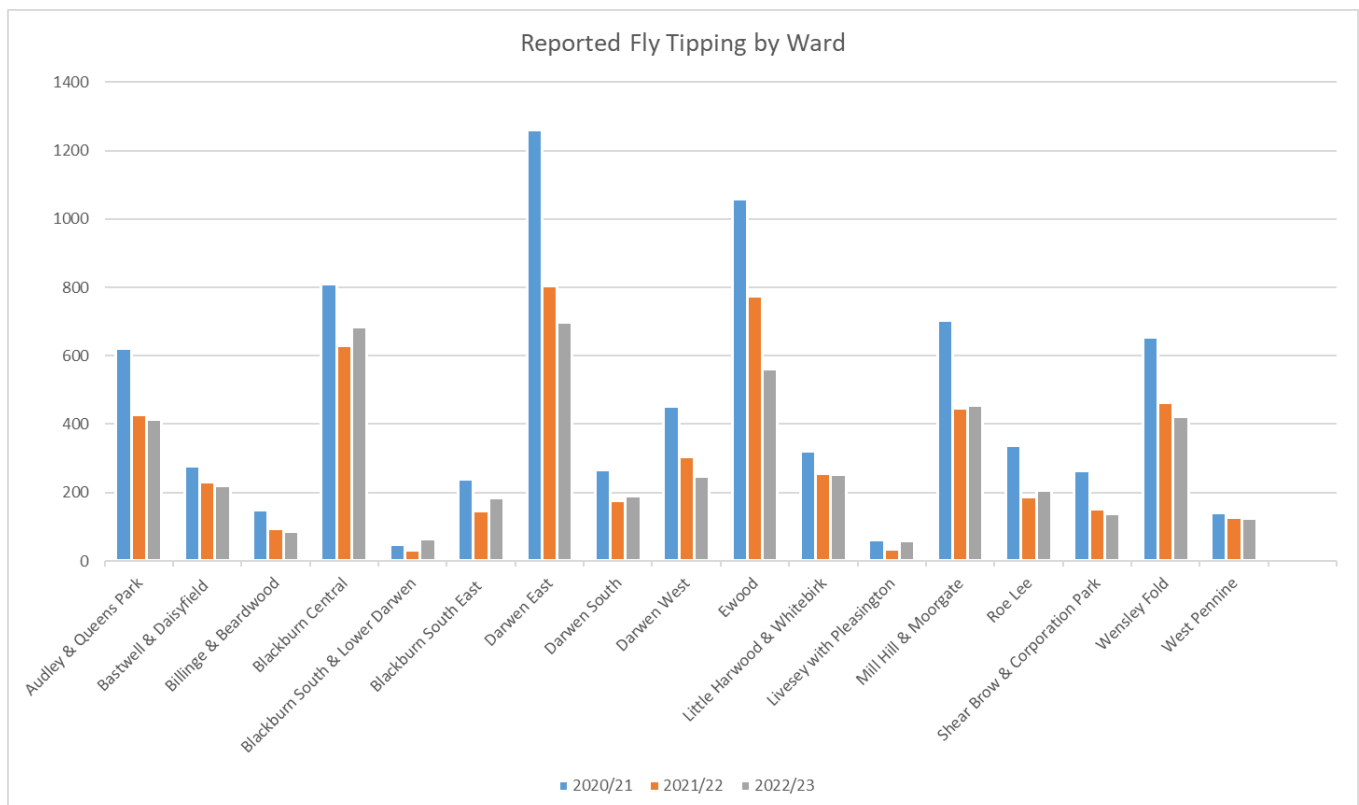
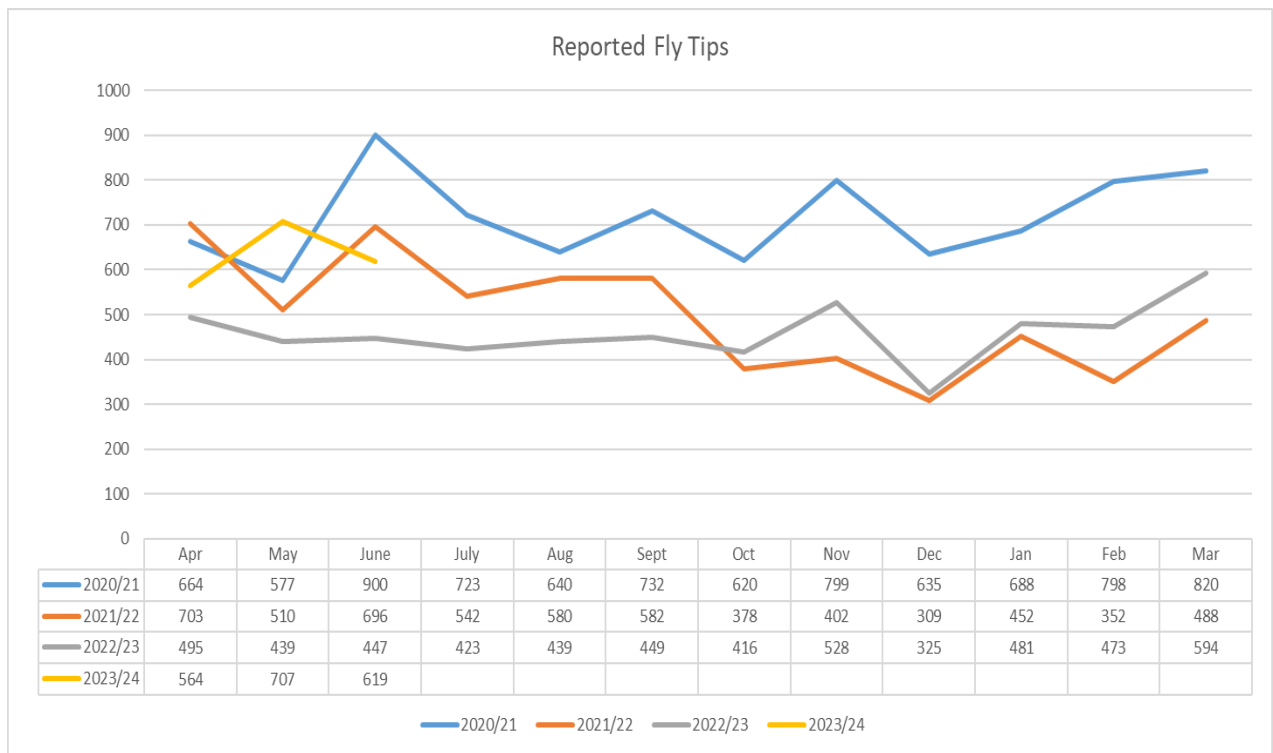
Dog Fouling = 6

Payment rate is approximately 65%, worth circa £80,000

Mode of operation, how they determine areas of work etc: The contractor patrols in Blackburn and Darwen town centres, as well as outlying areas. Where specific concerns are raised, the Service Lead Public Protection will task the team specifically.

Dog fouling patrols operate in parks, as well as locations passed on by the Service Lead Public Protection from intelligence received.

## Fly tipping



### **Fixed Penalty Notices issued for fly tipping and waste offences**

2020/21 FPNs, 67 issued for a value of £14,250

2021/22 FPNs, 83 issued for a value of £13,400

2022/23 FPNs, 83 issued for a value of £14,775

### **Prosecutions for fly tipping and waste offences**

2020/21 Prosecutions, 122 issued for a value of £18,850

2021/22 Prosecutions, 115 issued for a value of £44,684

2022/23 Prosecutions, 123 issued for a value of £45,078

### **CCTV**

The ECOs also have access to 20 CCTV cameras, which are deployed and moved round to act as both a deterrent and also to catch offenders for successful enforcement actions, with priority given to sites that receive the most fly tipping reports within the borough and where there is a suitable lamp column to attach the CCTV system to. The also has a WhatsApp link for residents to forward any CCTV and pictures from their own CCTV systems to help us investigate and progress prosecutions where possible. The CCTV, when used, is accompanied by signage and leaflets, to ensure that we comply with the Regulation of Investigatory Powers Act 2000.

### **Overhanging trees on the Highway**

One of the requirements of the Highways Act 1980 is that a public highway should be kept clear of obstructions. Trees are living and growing organisms that can grow, in time, over a highway and impede the movement of pedestrians and vehicular traffic. Specifically, section 154 of the Act gives the highway authority powers to require the removal or cutting back of trees, shrubs and hedges that obstruct or endanger highway users.

While no specific guidance is given in the Act, it is generally accepted that the minimum clearance should be 2.4m over a footpath and 5.05m (16' 6") over a road (measured from the centre line). As a guide, these minimum clearances should be sufficient to allow a two-metre person with an umbrella up to walk unimpeded along a footpath and a double-decker bus to travel along a road without hitting any overhanging branches.

The Council's Highway and Transportation service is responsible for all adopted highway street trees, with the Environment team undertaking work at their

instruction. The Highways and Transportation service is also responsible for dealing with overhanging trees and shrubs affecting public footpaths and adopted highways from private land.

**Tony Watson**

**Head of Environment**