

Record of officer decision

Decision title:	Decision to prosecute one defendant for fly tipping and duty of care offences
Date of decision:	11/12/19
Decision maker:	Acting Assistant Directorate for Regulatory, Environment and Waste Services
Authority for delegated decision:	Economy and Place Scheme of Delegation item 64
Ward:	Kington
Consultation:	Legal Services: in accordance with S222 of the Local Government Act 1972 we consider a prosecution is both appropriate and reasonable in this matter for the promotion or protection of the interests of the people of the County of Herefordshire which is also in accordance with the Herefordshire Council's Enforcement and Prosecution Policy.
Decision made:	To prosecute 1 defendant for illegally depositing waste and failing in duty of care under Sections 33(1)(a) and 33(6) and 34 (1) & 34(6) of the Environmental Protection Act 1990.
Reasons for decision:	<p>Fly tipping is a very serious crime. It damages the environment and costs the local Councils millions to clear up each year. Where ever possible court action should be taken against those involved.</p> <p>In this particular case all the evidence we need for the charges is in the defendant's PACE interview. He has stated it was his caravan and he was present when it was abandoned in the layby. He had admitted it was his waste inside the caravan. He failed to ensure that in the next day or two the caravan was recovered. Hence effectively the caravan and its contents had been fly tipped.</p> <p>From the Council's enforcement policy the public interest factors in favour of prosecution are:-</p> <p>6.4.3</p> <p>(a) conviction is likely to result in a significant sentence (e) risk to the environment is widespread (g) the defendant acted wilfully or negligently (h) harm was caused to the environment (j) the evidence shows he was a ringleader in the offence (k) there is evidence that the defendant has lied and so the offence may have been premeditated. (v) a prosecution would have a positive impact on maintaining community confidence- the public consider fly tipping serious and want to see offenders prosecuted. (w) a prosecution will draw public attention to the issue of fly tipping</p> <p>Factors against prosecution:-</p> <p>(b) the defendant may claim it was the result of a single incident and caused by a misjudgement.</p> <p>Overall the factors in favour of prosecution outweigh the factors against. There is sufficient reliable, admissible evidence for a realistic prospect of conviction</p>
Highlight any associated risks/finance/legal/equality considerations:	None
Details of any alternative options considered and rejected:	Environmental crime is serious and so a caution is not an appropriate option.
Details of any declarations of interest made:	None

Signed:

Date: 11/12/19