

Record of operational decision

Decision title:	Decision to prosecute one defendant for fly tipping, waste duty of care, not being a registered waste carrier and failing to provide documentation to an officer
Date of decision:	18 February 2023
Decision maker:	Head of Public Protection
Authority for delegated decision:	Economy and Environment Scheme of delegation Item 70 (03/08/2022).
Ward:	Hope End, Bobblestock, Saxon Gate, Greyfriars, Wormside
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 one defendant for offences under Sections 33, 34 (1) & 34(6) of the Environmental Protection Act 1990, Regulation 35 of the Waste (England and Wales) Regulations 2011, section 1 of the Control of Pollution (Amendment) Act 1989.
Reasons for decision:	<p>The defendant, who advertises as a landscape gardener and advertises on Facebook, has carried out various works for residents in Herefordshire. Fly tips have been found in various places and traced back to several of these residents and evidence revealed that the defendant was contracted to remove the waste. When officers made contact with the defendant, he made various excuses saying someone else removed the waste, gave a false address and refused to attend an interview. The defendant when requested did not provide waste documents to say who he transferred the waste to.</p> <p>From the Council's enforcement policy the public interest factors in favour of prosecution are:-</p> <ul style="list-style-type: none"> (a) conviction is likely to result in a significant sentence (b) risk to the environment is widespread (c) the defendant acted wilfully or negligently (d) harm was caused to the environment (e) a prosecution would have a positive impact on maintaining community confidence- the public consider offences regarding waste serious and want to see offenders prosecuted. (f) a prosecution will draw public attention to the issue of ensuring proper waste disposal. (g) there are grounds for believing that the alleged offence is likely to be continued or repeated <p>There is one public interest factor against prosecution which is that the penalty is likely to be nominal (para 6.4.4(e)).</p> <p>There is however sufficient, reliable evidence to obtain a conviction.</p>
Equality Considerations	The decision to prosecute does not discriminate, harass or victimize nor encourage conduct prohibited under the Equality Act 2010. It also does not unfairly impact upon anyone with a relevant protected characteristic nor hinder relations between persons sharing such a characteristic.
Highlight any associated risks finance/legal/equality considerations:	None

Details of any alternative options considered and rejected:	Not to prosecute – however this would not be in the public interest and would not be accordance with the Council’s Prosecution and Enforcement Policy.
Details of any declarations of interest made:	None

Signed

Date: 18 February 2023