ENVIRONMENTAL PROTECTION ACT 1990, SECTION 33, 34, 34(2A) – FLY TIPPING

Submitted by: **Head of Environmental Health Services**

Portfolio: **Environment and Recycling**

Ward(s) affected: **All**

Purpose of the Report

To advise the Committee of action taken in respect of fly tipping offences within the borough and to seek authorisation to institute legal proceedings.

Recommendation

That legal proceedings be instituted in relation to the case mentioned below.

Reasons

A prosecution taken under sections 33 and 34 (2A) Environmental Protection Act 1990 (as amended by The Waste (Household Waste Duty of Care) (England and Wales) Regulations 2005) is in line with the Council Priority Creating a Cleaner Greener and Safer Borough. Creating an environment where the streets and open spaces are clean and the community maintains pride in the borough. The action should deter other persons from fly tipping within the borough.

1. Background

1.1 On the afternoon of the 11 October 2012, a complaint was received of a fly tipping incident at Ashfields New Road, Newcastle-under-Lyme. The complainant was contacted and they advised that a number of items were found. Most of the items were addressed to NFS, a company located in Newcastle under Lyme.

1.2 On 12 October 2012, an officer visited the location of the fly tipping and noted a large accumulation of flooring, underlay, cardboard boxes, plastic sacks, plastic containers and refuse sacks. On investigation of one of the refuse sacks correspondence was found addressed to NFS.

1.3 On 17 October 2012, officers visited NFS and hand delivered an invite to interview and on 22 October 2012 the owner of NFS attended the interview under caution. During the interview the owner stated that he had procedures in place for the correct disposal of his waste, however due to cash flow issues he had recently used a gentleman whose details he had obtained from a newspaper. The company owner did not produce any waste transfer notes, a copy of the gentleman's waste transfer licence or any other documents in relation to the disposal of the waste. Documents in relation to the company he had used for the disposal were not produced. The company owner said that he was fully aware of his responsibilities in relation to his duty of care for commercial waste, but offered no further explanation.

2. Issues

2.1 Consideration should be given to bringing a prosecution as contrary to section 33 and 34, there is reason to believe that the owner of NFS deposited controlled waste on the land without a waste management licence authorising such a deposit. He also failed to dispose

of controlled waste otherwise than in accordance with a waste management licence. The company owner also failed in his 'duty of care' to secure the transfer of business and trade waste produced by his company to an authorised person or to a person authorised for transport purposes. Any prosecution would be taken under section 33 or 34 (2A) Environmental Protection Act 1990 (As amended by The Waste (Household Waste Duty of Care) (England and Wales) Regulations 2005).

3. Policy Considerations

There are none arising from this report.

4. Outcomes Linked to Sustainable Community Strategy and Corporate Priorities

4.1 Creating a cleaner, safer and sustainable Borough.

- Streets and open spaces are clean and the community have pride in the borough and take responsibility for seeing that it is clean and pleasant by reducing waste.
- The community is not put at risk from pollution or environmental hazards.

5. Legal and Statutory Implications

5.1 The Environmental Protection Act 1990 places a duty on the Council and provides powers.

6. Equality Impact Assessment

There are no differential equality impacts identified within this report.

7. Financial and Resource Implications

7.1 The Council would seek to recover costs during any court proceedings.

8. Major Risks

There are no major risks with this report.

9. Human Rights Implications

Article (6)(i) guarantees an applicant a fair hearing
Article 14 guarantees no discrimination