

## **Fixed Penalty Notice (FPN) Policy for environmental offences**

### **Summary**

To request approval to be able to issue Fixed Penalty Notices for fly tipping, a contravention of the Environmental Protection Act 1990.

The new provisions provide for a fine of not less than £150 and not more than £400 as specified by the Waste Collection Authority and £200 if no amount is specified by the Local Authority.

**Portfolio: Councillor Vivienne Chapman for Community**  
**Date Portfolio Holder signed off report: 25 May 2016**

**Wards Affected: All**

### **Recommendation**

The Executive is RECOMMENDED to:

- a) SET a fixed penalty of £400, reduced to £300 if paid within 10 days in accordance with the Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016;
- b) DELEGATE to the Executive Head of Community, in consultation with the Portfolio Holder for Community, the ability to vary all environmental Fixed Penalty Notice charges in accordance with legislation; and
- c) AUTHORISE that revenue raised from fixed penalty notices be used on prevention, detection and investigation of future offences.

### **1. Resource Implications**

- 1.1. The investigation of fly tipping and issuing of any fixed penalty notices will be carried out within existing staff resources and budgets.
- 1.2. The primary purpose of having the ability to issue an FPN is to discourage offending rather than to raise revenue.
- 1.3. Government legislation stipulates that penalty receipts generated from environmental crime must be spent on the function they relate to. However, this does not apply to fly tipping penalties.
- 1.4. The Executive is being asked to approve that any income raised through the issues of all FPNs is used for enforcement and prevention.

## **2. Key Issues**

- 2.1. Currently the Council has the ability to issue Fixed Penalty Notices (FPN) for a variety of environmental offences such as littering, smoking in a public place etc.
- 2.2. Fly tipping is an offence under Section 33 of the Environmental Protection Act 1990. Currently the Council has two options when enforcing against fly tipping offenders as follows:
  - taking formal court proceedings; or
  - issuing a £75.00 (reduced to £50.00 if paid within 10 days) Fixed Penalty Notice for littering.
- 2.3. The issuing of the Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 on the 9<sup>th</sup> May 2016 changed the law to enable Waste Collection Authorities to issue fixed penalty notices (FPNs) to be served specifically for fly tipping as an alternative to prosecution.
- 2.4. A FPN offers the perpetrator the opportunity to discharge their liability to conviction for the offence it relates to by payment of a fixed penalty and is usually applied in low level cases where it is not cost effective or proportionate to prosecute.
- 2.5. The Environmental Protection Act 1990 does not provide a comprehensive definition of litter or refuse, however DEFRA guidance states a single plastic sack of rubbish should usually be considered fly tipping rather than litter.
- 2.6. Many parts of the Borough are subject to persistent fly tipping, especially in rural areas. The Council's Counter Fraud and Corporate Enforcement Team use a range of techniques to identify perpetrators which include tracking down the ownership of vehicles seen dumping illegal waste and CCTV cameras. It is important that perpetrators receive a sanction that properly reflects the damage to the environment and local community, the cost to the Local Authority in clearing the dumped waste and also acts as a deterrent against future offending, both for the identified offender and, if suitably publicised, for others who may be minded to fly tip. A £75 penalty under the current rules falls short on all counts.
- 2.7. Investigations into fly tipping are resource intensive and can be lengthy and complex. The proposed £400 penalty will provide a more proportionate and expeditious approach to deal with small scale fly tipping offences. The Council will continue to prosecute serious cases and repeat offenders through the court, together with those who fail to pay the FPN.

## **3. Options**

- 3.1. The Executive may accept, reject or amend the proposal

## **4. Proposals**

- 4.1. It is proposed that Executive:

- a) Set a fixed penalty of £400 for fly tipping, reduced to £300 if paid within 10 days in accordance with the Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016;
- b) Delegate to Executive Head of Community, in consultation with the Portfolio Holder for Community, the ability to vary all environmental FPN charges in accordance with legislation; and
- c) Authorise that revenue raised from fixed penalty notices be used on prevention and investigation of future offences.

## **5. Supporting Information**

- 5.1 Some guidance has been issued by DEFRA.

## **6. Corporate Objectives and Key Priorities**

- 6.1. The policy underpins Corporate Objectives 1 and 3, we will do this by:
  - (a) Keeping the Borough clean by delivering good recycling and refuse collection and street cleansing services; and
  - (b) Protecting the general health and wellbeing of the community through our services, our health promotion and community development work.

## **7. Policy Framework**

- 7.1. The proposed changes will be inserted into the existing Fixed Penalty Notice policy which is based on the framework issued by DEFRA.

## **8. Legal Issues**

- 8.1 The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016.
- 8.2 If a person refuses to accept a Fixed Penalty Notice or does not pay within the specified period, the case will be referred to Legal Services who will apply the evidential and public interest tests before issuing proceedings for prosecution.

## **9. Governance**

- 9.1. Fixed Penalty receipts for fly tipping offences are not legally ring fenced for specific environmental functions or enforcement action.

## **10. Equalities Impact**

- 10.1. The Fixed Penalty Notice policy has clearly defined guidelines to deal with vulnerable people. The change in legislation does not highlight any specific equality considerations.

## 11. Human Rights

- 11.1. Officers authorised to issue Fixed Penalty Notices are fully trained in legislation directly affecting human rights, specifically Articles 6 & 8.

## 12. Consultation

- 12.1. The relevant Executive Heads have been consulted.

## 13. PR and Marketing

- 13.1. The introduction of fixed penalty notices for fly tipping will be actively promoted in conjunction with the Communication team so as to discourage offending.

## 14. Officer Comments

- 14.1 Fixed penalty notices for fly tipping are a positive step in tackling the issue and will enable the council to take a faster and more direct approach to ensuring the perpetrators are made accountable.

<b>Annexes</b>	N/A
<b>Background Papers</b>	
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## Consultations, Implications and Issues Addressed

<b>Resources</b>	<b>Required</b>	<b>Consulted</b>
Revenue	✓	
Capital		
Human Resources		
Asset Management		
IT		
<b>Other Issues</b>	<b>Required</b>	<b>Consulted</b>
Corporate Objectives & Key Priorities	✓	
Policy Framework		
Legal	✓	
Governance		
Sustainability		
Risk Management		
Equalities Impact Assessment		
Community Safety		
Human Rights		
Consultation		
P R & Marketing	✓	

**Review Date:**

**Version:**