

EXECUTIVE - 18 JANUARY 2018

## FIXED PENALTY NOTICE (FPN) POLICY FOR FLY TIPPING OFFENCES

### Executive Summary

The purpose of this report is to seek authorisation for the level of penalty to be fixed to enable authorised officers to issue fixed penalty notices (FPNs) for contraventions of section 33(1)(a) of the Environmental Protection Act 1990 (EPA) for fly tipping.

The new provisions (Regulation 2 of the Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 enacted on 9 May 2016 provide for an amount 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.

### Reasons for Decision

The introduction of a fixed penalty notice scheme for fly tipping offences is considered a necessary and proportionate response to the current environmental issues facing the Council.

### Recommendations

The Executive is requested to:

#### **RECOMMEND to Council That**

- i) the Council issue fixed penalty notices for fly tipping under the Environmental Protection Act 1990;**
- ii) the level of fixed penalty notices shall be set at £400 per penalty notice for fly tipping, such penalty to be reduced to £300 if paid within 10 days as provided for under Regulation 2 of the Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016;**
- iii) authority be delegated to the Assistant Director (Place), in consultation with the Portfolio Holder for Environmental and Well Being Services, to vary the level of all environmental fixed penalty notice charges in accordance with legislation; and**
- iv) authority be delegated to the Assistant Director (Place) to authorise any persons to issue fixed penalty notices for fly tipping under the Environmental Protection Act 1990.**

<b>This item will need to be dealt with by way of a recommendation to the Council.</b>
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### Background Papers:

Sustainability Impact Assessment  
Equalities Impact Assessment

## Fixed Penalty Notice (FPN) Policy for Fly Tipping Offences

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## Fixed Penalty Notice (FPN) Policy for Fly Tipping Offences

### 1.0 Introduction

- 1.1 On 9 May 2016, the Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 amends section 33 of the Environmental Protection Act 1990 (EPA) by inserting a new section 33ZA into the EPA 1990 granting powers to Waste Collection Authorities to issue fixed penalty notices (FPNs) for fly tipping, as an alternative solution to prosecution.
- 1.2 These regulations introduce powers to serve a fixed penalty notice on a person found to be responsible for fly tipping offences (this excludes operators in the waste management industry, those responsible for the tipping of hazardous waste and repeat offenders).
- 1.3 Section 33 (1) (a) of the Environmental Protection Act 1990 creates an offence for depositing controlled waste or knowingly permitted controlled waste to be deposited on any land unless the person has a valid permit authorising them to do so. A person in contravention of this provision is liable to prosecution. Woking Borough Council is an enforcement authority under the provisions of the Act.
- 1.4 An FPN offers the offender the opportunity to discharge their liability by accepting a fixed penalty notice instead of prosecution.
- 1.5 It is intended that fixed penalty notices will typically be used by officers to deal with small to medium sized fly tips, with the larger scale fly tips being referred to Legal to consider prosecution and hazardous waste offences remaining the responsibility of the Environment Agency.

### 2.0 Background

- 2.1 Fly tipping is a significant problem to local communities and is a risk to the environment. It is a drain on Council resources and undermines legitimate waste businesses, where unscrupulous operators undercut those that operate within the law.
- 2.2 In 2014/15, local authorities reported 900,000 incidents of fly tipping, costing taxpayers in England an estimated £50 million to clear. The costs to local authorities of investigating, bringing prosecutions, clearance and disposal of fly tipping are considerable. Where fines are issued, as a result of a successful prosecution, they are paid to the court rather than the prosecuting authority.
- 2.3 At present, the Council has the ability to issue Fixed Penalty Notices (FPNs) for a variety of environmental offences as an alternative to prosecution including littering, dog fouling, smoke free offences and unlicensed waste carriers. These FPNs are issued by authorised officers within the Environmental Health and Neighbourhood teams and also Environmental Enforcement Officers contracted through Kingdom. The same authorised officers will be responsible for issuing FPNs for small to medium scale fly tipping offences.
- 2.4 Fly tipping is an offence under section 33 (1) (a) of the Environmental Protection Act 1990. Currently the Council has two options when enforcing against a fly tipping offender, as follows:
  - Taking formal court proceedings by way of a prosecution; or
  - Issuing a £75.00 (reduced to £50.00 if paid within 10 days) Fixed Penalty Notice for the offence of littering.
- 2.5 Many parts of the Borough are subject to persistent fly tipping, especially in rural and secluded areas. Council Officers with delegated powers use a range of techniques to

## Fixed Penalty Notice (FPN) Policy for Fly Tipping Offences

identify perpetrators, which include the use of CCTV cameras, investigating the ownership of vehicles seen dumping waste illegally and searching through fly tipped waste to look for evidence. 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, which also acts as a deterrent against future offending, both for the identified offender and, if suitably publicised, for others who may be minded to tip. A £75.00 penalty under the current rules falls short on all counts.

- 2.6 The Environmental Protection Act 1990 does not provide a comprehensive definition of litter or refuse. However, it is considered that a single plastic sack of rubbish should normally be considered fly tipping rather than litter. Controlled waste is defined at section 75(4) of the EPA 1990 to mean household, industrial and commercial waste or any such waste.
- 2.7 In determining the appropriate levels of fixed penalty to be imposed for small to medium scale fly tipping, the Council will need to take into account the deterrent effect of different levels, peoples' readiness to pay and the levels of fines for fly tipping currently imposed in the magistrates' courts. Fixed penalties that are set too high for local conditions or are likely to be higher than a fine imposed by the Court in the event of non-payment, will lead to substantial non-payment rates and so are counter-productive.
- 2.8 There is a set legal standard payment period of 14 days for the payment of fixed penalties. Once a fixed penalty notice has been issued, an authority cannot prosecute for the offence if the fixed penalty is paid within this period, and this must be stated on the notice itself. For this reason, the period during which a discount for early payment is offered must be less than 14 days and in line with the Regulations cannot be more than 10 days. Again, this will be consistent with the standards set by other local authorities and this approach is already in place for other fixed penalty notices for environmental offences.
- 2.9 The Council's new FPN powers for small to medium scale fly tipping will be used as part of the package of enforcement options available in accordance with the Council's Corporate Enforcement Policy.
- 2.10 The provision of fixed penalty notices for fly tipping will allow officers to serve FPNs of between £150 and £400 for small to medium scale fly tipping offences as an alternative to prosecution, which will ultimately save the Authority money and negate the need for a formal prosecution. The FPN can be served on any identified perpetrator, including home owners / occupiers, business owners and registered keepers of vehicles seen depositing larger amounts of waste from a vehicle.
- 2.11 As shown in the table below reports of fly tipping in Woking are unfortunately not slowing despite ongoing promotional and enforcement activity.

<b>Financial year 2016/2017 (Full year)</b>	<b>April 2017 to November 2017 (Part year)</b>
Highway – 414	Highway – 246
Council Land – 918	Council Land – 720
Footpath – 3	Footpath - 0
<b>Total – 1335</b>	<b>Total – 966</b>

- 2.12 Investigations into fly tipping are resource intensive and can be lengthy and complex. It is proposed that the fixed penalty notice amount is set at the maximum £400, to be paid within 14 days (as prescribed by the legislation) with a reduction to £300 if paid within the first 10 days.

## Fixed Penalty Notice (FPN) Policy for Fly Tipping Offences

2.13 This will incorporate the clear up costs and takes into account officer time and other overheads, which are involved in removing this type of waste from public areas. This 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.

### 3.0 Proposals

3.1 It is proposed that Council:

- Endorses the issuance of fixed penalty notices for fly tipping;
- Sets a fixed penalty amount of £400 for fly tipping, payable within 14 days and reduced to £300 if paid within 10 days in accordance with the Unauthorised deposit of Waste (Fixed Penalties) Regulations 2016;
- Delegates to the Assistant Director (Place), in consultation with the Portfolio Holder for Environmental and Well Being Services, the ability to vary all environmental FPN charges in accordance with legislation; and
- Delegates to the Assistant Director (Place) the ability to authorise any persons to issue fixed penalty notices for fly tipping under the Environmental Protection Act 1990.

### 4.0 Implications

#### Financial

4.1 The use of FPNs has the potential of yielding a modest income. In accordance with the current Regulations, FPN receipts will be used for the purpose of exercising functions to improve street cleanliness and enforcement of offences; it is not being regarded as an 'income generator'.

4.2 It is not envisaged that the revenue generated from the fines will be significant, but it will reduce the need to pursue costly prosecution in some cases and enable a more flexible approach in dealing with specific offences under the Environmental Protection Act 1990.

#### Human Resource/Training and Development

4.3 The implementation of one additional fixed penalty option will have no significant impact on current departmental resources.

#### Community Safety

4.4 There are no adverse community safety implications. Improvements to personal accessibility and the wider public realm are likely to have a positive effect upon access and public safety.

#### Risk Management

4.5 All Authorised Officers are fully trained and competent in serving fixed penalty notices. Any new staff will be assessed to ensure that relevant training is provided in relation to fly tipping enforcement and the serving of fixed penalty notices.

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### Sustainability

- 4.6 Implementation of the proposal will aim to reduce fly tipping through enforcement and education and this will improve the aesthetics of the Borough whilst promoting health and wellbeing.

### Equalities

- 4.7 The proposals set out in the report have been the subject of an Equality Impact Assessment and no adverse implications have been identified.

## **5.0 Consultations**

- 5.1 The Portfolio Holder for Environmental and Well Being Services has been consulted in the drafting of this report.

## **6.0 Conclusions**

- 6.1 The introduction of a fixed penalty notice scheme for fly tipping offences is considered a necessary and proportionate response to the current environmental issues facing the Council and will equally save the time and expense of instigating prosecutions through the courts. The recommended level of fine at £400 with a reduction to £300 if paid within 10 days would provide a targeted response to existing problems of fly tipping within the Borough, in accordance with the new Legislative Framework.

REPORT ENDS

EXE17-082

## **Fixed Penalty Notice (FPN) Policy for Fly Tipping Offences**

### **APPENDICES**

## Equality Impact Assessment

The purpose of this assessment is to improve the work of the Council by making sure that it does not discriminate against any individual or group and that, where possible, it promotes equality. The Council has a legal duty to comply with equalities legislation and this template enables you to consider the impact (positive or negative) a strategy, policy, project or service may have upon the protected groups.

		Positive impact?			Negative impact?	No specific impact	What will the impact be? If the impact is negative how can it be mitigated? (action) <b>THIS SECTION NEEDS TO BE COMPLETED AS EVIDENCE OF WHAT THE POSITIVE IMPACT IS OR WHAT ACTIONS ARE BEING TAKEN TO MITIGATE ANY NEGATIVE IMPACTS</b>
		Eliminate discrimination	Advance equality	Good relations			
<b>Gender</b>	Men					X	
	Women					X	
<b>Gender Reassignment</b>						X	
<b>Race</b>	White					X	
	Mixed/Multiple ethnic groups					X	
	Asian/Asian British					X	
	Black/African/Caribbean/Black British					X	
	Gypsies / travellers					X	
	Other ethnic group					X	



		Positive impact?			Negative impact?	No specific impact	What will the impact be? If the impact is negative how can it be mitigated? (action) <b>THIS SECTION NEEDS TO BE COMPLETED AS EVIDENCE OF WHAT THE POSITIVE IMPACT IS OR WHAT ACTIONS ARE BEING TAKEN TO MITIGATE ANY NEGATIVE IMPACTS</b>
		Eliminate discrimination	Advance equality	Good relations			
<b>Disability</b>	Physical					X	Vulnerable person's definition to be considered.
	Sensory					X	
	Learning Difficulties					X	
	Mental Health					X	
<b>Sexual Orientation</b>	Lesbian, gay men, bisexual					X	
<b>Age</b>	Older people (50+)					X	
	Younger people (16 - 25)					X	
<b>Religion or Belief</b>	Faith Groups					X	
<b>Pregnancy &amp; maternity</b>						X	
<b>Marriage &amp; Civil Partnership</b>						X	
<b>Socio-economic Background</b>						X	

The purpose of the Equality Impact Assessment is to improve the work of the Council by making sure it does not discriminate against any individual or group and that, where possible, it promotes equality. The assessment is quick and straightforward to undertake but it is an important step to make sure that individuals and teams think carefully about the likely impact of their work on people in Woking and take action to improve strategies, policies, services and projects, where appropriate. Further details and guidance on completing the form are [available](#).

### Sustainability Impact Assessment

Officers preparing a committee report are required to complete a Sustainability Impact Assessment. Sustainability is one of the Council's 'cross-cutting themes' and the Council has made a corporate commitment to address the social, economic and environmental effects of activities across Business Units. The purpose of this Impact Assessment is to record any positive or negative impacts this decision, project or programme is likely to have on each of the Council's Sustainability Themes. For assistance with completing the Impact Assessment, please refer to the instructions below. Further details and guidance on completing the form are [available](#).

Theme (Potential impacts of the project)	Positive Impact	Negative Impact	No specific impact	What will the impact be? If the impact is negative, how can it be mitigated? (action)
Use of energy, water, minerals and materials			X	
Waste generation / sustainable waste management	X			Use of proper facilities
Pollution to air, land and water	X			Use of proper facilities / less pollution
Factors that contribute to Climate Change			X	
Protection of and access to the natural environment	X			Clean and safe environment
Travel choices that do not rely on the car			X	
A strong, diverse and sustainable local economy	X			Improved aesthetics
Meet local needs locally			X	
Opportunities for education and information	X			Enforcement and education
Provision of appropriate and sustainable housing			X	
Personal safety and reduced fear of crime	X			Clean and safe environment
Equality in health and good health			X	
Access to cultural and leisure facilities			X	
Social inclusion / engage and consult communities			X	
Equal opportunities for the whole community			X	
Contribute to Woking's pride of place	X			Clean and safe environment