



To: Executive Councillor for Environment: Councillor Peter Roberts
Report by: Joel Carré, Head of Environmental Services
Relevant scrutiny committee: Environment 28/6/2016 Scrutiny Committee
Wards affected: Abbey Arbury Castle Cherry Hinton Coleridge East Chesterton King's Hedges Market Newnham Petersfield Queen Edith's Romsey Trumpington West Chesterton

FIXED PENALTY NOTICES (FPNs) FOR SMALL SCALE FLY TIPPING

Key Decision

1. Executive summary

The purposes of this report are:

- a) To inform the Executive Councillor and Scrutiny Committee Members of the new powers for small scale fly tipping that have come into force under The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 (the Regulations), which amend section 33 of the Environmental Protection Act 1990.
- b) To seek delegated authority to the Head of Environmental Services to introduce the new fixed penalties and to authorise the appropriate officers to issue fixed penalty notices (FPNs), under section 33ZA of the Environmental Protection Act 1990 (EPA), to persons whom the officer has reason to believe have committed a small scale fly tipping offence
- c) To seek authority to use the legal maximum FPN level of £400 for all small scale fly tipping offences and to give a discount of £240 (i.e. discounted fine value of £160) for early payment provided payment is made within 10 days of the date the FPN was issued.

2. Recommendations

The Executive Councillor is recommended to:

- a) Delegate authority to the Head of Environmental Services to introduce the new fixed penalties for the enforcement of small scale fly tipping offences and to authorise appropriate officers to issue these FPNs in accordance with section 33ZA of the Environmental Protection Act 1990.
- b) Adopt the legal maximum FPN level of £400 for all small scale fly tipping offences and to give discount for early payment of £240 (i.e. discounted fine value of £160) provided payment is made within 10 days of the date the FPN was issued.

3. Background

3.1 Fly tipping is a significant problem to local communities and 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. Prior to the introduction of the Regulations and subsequent FPN powers, the option for dealing with small scale fly tip cases was limited to prosecution when other formal action was not possible or suitable.

3.2 In 2014/15, local authorities reported 900,000 incidents of fly tipping, costing taxpayers in England an estimated £50 million to clear. In Cambridge, over the same 2014/15 period, there were 1056 reported incidents of fly tipping, which cost an estimated £76k to clear and dispose of. 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 and prosecuting authorities must seek to recover their costs through a separate process, which often can result in an award levels significantly less than the actual costs incurred for the investigation and prosecution. Evidence from local authorities has estimated that the average cost recovered from a successful fly tipping case prosecution is, on average, only 60% of actual cost of bringing the case to court.

3.3 The new 2016 Regulations amend section 33 of the Environmental Protection Act 1990 to give new powers to local authorities to deal with 'small scale fly tipping'¹. The Regulations also provide local authorities with a more efficient and proportionate response to fly tipping, i.e. the power to issue FPNs, instead of the current enforcement by prosecution

¹ Guidance from the Environment Agency refers to 'small scale fly tipping' as: "deposits of non-hazardous waste ranging from a more than a bin bag (approximately 100 litres) to volumes of waste less than 500 litres/0.5 m³ ("a car boot")" and can include like items such as pieces of broken furniture, old televisions and mattresses.

sole response option. The new Regulations also give local authorities the flexibility to set their own FPN rates for small scale fly tipping.

- 3.4 The intention is that the new fixed penalties will act as a deterrent to offenders; and that local authorities using them will see a decrease in the number of small scale fly tipping incidents and the number of prosecutions for fly tipping.
- 3.5 FPN's are an effective and visible way of dealing with low level environmental crime and will be supported by the public provided they are used sensibly, enforced fairly and are seen as a reasonable response to genuine problems.
- 3.6 The council has already approved the use of FPNs as an alternative to prosecutions when dealing with other environmental crimes including litter, dog fouling, illegal advertising and abandoned vehicles. These FPNs are issued by authorised officers within the Enforcement and Dog Warden teams of Streets and Open Spaces. The same authorised officers will be responsible for issuing FPNs for small scale fly tipping.
- 3.7 In accordance with the Environmental Protection Act 1990 and new Regulations, the income received by local authorities from FPN's has to be spent on functions relating to litter, dog fouling and cleansing. It is not to be used as a means of generating income for other uses.
- 3.8 In determining the appropriate levels of a fixed penalty for small 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 the Court imposed fine in the event of non-payment, will lead to substantial non-payment rates and so are counter-productive,.
- 3.9 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 alleged 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 the approach already in place for other environmental crime fixed penalty notices.
- 3.10 The new fixed penalty notices for small scale fly tipping will not be appropriate for operators in the waste management industry, repeat offenders or those responsible for large-scale fly tipping, or the fly tipping

of hazardous waste. These types of offences will continue to be enforced by prosecution in line with the Corporate Enforcement Policy.

3.11 The council's new FPN powers for small scale fly tipping will be used as part of the package of enforcement options available in accordance with the council's Corporate Enforcement Policy.

4. Implications

(a) Financial Implications

The use of FPNs has the potential of yielding a modest income. In accordance with the 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'. 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 cases² and enable a more flexible approach in dealing with specific offences under the Environmental Protection Act 1990.

(b) Staffing Implications

The introduction and issuing of the new fixed penalties for small scale fly tipping will be achieved within existing resources.

(c) Equality and Poverty Implications

An EQIA has been completed please see attached appendix A.

The impact on businesses, charities or voluntary bodies is expected to be positive, as these proposals should act as a deterrent to fly tippers and help level the playing field for legitimate waste businesses.

(d) Environmental Implications

There are no adverse environmental implications. The introduction of FPNs for small scale fly tipping will deliver a net positive climate change impact, through the reduction in fly tipping and associated additional vehicle movements required to clear and dispose of it. A reduction in fly tipping will also deliver an increase in the quality of the local environment, a reduction in associated environmental pollution and contamination and associated improvements in public perception, health, civic pride and inward investment.

² The Validation Impact Assessment, that forms part of the new Regulation, indicates there is a potential saving of between £52 and £182 per case when issuing fixed penalties as an alternative to prosecution

(e) Procurement

No procurement is necessary for the introduction of FPNs for small scale fly tipping. Any procurement involved in delivering the associated enforcement service will be undertaken in accordance with the procurement and financial regulations of the council.

(f) Consultation and communication

FPNs are an accepted means of discharging liability to deal with small scale environmental crime and have been used by the council for almost 10 years.

The extension of the scope of environmental crime for which FPNs can be issued to include small scale fly tipping is now allowed through the 2016 Regulations. The Regulations have been set as a result of evidence obtained by Government, as set out in The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016: Validation Impact Assessment (ref. Section 5 below).

To communicate the introduction of the new FPN powers, promotional literature will be developed and provided to council staff and members, builders merchants, public outlets (including community centres/ council receptions and libraries), Cambridge BID (for dissemination to its members), and advertised to the wider city community through news releases, social and web media and inclusion in fly tipping campaigns.

The departments and officers who will be responsible for the delivery of this enforcement procedure have been consulted.

(g) Community Safety

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.

5. Background papers

These background papers were used in the preparation of this report:

- Council's Corporate Enforcement Policy - <https://www.cambridge.gov.uk/content/enforcement-policy>
- Council Constitution - <https://www.cambridge.gov.uk/constitution>

- The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 - <http://www.legislation.gov.uk/uksi/2016/334/contents/made>
- Explanatory Memorandum to The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 - <http://www.legislation.gov.uk/uksi/2016/334/memorandum/contents>
- The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 Department for Environment, Food and Rural Affairs Regulatory Policy Committee - http://www.legislation.gov.uk/uksi/2016/334/pdfs/uksiod_20160334_en_001.pdf
- The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 Validation Impact Assessment - http://www.legislation.gov.uk/uksi/2016/334/pdfs/uksiod_20160334_en.pdf

6. Appendices

Appendix A: EqIA - Introduction of fixed penalty notices for small scale fly tipping

7. Inspection of papers

To inspect the background papers or if you have a query on the report please contact:

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