

MUNICIPAL YEAR 2016/2017 REPORT NO.

ACTION TO BE TAKEN UNDER DELEGATED AUTHORITY

PORTFOLIO DECISION OF:
Cabinet Member for Environment

REPORT OF:
Director – Regeneration & Environment

Agenda – Part 1	KD Num: 4412
Subject: Setting of the level of Fixed Penalty Notices under The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016	
Wards: All	

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1. EXECUTIVE SUMMARY

- 1.1 On 9 May 2016, the Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 ('the Regulations') came into force. The regulations make an amendment to the Environmental Protection Act 1990.
- 1.2 The amendment allows Local Authorities to issue a fixed penalty notice for a waste deposit (fly tipping) offence in the area of the authority and to determine the penalty charge amount, which can be no less than £150 and not more than £400. A lower amount may be also considered, which can be no less than £120, if the penalty is paid within 10 days of the date of the notice – but authorities are not required to do so.
- 1.3 The Council has applied the default £200 fixed penalty charge since May 2016 and to date has served a total of 25 fixed penalty notices for fly tipping. Since 1 April 2016, a further 644 £80 fixed penalty notices have been issued for low level fly tipping, which is classed as littering and 3823 fixed penalty notices have been issued by the Litter Enforcement Team.
- 1.4 London Councils through the London Councils' Transport & Environment Committee have proposed standardising the charge at £400 and it is proposed that L.B Enfield increase the current level to bring our charges in line with the rest of London.

2. RECOMMENDATIONS

- 2.1 To agree the introduction of a penalty charge for waste deposit (fly tipping) offences as prescribed by new regulation at the increased level of £400 to align with surrounding London boroughs.
- 2.2 To agree not to apply the early payment option.
- 2.3 To implement the new charge from 1 January 2017.

- 3.1.1 The new regulations allow local authorities to issue a fixed penalty notice offering the opportunity of discharging any liability to conviction for the offence of fly tipping.
- 3.1.2 The DEFRA code of practice outlines that a dumped waste, up to the size of a single residential bag, should be considered litter. The Waste Enforcement Unit therefore, issue an £80 fixed penalty notice under the offence of littering for these offences. Currently, where larger scale incidences of fly tipping occur, the Council issue a fixed penalty notice at the default amount of £200.
- 3.1.3 The DEFRA guidance remains unchanged and so the new fixed penalty notice can be issued for incidences of fly tipping, where the dumped waste is larger than a single bag of residential waste.
- 3.1.4 The borough is adversely impacted by high levels of daily fly tipping on public and private land. In 2015/16, the London Borough of Enfield cleared 70,930 fly tips, dumped within the borough. The local authority is required to remove all fly tipping from public land and incur the resulting cost of its disposal.
- 3.1.5 Fly tipping is currently punished by issuing £200 FPNs or by implementing prosecution proceedings which are both costly and not timely and the fines issued by the courts are usually disappointingly low. By implementing the increased fixed penalty notice for fly tipping, it will allow the Local Authority to take a stronger stance against those found to be responsible.

3.2 Setting the Fixed Penalty Notice Levels

- 3.2.1 The Regulations permit Local Authorities to issue fixed penalty notices and to determine the amount up to a maximum of £400. They may also specify a second, lower amount to be paid if the penalty is paid within 10 days, but are not required to do so.
- 3.2.2 The Regulations do not specify what must be taken into account when setting the level of a fixed penalty notice; only setting the maximum amount of £400 and the minimum charge at £150. Therefore, in determining the amount, it is not unreasonable to consider the following;
- a) Any justifiable costs or expected costs incurred or to be incurred in connection with the administration of the provisions of the legislation, and as a minimum cover officer time and costs, preparation and service of a Fixed Penalty Notice;
 - b) Cost or expected cost, of enforcing the provisions of the legislation, including the recovery of the cost of the removal of the unauthorised waste deposit.

- 3.2.3 If the Local Authority does not specify the fixed penalty charge, the charge reverts to £200.
- 3.2.4 In view of the cross London approach agreed through London Councils' Transport & Environment Committee, it is proposed that L.B Enfield set the fixed penalty notice level at £400. Appendix A indicates the London Councils that have already adopted the higher FPN level and it should be noted that more are in the process of increasing to the £400 limit.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 There is the option of leaving the current FPN value at £200 but this would not align with other London Councils.
- 4.2 There is also the alternative of not issuing FPNs for fly tipping and only prosecute but this would not be cost effective or good use of limited enforcement officer resources.
- 4.3 There is also the option to adopt a reduced penalty amount for early payment. By not offering an early payment option, it will send out a strong message that fly tipping is unacceptable behaviour that the Council takes seriously.

5. REASONS FOR RECOMMENDATIONS

- 5.1 The borough is adversely impacted by a significant number of daily fly tipping incidences. The majority of these incidences are in relation to residential waste dumped within the street scene.
- 5.2 The Waste Enforcement Unit look to implement strong penalties against the parties found to be responsible for fly tipping. By implementing the maximum fixed penalty notice amount, it would be a greater deterrent to prevent fly tipping and also allow for matters to be resolved in a swifter and more efficient manner than automatically proceeding through the courts.
- 5.3 The process for issuing a fixed penalty notice for a fly tipping offence is the same as for other offences for which the Council currently issues fixed penalty notices.
- 5.4 The recommended amount for the fixed penalty notice is considered justifiable and proportionate. The FPN allows for the responsible parties to discharging any liability to conviction swiftly but still at a rate that demonstrates the seriousness of the offence which would still deter any repeat offence.
- 5.5 The FPN would also be in line with surrounding London boroughs and failure to increase the value could see the borough become a target for

fly tippers, knowing they face a lesser punishment, if they were caught in Enfield.

6. COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES, AND OTHER DEPARTMENTS

6.1 Financial Implications

6.1.1 On 9 May 2016, The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 ('The Regulations') came into force. The Regulations allows Local Authorities to issue a fixed penalty notice for a waste deposit (fly tipping) offence in the area of the authority and to determine the penalty charge amount, which can be no less than £150 and not more than £400. A lower amount may be also considered, which can be no less than £120, if the penalty is paid within 10 days of the date of the notice – but authorities are not required to do so.

6.1.2 In 2015/16 Street Scene Service cleared a total of 70,930 fly tips, which is very significant cost to the service and it is a diversion of resources (from the day to day of street cleansing of the Borough's roads).

By implementing the maximum fixed penalty notice amount of £400, it would be a greater deterrent to prevent fly tipping and will enable the service to mitigate the cost of clearing fly tips.

6.1.3 The recommendation to introduce a penalty charge for waste deposit (fly tipping) offences as prescribed by new regulation at the increased level of £400 will align Enfield with surrounding London boroughs.

6.2 Legal Implications

6.2.1 The 2016 Regulations amend the Environmental Protection Act 1990 by inserting a new section into the Act. This authorises a waste collection authority to issue a Fixed Penalty Notice for contravention of section 33 of the Act (which prohibits fly tipping).

6.2.2 In accordance with Section 33 (6) of the Act a notice under this section must give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information about the offence and must state:

(a) the period during which, by virtue of subsection (4)(a), proceedings will not be taken for the offence;

(b) the amount of the fixed penalty; and

(c) the person to whom and the address at which the fixed penalty may be paid

6.2.3 Section 33 (9) of the Act states that the fixed penalty payable in pursuance of a notice under this section must be set at between £150 and £400. If no fixed amount is set the default level is £200.

6.3 **Property Implications**

None

7. **KEY RISKS**

7.1 No significant risks have been identified. There is no appeal process attached to the fixed penalty notice and a failure to pay the fixed penalty notice will result in the matter being resolved by prosecution proceedings.

8. **IMPACT ON COUNCIL PRIORITIES**

8.1 **Fairness for All**

There will be positive impacts for residents and other people visiting the borough in terms of a visual improvement to the landscape due to reduced amounts of fly tipping.

8.2 **Growth and Sustainability**

Application of this legislation will contribute towards creating a cleaner environment for both residents and business.

8.3 **Strong Communities**

Application of the maximum amount for the fixed penalty notice will contribute towards creating cleaner and improved street scene across the borough and a reduction of pressure put upon the Street Cleaning team.

9. **EQUALITY IMPACT IMPLICATIONS**

9.1 The provision of general enforcement services has already been considered as part of the Regulatory Service's retrospective Equalities Impact Assessment.

9.2 The Council's approach to enforcement is detailed in the Enforcement Policy adopted by Cabinet.

10. **PERFORMANCE MANAGEMENT IMPLICATIONS**

None

11. PUBLIC HEALTH IMPLICATIONS

- 11.1 Fly tipping not only gives a sense of malaise and decay but its presence encourages others to do the same. It is anticipated that the risk of receiving a £400 fixed penalty notice will prove a deterrent to assist in reducing the level fly tipping and dumping of waste within the borough. This would not only improve the street scene, but reduce the amount of expenditure currently spent by the Council, on removing fly tips.

Background Papers

None

Appendix A

List of London Boroughs which have already adopted £400 FPN

Brent,
Bexley,
Ealing,
Greenwich,
Hounslow,
Kensington and Chelsea,
Merton,
Newham,
Richmond,
Waltham Forest,
Wandsworth,
Islington,
Redbridge,
Sutton

