

Cabinet – 15 March 2017

Fixed Penalty Notices for Fly Tipping

Portfolio: Councillor Julie Fitzpatrick - Communities Leisure and Culture

Related portfolios: Councillor Chris Jones - Clean and Green

Service: Community Protection

Wards: All

Key decision: No

Forward plan: No

1. Summary

This report informs Cabinet of an amendment to the Environmental Protection Act 1990 introducing the use of fixed penalty notices for fly tipping and recommends that the authority utilises these powers and sets the level of penalty to use in Walsall.

2. Recommendations

- 2.1 That Walsall Council introduces the use of fixed penalty notices for fly tipping with effect from 1 April 2017.
- 2.2 That the level of penalty to be applied in Walsall is £400 with a discount of £50 for payment within 10 days.

3. Report detail

- 3.1 Fly tipping is a problem across the UK and Walsall is no exception, with certain locations are impacted more significantly than others. In 2016 there were 5389 incidents of fly tipping in Walsall, resulting in just under 3,000 tonnes of waste to clear, costing the Authority £408k. This figure does not include waste left on unauthorised encampments and does not include the cost to private businesses for clearing fly tipped waste from their land. As well as the implications for council resources on clean up of illegal fly tipping, the impact on residents, business and the wider community of such matters can be significant. It can contain hazardous materials which are an immediate danger or have long term health implications for residents; once fly tipping takes hold in an area it can very quickly and easily become a hotspot, it has a negative impact on the local economy and businesses and can often be a “signal crime” indicating other problems and anti social behaviour in the area or leading to an increase in such activity.

- 3.2 Currently, offences of fly tipping are investigated by Community Protection Officers and, in accordance with the Authority's Enforcement Policy, is dealt with in a number of ways. According to the facts of the case and all other legal requirements being satisfied, the matter may be put before the courts in a prosecution or it may be discharged by way of a simple caution; warning letter or, for low volumes, by issuing a fixed penalty notice for litter. Investigations are usually commenced as a result of evidence gathered by CCTV cameras located in fly tipping hotspots but may occasionally be as a result of eye witness reports.
- 3.3 Whilst the maximum penalties which can be imposed by a court are high, it is rare that courts will impose the maximum penalty, particularly on a first offence. The resources involved in investigating and bringing to court such offences are significant. The maximum penalty for fly tipping which can be imposed by the court is £50,000. Recently, fines locally have ranged from £160 to £920.
- 3.4 With fixed penalty tickets, it is still necessary to prove the offence to the criminal standards, i.e. beyond reasonable doubt as if an accused person chooses not to pay the ultimate recourse is still to instigate legal proceedings in court. However, there are efficiency savings in the preparation of the file and in the resources required for legal services to bring the matter to court. When a matter is prosecuted in court, any fine levied is paid into central funds with any order for costs, being returned to the authority. However, an order for costs is at the Court's discretion.
- 3.5 Justice is delivered in a more timely manner with fixed penalty notices. This is because there are efficiency savings to the council in the preparation of case files and that they are not then subject to the court process and time frames.
- 3.6 The introduction of fixed penalty notices for fly tipping does not replace any of the other enforcement options currently available to officers, it adds to them. In accordance with the principles of good enforcement and the enforcement policy, each case is assessed on its merits. For the most serious offences either in terms of scale, nature of waste, location, repeat offending, impact on the community, cases will continue to be brought to court. Where the amounts of fly tipping are very small or where there are genuine mitigating circumstances to take into account, it may be appropriate to utilise the lower level fixed penalty notice for litter, to issue a "simple caution" or warning letter. Enforcement of these provisions and use of the fixed penalty tickets rests primarily with the Community Protection Team. However, provision will be included for this to be also undertaken by the contractor appointed in the new environmental enforcement contract in appropriate circumstances.
- 3.7 Wherever possible, successful prosecutions in court are publicised including defendant's details as well as the full penalty. With the issue of fixed penalty tickets, it is not possible to do this as each case is not a matter of public record. However, it is anticipated that there will be more cases with tickets issued than are currently prosecuted and a programme of appropriate communications will be instigated including traditional media such as the press and social media. This opportunity for more frequent reporting will go some way to mitigating this drawback.

- 3.8 The legislation provides that the Local Authority can set its own fine levels between £150 and £400 with the option to provide a discount for early payment. The penalty needs to be set at a level which will provide a deterrent effect and send a clear message to potential offenders that the authority takes this criminal activity seriously. Therefore the recommendation of this report is to set the fixed penalty at the maximum level of £400.
- 3.9 If an alleged fly tipper does not pay the penalty, the authority needs to be able to discharge the matter by way of prosecution. However, to meet the objectives of utilising this power and minimise the resources of chasing unpaid tickets and submitting further prosecution files, it is recommended that the option of a discount for early payment is utilised with the amount of discount being sufficient to provide an incentive to pay early, whilst not taking away from the objective of stating how seriously the authority takes the matter. Therefore, the recommendation of this report is that an early payment discount is agreed and set at £50, making the charge £350 with early payment. The legislation specifies the time frame for early payment as 10 days and sets the minimum penalty level for early payment as £120.

4. Council priorities

Fly tipping is a problem which has an adverse impact on all the council priorities. As well as an eye sore, it can present both immediate hazards and long term harm to residents and to wildlife. It is a source of pollution and undermines legitimate business. Tackling fly tipping provides increased support and feelings of wellbeing and pride for communities. In challenging financial times, the Council is looking to deliver its services in a more efficient way. A robust message about tackling fly tippers should lead to a reduction in fly tipping and the consequential clean up costs and efficiencies in enforcement and legal processing.

5. Risk management

The risks associated with the following this approach are that the processes must be in place to authorise such use and make the correct decisions on implementation and in relation to ongoing enforcement cases and notices and processes must comply with the legal requirements. These are mitigated with ongoing discussions with legal services.

6. Financial implications

The implementation of this approach is met within current financial resources. The legislation requires that a certificate from a person authorised on behalf of the chief financial officer is required to prove that a penalty notice has not been paid before action can be taken in court.

7. Legal implications

The depositing of controlled waste otherwise than in accordance with a waste management licence is an offence by virtue of S33 of the Environmental Protection Act 1990. The use of fixed penalty notices for fly tipping is an amendment to the legislation brought into force by virtue of The Unauthorised

Deposit of Waste (Fixed Penalties) Regulations 2016. The decision to utilise the provisions and set the level of penalty is one appropriately made by the executive of the Council by virtue of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000. Cabinet is therefore the appropriate decision making body for this report. Legal services have been consulted and are advising on the form and content of notices to implement the process.

8. Procurement Implications/Social Value

There are no direct procurement implications with this report. However, an environmental enforcement contract scheduled to come into place by April 2017 will include provisions for the contractor to issue fixed penalty notice for fly tipping to support the work of the Community Protection Officers where appropriate and necessary.

9. Property implications

Not applicable

10. Health and wellbeing implications

Fly tipping can present immediate hazards and long term health implications to communities affected. It reduces the civic amenity which is provided for residents and hence can restrict the health benefits of such amenities. Communities blighted by fly tipping can have reduced pride in their area and there is often a long term impact on the economy.

11. Staffing implications

This is within scope of the job descriptions of staff within the Community Protection Team and Clean and Green. Briefings will be held to ensure that the processes to be followed are understood by all staff.

12. Equality implications

Equalities Impact Assessments are not required for the implementation of legislation. The impact of following this approach should reduce the incidents of fly tipping across the borough which in turn will have a positive benefit on certain groups, for example people with visual impairments will find it easier to access certain amenities.

13. Consultation

There is no requirement for external consultation on the implementation of this approach. The internal consultation procedures have been followed.

Background papers

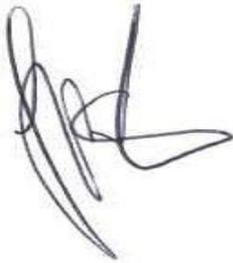
None attached

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Simon Neilson
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6 March 2017



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Portfolio holder

6 March 2017