

BOROUGH OF KETTERING

Committee	EXECUTIVE	Item 12	Page 1
Report Originator	Shirley Plenderleith Head of Public Services	<i>Fwd Plan Ref No:</i> A18/029	
Wards Affected	All	16 th January 2019	
Title	FLY TIPPING AND LITTERING ENFORCEMENT		

Portfolio Holder: Cllr Mark Dearing

1. PURPOSE OF REPORT

- 1.1 To agree that authorised officers of the Council can issue Fixed Penalty Notices for certain fly tipping offences as an alternative to prosecution through the Courts.
- 1.2 To seek delegation to the Heads of Public Services, and Environmental Care in respect of The Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018 which introduces new Fixed Penalty Notices for littering from vehicles from powers conferred by inserting section 88A of the Environmental Protection Act 1990.
- 1.3 To set the Fixed Penalty Notices for fly tipping at £400, which will be reduced to £300 if paid within 14 days.
- 1.4 To raise the fine levels for littering (direct observation and from vehicles) from £75 to £100.

2. BACKGROUND

Fly tipping Fixed Penalty Notices (FPN):

- 2.1 A focused campaign of investigation and prosecution, together with an intelligence led approach has led to an increasing number of successful fly tipping prosecution cases taken by the Council.
- 2.2 In the last twelve months, the Council has successfully convicted four offenders for fly tipping in the Magistrates Court. Three further offenders are currently waiting to go to trial and two additional offenders remain wanted on warrant for failing to appear in Court.
- 2.3 Investigating a fly tipping offence is both resource intensive and costly. Typically, an investigation can take months before a case is complete. Of these cases, at least two could have been dealt with using an FPN enabling the team to work more efficiently within the resource envelope available.
- 2.4 Whilst to date all such cases have been taken through the court system, there is an option under the 'The Unauthorised Deposit of Waste (Fixed Penalties)

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Regulations 2016' to allow cases to be discharged using a Fixed Penalty Notice (FPN) of between £150 to £400.

- 2.5 It is proposed that an FPN of £400 is introduced to offset the costs of enforcement, and in line with other local authorities in the County. A reduction to £300 would be offered for fines paid within 14 days of the FPN being issued. This is consistent with FPNs set within all other neighbouring Northamptonshire authorities.
- 2.6 If agreed by Members, this would allow the Warden Team together with colleagues in Environmental Care to progress cases faster, and although not considered suitable for large complex cases it would provide an additional tool to deal with more straightforward cases and enable the teams to spend more focused time on the more serious cases.
- 2.7 The FPN would not replace prosecutions taken through the court system. FPNs will only be issued in those cases where offenders admit to fly tipping and agree to pay an FPN. All serious fly tipping cases, those where officers can prove duty of care, and those that are in the public interest will be progressed through the courts in the usual way.

Littering from Vehicles:

- 2.8 Legislative changes, which came into effect in April 2018, provide local authorities with a more efficient response to littering from a motor vehicle, i.e. the power to issue FPNs to the registered keeper of the vehicle directly. Prior to the change in legislation, officers had to ascertain who was driving the vehicle at the time of the littering offence. This is carried out via a "Request for Information", which is sent to the registered keeper of the vehicle, and asks whether the registered keeper was driving the vehicle at the time of the offence. If they state that were not driving, they are requested to supply the details of the person who was driving at the time of the offence. These cases whilst considered important in having a deterrent effect on those who throw litter from vehicles are time consuming to pursue.
- 2.9 The Littering from Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018 confers powers on litter authorities (defined in Regulations) to issue civil penalty notices or FPNs to the registered keeper of a vehicle when the council has reason to believe, to the civil standard of proof, that a littering offence has been committed from the vehicle.
- 2.10 It is also proposed to increase the local fine level for littering from £75 to £100 as permitted under the new regulations in line with the FPNs that can be issued under the Council's Public Space Protection Order (PSPO). Fines would be reduced to £80 if paid within 14 days.
- 2.11 FPNs are payable within 28 days; if the penalty remains unpaid after 28 days (clock paused during any appeal proceedings), the Act provides for the penalty to be increased by 100% (i.e. doubled).

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3. CONSULTATION AND CUSTOMER IMPACT

3.1 The Council currently uses FPNs to enforce against environmental crimes, and has a well-established process for dealing with such matters including appeals.

3.2 The FPN process will allow certain cases to be resolved more quickly.

Littering from vehicles:

3.3 Public service vehicles, hackney carriages and private hire vehicles are exempt from liability for a civil penalty notice if a passenger commits the offence. The Regulations also provide for businesses engaged in the hiring of vehicles to appeal a civil penalty notice in connection with one of their vehicles by providing evidence that the vehicle was not being kept by the business at the time of the offence by virtue of the relevant vehicle hire agreement.

3.4 A person who receives a Fixed Penalty Notice may make written representations under Regulation 14 of the Act to the litter authority if they believe one or more of grounds set out in the Regulations apply to their circumstances.

4. POLICY IMPLICATIONS

4.1 No policy changes are proposed in this report. FPN's are an effective and visible way of dealing with environmental crime and are generally supported by the public provided they are used sensibly, enforced fairly and are seen as a reasonable response to genuine problems. They are already used widely by the Council.

5. FINANCIAL RESOURCE IMPLICATIONS

5.1 The proposed adoption of legislation allows for more efficient ways of working, and will be delivered within existing resources.

6. HUMAN RESOURCE IMPLICATIONS

6.1 There are no Human Resource implications

7. LEGAL IMPLICATIONS

7.1 *The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016* allow local enforcement authorities to issue FPNs to facilitate out of court disposals for

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fly tipping. These regulations specifically allow enforcement authorities to set an FPN level between £150 and £400.

7.2 *The Littering from Vehicles outside London (Keepers: Civil Penalties) Regulations 2018* allows local authorities outside of London to address littering from vehicles through the registered keeper route.

8. RECOMMENDATION

That Members agree:

- 8.1 To delegate authority to the Heads of Public Services, and Environmental Care to authorise the appropriate officers to offer a Fixed Penalty Notice (FPN) for fly tipping as permitted under the Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016.
- 8.2 To delegate authority to the Heads of Public Services, and Environmental Care to authorise the appropriate officers to issue Fixed Penalty Notices (FPNs) under The Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018.
- 8.3 FPN levels to be set as below:
 - Fly tipping cases - £400 FPN, reduced to £300 if paid within 14days
 - Littering from vehicles - £100 FPN, reduced to £80 if paid within 14days.

Background Papers:

Title

Date

Contact Officer

Previous Minutes/Reports:

Ref:

Date: