

Agenda Item No: 7

Report To: Cabinet

Date of Meeting: 12th January 2017

Report Title: Fixed Penalty Notices for fly tipping

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Portfolio Holder Cllr. Mrs Clair Bell,
Portfolio Holder for: Public Interaction and Borough Presentation

Summary:	This report explains the provisions for fixed penalty notices for fly tipping, that became available in 2016 and asks Members to agree to set a fine level for this borough.
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Key Decision: YES

Significantly Affected Wards: All wards

Recommendations: **The Cabinet is recommended to:-**

- (i) **Authorise the issue of Fixed Penalty Notices for small scale fly tipping offences contrary to section 33 (1) (a) of the Environmental Protection Act 1990**
- (ii) **Set the maximum Fixed Penalty to £400 without the ability to pay a reduced fee**

Policy Overview: In May 2016, the provisions of the Environmental Protection Act 1990 were amended to extend the powers available to include fixed penalty notices to include fly tipping offences. This initiative, alongside enforcement on littering, supports corporate priority 4, Attractive Ashford.

Financial Implications: Setting a robust fine level should assist in deterring fly tipping in the borough and allow the street scene team to deal with this offence in the most expedient manner.

Legal Implications Setting a fine level for fixed penalty notices for fly tipping will mean that some cases do not proceed to court for prosecution but will offer an expedient deterrent alternative in all but the more serious of cases .

Equalities Impact Assessment See paragraphs 28 and 29

Exempt from Publication: No

Background Papers: N/A

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Introduction and Background

1. From 2014 / 15 data, (the latest date for which statistics are currently available); Local Authorities dealt with a total of 900 thousand incidents of fly-tipping, an increase of 5.6 per cent since 2013/14 with nearly two thirds of fly-tips involving household waste.
2. The estimated cost of clearance of fly-tipping to local authorities in England in 2014/15 was nearly £50 million, an 11 per cent increase on 2013/14

Proposal/Current Position

3. Ashford Borough Council is part of the Mid Kent Joint Waste Partnership for household waste collection with Swale, Maidstone and Kent County Council and Biffa (as our service provider).
4. As part of our contractual agreement with Biffa, any fly tip under 2m³ is picked up as soon as it is reported or seen by cleansing operatives and disposed of inside the annual contract costs (no additional charge).
5. Fly tips collected by our contractor are checked for information relating to whomever may have deposited the fly tip or maybe associated with it (e.g. a letter with householder details, or a bill with personal information).
6. Fly tips reported directly to the street scene service, are usually larger in nature and are checked for information that may lead to an investigation and possible prosecution.
7. If fly tips are over 2m³ our contractor will clear the waste but as a chargeable service. The charge for this will depend on the size / nature of the waste and the manpower / vehicles required to clear it.
8. From the financial year 2015 / 16, if Ashford Borough Council was required to pay to clear reported fly tips (as opposed to them being covered by the contract), the commercial cost equivalent would have been approximately £48,700 (based on government return figures).
9. Enforcement action is undertaken on a reactive basis and would continue on that basis, alongside education and publicity of successful prosecution and fines paid where applicable.

10. Recently, the street scene team worked with corporate fraud investigation and our legal services team to secure the successful prosecution of an illegal fly tip from a commercial window replacement company.
11. Although the fines in the recent prosecution were £750, this is retained by the courts and not the local authority. The local authority receive awarded costs only.
12. There is currently another fly tipping case going forward for prosecution and two more under investigation.
13. However undertaking an investigation and prosecution is a complex and time consuming process which requires a significant input of staff resource and cannot be guaranteed to be successful. The fines from any successful prosecutions are paid to the court and not to the local authority.
14. In response to public concern about fly-tipping and the appropriateness of the sanctions available to deal with it the Government have brought forward The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 which came into force on 9 May 2016. The regulations add a section 33ZA to the Environmental Protection Act 1990 which provides for the issue of a FPN for contravention of section 33(1)(a) of that Act. The explanatory memorandum to the regulations explain that the purpose is to provide
'local authorities with a more efficient and proportionate response to small-scale fly-tipping of waste.'
15. These Regulations introduce a power enabling an authorised officer of a waste collection authority to serve a fixed penalty notice on a person found to be responsible for fly tipping offences.
16. Fixed penalty notices cannot be served on operators in the waste management industry, or those responsible for the fly tipping of hazardous waste. Government guidance indicates that the use of fixed penalty notice for repeat offenders is not appropriate.
17. Payment of a fixed penalty discharges the recipient from liability for conviction for the offence.
18. The legislation gives local authorities the power to set the level of fixed penalty notices within the range of £150 – £400, with the default being £200 if no other amount is specified.
19. The legislation also allows for an early payment discount to be applied to fines paid within 10 days of the issue of the penalty, setting a minimum level for discounted fines of £120.
20. Once a fixed penalty notice has been issued, no Court proceedings can be started until after the expiry of 14 days from the date of the fixed penalty notice.

Implications and Risk Assessment

21. In Ashford Borough Council, if the fly tip exceeds 2m³ the minimum cost for removal can vary dependent upon the manpower and disposal costs required to clear the fly tip (we are charged on an agreed bill of quantities rate). It is therefore considered that any fixed penalty levied at least covers clearance costs and should ideally cover at least some of the investigation costs.
22. As indicated above, the fines levied in the case of a prosecution for fly tipping are retained by the Courts (with only the costs of bringing the case being payable to the Council, if ordered by the Court).
23. A number of neighbouring local authorities have recently set their fixed penalty levels with many charging £400 for the full fine and £250 - £300 for the reduced rate, if paid inside 10 days.
24. Others are intending to set their fixed penalty fine at the maximum of £400 with no early repayment (on the basis that the potentially lesser offence of “failure to produce waste documentation” carries the lesser fine of £300).
25. There is no requirement for an early repayment level to be agreed and some local authorities in Kent have decided not to allow a reduced rate for early repayment. The recommendation of this report is that we do not accept a reduced fee for early repayment.
26. FPNs would be used for small scale fly-tipping where prosecution is unlikely to be cost-effective. Prosecution will still be pursued in more serious cases such as Commercial operators, hazardous, high volume, or organised tipping.
27. A FPN would only be served once, on someone who fly tips. A second offence by the same person would be considered for prosecution and not offered a Fixed Penalty Notice.

Equalities Impact Assessment

28. Members are referred to paragraphs 17 – 20 where consideration is given to the reasoning for recommendations for fine level.
29. An initial assessment identified no implications in relation to protected characteristics

Consultation Planned or Undertaken

30. This document has received feedback that has informed the report from legal services and the policy, compliance and scrutiny officer.

Options Considered

31. The level of fixed penalty can be set within the range of £150 - £400. If the Council does not set a level of fixed penalty to be applied, the default level of £200 will be applicable.

32. It is recommended that Cabinet set the fixed penalty level at the maximum level of £400 and do not allow an early payment discount.

Reasons for Supporting Option Recommended

33. The suggested level (amount) for the fixed penalty notice would ensure that the receipts from fixed penalty notices are in proportion to the actual cost of dealing with fly tipping in Ashford.
34. Fixed penalty receipts can be retained by the Council and used in exercising its functions in relation to fly tipping. These receipts could be used to fund increased work in detection of fly tipping and in education on the issue.
35. Providing an early repayment has not been adopted in litter enforcement (through the pilot with Kingdom). As such, it is suggested that this FPN does not allow for a reduced early repayment option.
36. In the event that a FPN is not paid, the perpetrator will be prosecuted for the original offence.

Conclusion

37. The provision of a Fixed Penalty Notice for fly tipping should provide an expedient way in which to deal with all but the most serious offences.
38. Dealing with all but the most serious fly tips in this way should save the courts time and act as an effective deterrent.

Portfolio Holder's Views

39. Fly tipping is a blight on the landscape for all local authorities to deal with. Setting a Fixed Penalty Notice at the maximum amount is a clear indication of how seriously this authority views this offence and the strong stance we take on enforcement. Councillor Clair Bell, Portfolio Holder for Public Interaction and Borough Presentation.

Contact and Email

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