

**AGENDA ITEM**

**REPORT TO CABINET**

**25 JANUARY 2018**

**CABINET DECISION**

**Access, Communities and Community Safety – Lead Cabinet Member – Councillor Steve Nelson  
Fly-Tipping Fixed Penalty Notices**

1. Summary

The purpose of this briefing paper is to outline some of the changes around legislation relating to fly tipping and how the offence is dealt with in Stockton on Tees. Last year, Local Authorities in England dealt with over one million fly tipping incidents an increase of 7%. Locally, we deal with thousands of request for service each year with incidents of fly tipping increasing in line with the national picture. The estimated cost of clearance of fly tipping in England is around £57 million per year.

2. Recommendations

- 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 at the upper scale of £400 without the option to discount.

3. Reasons for the Recommendation(s)/Decision(s)

This sets a clear deterrent factor to would be offenders whilst also taking into account the time and money spent on investigating and removing fly tipping.

The use of a fixed penalty notice should be used instead of Court action, with the exception of the following instances;

- The offender has relevant past convictions for related offences
- The offender is commercial business, or acting on behalf of a business
- The offender has shown no sign of remorse, acceptance or correcting behaviour

4. Members' Interests

Members (including co-opted Members) should consider whether they have a personal interest in any item, as defined in **paragraphs 9 and 11** of the Council's code of conduct and, if so, declare the existence and nature of that interest in accordance with and/or taking account of **paragraphs 12 - 17** of the code.

Where a Member regards him/herself as having a personal interest, as described in **paragraph 16** of the code, in any business of the Council he/she must then, **in accordance with paragraph 18** of the code, consider whether that interest is one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so

significant that it is likely to prejudice the Member's judgement of the public interest and the business:-

- affects the members financial position or the financial position of a person or body described in **paragraph 17** of the code, or
- relates to the determining of any approval, consent, licence, permission or registration in relation to the member or any person or body described in **paragraph 17** of the code.

A Member with a personal interest, as described in **paragraph 18** of the code, may attend the meeting but must not take part in the consideration and voting upon the relevant item of business. However, a member with such an interest may make representations, answer questions or give evidence relating to that business before the business is considered or voted on, provided the public are also allowed to attend the meeting for the same purpose whether under a statutory right or otherwise (**paragraph 19** of the code)

Members may participate in any discussion and vote on a matter in which they have an interest, as described in **paragraph 18** of the code, where that interest relates to functions of the Council detailed in **paragraph 20** of the code.

### **Disclosable Pecuniary Interests**

It is a criminal offence for a member to participate in any discussion or vote on a matter in which he/she has a disclosable pecuniary interest (and where an appropriate dispensation has not been granted) **paragraph 21** of the code.

Members are required to comply with any procedural rule adopted by the Council which requires a member to leave the meeting room whilst the meeting is discussing a matter in which that member has a disclosable pecuniary interest (**paragraph 22** of the code)

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**REPORT TO CABINET**

**25 JANUARY 2017**

**REPORT OF CORPORATE  
MANAGEMENT TEAM or CMT**

**CABINET DECISION**

**Access, Communities and Community Safety – Lead Cabinet Member – Councillor Steve Nelson  
Fly-Tipping Fixed Penalty Notices**

The purpose of this briefing paper is to outline some of the changes around legislation relating to fly tipping and how a fly-tipping offence is dealt with in Stockton on Tees. Last year, Local Authorities in England dealt with over one million fly tipping incidents an increase of 7%. Locally, we deal with thousands of request for service each year with incidents of fly tipping increasing in line with the national picture. The estimated cost of clearance of fly tipping in England is around £57 million per year.

**Recommendations**

2. Recommendations

- 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 at the upper scale of £400 without the option to discount. This would bring Stockton on Tees Borough Council in line with the majority of our neighbouring authority areas.

**DETAIL**

**Background**

1. By definition, fly-tipping is the illegal disposal of waste without a waste management license and is a wide-ranging offence. It can cover everything from the dumping of a single black bin bag, up to thousands of tonnes of waste. Fly-tipping can be dangerous, pollutes land and waterways and costs the council tax payer significant amounts of money to clear away. The legislation tackling fly-tipping is complex and can generally be found in the Environmental Protection Act 1990, as amended by the Clean Neighbourhoods and Environment Act 2005.
2. Fly-tipping legislation deals with all matters relating to 'controlled waste'. 'Controlled waste' means household, industrial and commercial waste including:
  - General household waste
  - Larger domestic items, such as fridges and mattresses
  - Garden refuse
  - Commercial waste such as builders' rubble, clinical waste and tyres

3. The act of fly-tipping is a criminal offence, which is committed if controlled waste is:
  - Deposited, or caused or allowed to be deposited, in a way or place not allowed by a waste management license
  - Kept or managed in a way that is likely to cause pollution or harm to human health
4. Following the introduction of The Unauthorised Deposit of Waste (Fixed Penalty) Regulations 2016 on the 9<sup>th</sup> May 2016, section 33A was introduced into the statute which increased the powers of a local authority to deal with fly tipping. The implementation of a FPN was contained within the governments manifesto and is designed to help Councils tackle the blight of fly tipping in a measured and cost effective way.
5. It is proposed that this FPN be implemented and used by Civic Enforcement Officers to tackle only the more serious waste offences that would otherwise be progressed through the Court system. This does not affect single item deposits such as litter or household waste as we already have sufficient enforcement mechanisms in place to tackle these issues. It also will not be used to tackle waste presentation offences from commercial businesses, which includes the presentation of commercial waste and the provision of a commercial waste agreement.
6. An illustrative example of how the new FPN will be used, is shown below;

Situation	Standard Approach
Three black bags of domestic related waste are put into the rear lane. The bags contain evidence which proves they are from a house that backs off onto the rear lane.	Matter dealt with via existing waste presentation rules under s46 Environmental Protection Act. Civil matter.
Domestic waste including bulky items left in a street. Evidence relates to an address several streets away,	Eligible for FPN for fly tipping, providing the person responsible is eligible.
A large deposit of waste, weighing around 2 tons is found on a country lane. The person responsible is found.	Summons to Court for fly tipping under existing rules, not eligible for FPN given severity of offence.

## IMPLEMENTATION

7. A fixed penalty notice is a way in which an offender can discharge his/her liability for an offence by paying a set amount to avoid Court action. We currently issue a range of FPN's for offences such as littering, dog fouling, vehicle abandonment and to deal with matters relating to the licencing of waste carriers. It is not an admission of guilt, providing the full amount is paid within the set term. In terms of FPN cost for fly tipping, the government have set guidelines for Councils to work to;

Offence	Default Penalty	Minimum Full Penalty	Maximum Full Penalty	Minimum Discounted Penalty
Fly Tipping	£200	£150	£400	£120

8. There is no governmental controls on how the income from these fines can be used within the Council, unlike income from other offences which is often ringfenced. In terms of the local picture, those neighbouring authorities that have implemented the FPN for fly tipping

have opted to set the rate at £400.00. This is also the case for the majority of Councils nationally, with 56,000 FPN's issued last year in England.

## **COMMUNITY IMPACT IMPLICATIONS**

1. N/A

## **FINANCIAL IMPLICATIONS**

Income levels will be directly related to the number of FPN issued. Exact numbers are difficult to forecast as the purpose of implementing these fines is to reduce the likelihood of these offences occurring. Any income raised can be reinvested in additional education and the promotion of appropriate waste disposal.

## **LEGAL IMPLICATIONS**

The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 which came into force on 9 May 2016 amended the Environmental Protection Act 1990 (the "EPA") by inserting provisions to allow a waste collection authority in England (which includes the Council) to issue a fixed penalty notice for a contravention of section 33(1)(a) of the EPA. Section 33(1)(a) prohibits a person from depositing controlled waste or extraction of waste in or on any land unless in accordance with an environmental permit ("fly-tipping").

## **RISK ASSESSMENT**

N/A

## **COUNCIL PLAN POLICY PRINCIPLES AND PRIORITIES**

Developing strong and healthy communities

## **CORPORATE PARENTING IMPLICATIONS**

N/A

## **CONSULTATION INCLUDING WARD/COUNCILLORS**

Cabinet Member: Access, Communities & Community Safety

Cabinet Member: Environment & Transport

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Education related

No

Background Papers

None

Ward(s) and Ward Councillors:

All

Property

None