

NOTICE OF MEETING

CABINET MEMBER SIGNING

Friday, 14th October, 2016, **11.00** am - **Civic** Centre, High Road, Wood Green, N22 8LE

Members: Councillor Ahmet

1. **FILMING AT MEETINGS**

Please note that this meeting may be filmed or recorded by the Council for live or subsequent broadcast via the Council's internet site or by anyone attending the meeting using any communication method. Although we ask members of the public recording, filming or reporting on the meeting not to include the public seating areas, members of the public attending the meeting should be aware that we cannot guarantee that they will not be filmed or recorded by others attending the meeting. Members of the public participating in the meeting (e.g. making deputations, asking questions, making oral protests) should be aware that they are likely to be filmed, recorded or reported on.

By entering the meeting room and using the public seating area, you are consenting to being filmed and to the possible use of those images and sound recordings.

The chair of the meeting has the discretion to terminate or suspend filming or recording, if in his or her opinion continuation of the filming, recording or reporting would disrupt or prejudice the proceedings, infringe the rights of any individual or may lead to the breach of a legal obligation by the Council.

2. **DECLARATION OF INTERESTS**

A Member with a disclosable pecuniary interest or a prejudicial interest in a matter who attends a meeting of the authority at which the matter is considered:

- (i) must disclose the interest at the start of the meeting or when the interest becomes apparent, and
- (ii) may not participate in any discussion or vote on the matter and must withdraw from the meeting room.

A Member who discloses at a meeting a disclosable pecuniary interest which is not registered in the Register of Members' Interests or the subject of a pending notification must notify the Monitoring Officer of the interest within 28 days of the disclosure.

Disclosable pecuniary interests, personal interests and prejudicial interests are defined at Paragraphs 5-7 and Appendix A of the Members' Code of Conduct.

3. INTRODUCING A FIXED PENALTY NOTICE FOR FLYTIPPING (PAGES 1 - 18)

To agree the level of fine for this offence under Section 33 of the Environmental Protection Act 1990 (as amended). The maximum penalty possible is £400, and the minimum £150.

4. URGENT BUSINESS

The Leader/Cabinet Member will advise of any items they have decided to take as urgent business.

Philip Slawther
Tel – 020 8489 2957
Fax – 020 8881 5218
Email: philip.slawther@haringey.gov.uk

Bernie Ryan
Assistant Director – Corporate Governance and Monitoring Officer
River Park House, 225 High Road, Wood Green, N22 8HQ

Thursday, 06 October 2016

Report for: Cabinet Member Signing - 14 October 2016

Item number: 3

Title: Introducing a Fixed Penalty Notice for Fly-tipping

Report authorised by: Stephen McDonnell (Assistant Director for Commercial and Operations)



Lead Officer: Tom Hemming – Neighbourhood Action Team Manager (020 8489 5625)

Ward(s) affected: ALL

**Report for Key/
Non Key Decision:** Key

1. Describe the issue under consideration

- 1.1. The Environmental Protection Act 1990 (the “EPA”) was amended on 9th May 2016 to allow local authorities to issue a specific Fixed Penalty Notice (“FPN”) for flytipping offences, which could be used in addition/as an alternative to the existing tools at local authorities’ disposal, namely to prosecute or issue notices under related sections of the legislation.
- 1.2. The maximum penalty possible for the new FPN for flytipping is £400, and the minimum is £150. If councils do not specify an amount, the amount payable is £200. It is possible to offer an early payment amount of not less than £120 if the penalty is paid within 10 days.
- 1.3. The Fixed Penalty can be levied by authorised officers giving those believed to have committed flytipping offences a FPN payable within a limited period as an alternative to prosecution or serving a notice.
- 1.4. A decision was made by London Councils’ Transport & Environment Committee (TEC) on 16 July 2016 to provide a steer to boroughs that the FPN for flytipping should be set at the highest possible amount of £400. The Committee did not determine whether to set an early payment or at what level. It should be noted that the Committee can only provide a steer on the flytipping penalty as the EPA is national rather than London-specific legislation (i.e. London Local Authorities Act 2007) – local authorities can therefore legally set alternative levels, within the amounts set by government, if desired.

- 1.5. This report recommends that the LBH exercise new powers given by s33ZA of the EPA by introducing a FPN for flytipping offences at the statutory maximum of £400, with no early payment option.

2. Cabinet Member Introduction

- 2.1. Fly-tipping of waste is a major problem for local authorities across England, including the London Borough of Haringey. It is a blight on our local communities, having significant social, financial, environmental and public health impacts, all of which have a direct impact on the quality of life of our residents.
- 2.2. We need to continue to engage and communicate but also take a tougher stance against flytippers who do not care about the impact on their own communities and seek to gain profit at the expense of our neighbourhoods.
- 2.3. The introduction of a FPN for flytipping provides an additional tool for councils to tackle flytipping, helping keep our borough cleaner and safer. It does not replace the use of existing tools and means that the Council would retain existing powers to issue FPNs at lower amounts for small scale infringements such as litter and we would, as a matter of course, still prosecute for more serious offences.
- 2.4. As such I welcome the introduction of a specific Fixed Penalty Notice for flytipping.

3. Recommendations

- 3.1. It is recommended that the Cabinet Member approve the introduction of a Fixed Penalty for flytipping offences pursuant to section 33ZA of the Environmental Protection Act 1990 at the statutory maximum of £400 with no early payment option.”

4. Reason for Decision

- 4.1. Adopting the maximum penalty provides a clear message that LBH does not tolerate flytipping.
- 4.2. It would be consistent with the existing approach undertaken by LBH around maximising the risk to offenders, thereby prioritising prevention and deterrence.
- 4.3. It is in line with the decision taken by London Councils' Transport & Environment Committee (TEC) to recommend all London boroughs set the penalty at the maximum level; if other boroughs follow suit, there will be advantages of adopting a standard penalty in terms of it being straightforward for residents and businesses alike to understand what the flytipping penalties are across London, and assist with any pan-London communication messaging.

- 4.4. In terms of the rationale for the level of the penalty, in 2014/15 22 prosecutions were brought by LBH for flytipping offences, which is less than one percent of the total enforcement actions taken. A total of 18 of the 22 prosecutions resulted in a fine.
- 4.5. Only one of the 18 fines was issued at a mid-range level (£1,000 to £5,000), four were lower and ranged between £500 and £1,000. A total of 13 were in the low range, with nine cases receiving a fine between £200 and £500 and four cases below £200. The upper fine amount that can be levied for flytipping has, since 12 March 2015, been unlimited, but no fines were issued above the mid-range (£1,000 to £5000). These amounts awarded are relatively low compared to the cost of disposing of waste. For example, the removal of a skip-load of waste costs a minimum of £230 and can cost more than £500.
- 4.6. Alongside the above, there were just under 800 FPNs issued in 14/15, for waste-related offences. These penalties range from between £80 for residents and £300 for businesses, depending on the exact offence.
- 4.7. Given the relative infrequency of prosecution, the lower levels of fines that have been issued, and combined with the levels of the FPNs that have previously been available, on average it is cheaper to offend than to responsibly dispose of waste.
- 4.8. Whilst LBH is working with the magistrates to communicate to it the severity of the issue in terms of scale and impact on the local community, with the aim of increasing the deterrent factor, the use of the flytipping FPN will provide an alternative option to prosecuting fly-tippers, in particular for smaller or 'low level' fly-tipping. However, it continues to be possible to prosecute fly-tippers and it is at the Council's discretion what enforcement tool is used. LBH would still, as per existing procedure, seek to prosecute for more serious offences.
- 4.9. In this context, setting the flytipping FPN amount at the maximum will provide a penalty that is more in line with the lower prosecution fines, which are below £500, therefore making it a suitable alternative enforcement tool. It would also provide a penalty that is more in keeping with the cost of disposal e.g. hiring a skip or disposing of waste commercially.
- 4.10. It would also avoid a situation where it is 'cheaper' to risk flytipping in Haringey than another borough. We are aware that a number of our neighbouring boroughs have adopted (eg. Waltham Forest) or are planning to adopt the penalty at the maximum level.
- 4.11. An equality impact assessment will be produced for the final Member report. All enforcement action taken will always be proportionate to the offence and each situation is treated on an individual basis.

5. Alternative options considered

- 5.1. Alternative options consist of setting the level of penalty at a lower level and/or providing an early payment discount, as allowed for under the EPA 1990 (not less than £120 if the penalty is paid within 10 days).
- 5.2. A lower level of penalty, and provision for an early payment discount could encourage payment, rather than potentially facing prosecution for non-payment.
- 5.3. However, either (and both) of these measures would dilute the seriousness with which the council wishes to treat flytipping as an offence, and the deterrent effect being sought. Linked to this, offering an early payment could encourage the perception that the use of the power is around generating income rather than tackling flytipping to provide cleaner and safer streets.
- 5.4. For the reasons outlined in section 4, the maximum level of penalty and no early payment facility has been recommended.

6. Background information

- 6.1. Flytipping, also known as rubbish dumping or the unauthorised deposit of waste, is unsightly and causes environmental damage. The introduction of a Fixed Penalty notice provides an additional tool for councils to tackle flytipping to help keep boroughs cleaner and safer.
- 6.2. Councils have a limited resource to tackle fly-tips, and yet the estimated cost of fly-tipping is increasing as the number of fly-tips reported increases. Local authorities in England spent nearly £50 million on removing 900,000 fly-tips in 2014/15, and a further £17.8 million was spent on enforcing. Out of the £17.8 million, £5.4 million was spent on tackling the 367,000 reported fly-tips in London (see Section 11 for source data).
- 6.3. Haringey has the third highest number of reported fly-tip incidences across the UK, even though fly-tips reported in Haringey had decreased by 17 percent compared to 2013/14.
- 6.4. Enforcement action is used where preventative measures have not been successful. A total of around 8,700 enforcement actions were carried out in Haringey during 2014/15, mainly consisting of investigations (57 percent), duty of care inspections (19 percent), statutory notices (14 percent) and fixed penalty notices (nine percent). While not a direct aim of the legal action, fines also indirectly play a key role in deterring others from committing similar offences.

7. Contribution to strategic outcomes

- 7.1. A key priority of Haringey's Corporate Plan is for a clean, well maintained and safe borough (Priority 3) and includes objectives around working with the community to improve the environment, particularly by reducing anti-social behaviour and environmental crime.
- 7.2. A key means of delivering these objectives is the delivery of a flytipping strategy that raises awareness of the seriousness of flytipping and the harm it does to communities, increases the perception of risk amongst offenders, and to these ends amplifies the communication of enforcement outcomes, as well as providing clear advice on how to dispose of waste responsibly.
- 7.3. Introducing the flytipping fine at the maximum level will support the strategy by sending a clear message to any potential offenders that flytipping is not tolerated, and enable direct action by authorised officers that better reflects the severity of the offence.
- 7.4. Equally important to our strategy is encouraging the reporting of information by the public where flytipping is witnessed or its source known. In relation to this, the Team Noel Park trial is testing out a new way of working more closely with the community in an area that consistently sees the highest levels of fly-tipping in the borough. The trial seeks to develop solutions that fit local needs. For example, much of the dumping locally is composed of domestic waste, and therefore part of Team Noel Park's approach is to demonstrate the strength of resident feeling against fly-tipping as a means to influencing what is considered to be acceptable behaviour amongst neighbours. If successful, this approach will be extended to other parts of the borough. The new FPN is a nonetheless an important tool to enable appropriate enforcement action where necessary to reinforce engagement activity.

8. Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)

Finance and procurement

- 8.1. The income generated from the flytipping FPN's is expected to be broadly similar to the amount currently achieved through other enforcement routes such as prosecution or community protection notices. Any income generated should be reinvested into the relevant service, i.e. clearing and enforcement of fly-tipping.

Comments of the Assistant Director of Corporate Governance and Legal Implications

- 8.2. The Assistant Director of Corporate Governance has been consulted in the preparation of this report and makes the following comments.
- 8.3. S33(1)(a) of the EPA creates offences including that colloquially known as fly-tipping. The maximum penalty on conviction in the Crown Court is an unlimited fine or 5 years imprisonment or both.

- 8.4. On 9 May 2016 s33ZA, an amendment to the EPA, came into force. It introduces a new power for officers authorised by the Council to give those whom they have reason to believe have committed the s33(1)(a) offence within the borough a notice (“FPN”) offering them the opportunity to pay a Fixed Penalty so as to discharge any liability for prosecution for that offence.
- 8.5. No prosecution may be commenced within the period for payment of the Fixed Penalty, and if the penalty is paid within that period the recipient of the notice may not be convicted of the offence.
- 8.6. By EPA s33ZA(9)(a) the Council may fix the penalty payable at any figure between £150 and £400. If the Council does not fix a figure then the penalty is set at £200.
- 8.7. Under the Constitution power to agree to levy a Fixed Penalty, and to fix the amount of the penalty where there is discretion, is reserved to Cabinet (subject to the Leader’s power to take the decision or allocate it to a Cabinet Member).

9. Equalities Comments

- 9.1. The Council has a public sector equality duty under the Equalities Act (2010) to have due regard to:
 - Tackle discrimination and victimisation of persons that share the characteristics protected under S4 of the Act. These include the characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex (formerly gender) and sexual orientation;
 - Advance equality of opportunity between people who share those protected characteristics and people who do not;
 - Foster good relations between people who share those characteristics and people who do not.
- 9.2. The Fixed Penalty will apply equally to anyone committing this offence regardless of background. The policy is intended to have a positive impact on local communities in terms of improving the local environment, by helping keep the Borough cleaner and safer.
- 9.3. The overall conclusion is that no one group will be disadvantaged as a result of introducing a new Fixed Penalty for Flytipping. If mitigation measures addressed within the equality impact assessment are implemented. The full Equality Impact Assessment can be found in Appendix 1.

10. Use of Appendices

Appendix 1 – Equality Impact Assessment

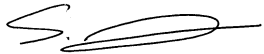
11. Local Government (Access to Information) Act 1985

<http://researchbriefings.files.parliament.uk/documents/SN05672/SN05672.pdf>

External links – Haringey Council is not responsible for the contents or reliability of linked web sites and does not necessarily endorse any views expressed within them. Listing should not be taken as endorsement of any kind. It is your responsibility to check the terms and conditions of any other web sites you may visit. We cannot guarantee that these links will work all of the time and we have no control over the availability of the linked pages

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Equality Impact Assessment

Name of Project	Introducing a Fixed Penalty Notice for Fly-tipping	Cabinet meeting date <i>If applicable</i>	TBC
Service area responsible	Commercial & Operations		
Name of completing officer	Debbie Campbell	Date EqIA created	7-9-16
Approved by Director / Assistant Director	Stephen McDonnell 	Date of approval	6-10-16

The Equality Act 2010 places a ‘**General Duty**’ on all public bodies to have ‘**due regard**’ to:

- **Eliminating discrimination, harassment and victimisation and any other conduct prohibited under the Act**
- **Advancing equality of opportunity between those with ‘protected characteristics’ and those without them**
- **Fostering good relations between those with ‘protected characteristics’ and those without them.**

In addition the Council complies with the Marriage (same sex couples) Act 2013.

Haringey Council also has a ‘**Specific Duty**’ to publish information about people affected by our policies and practices.

All assessments must be published on the Haringey equalities web pages. All Cabinet papers MUST include a link to the web page where this assessment will be published.

This Equality Impact Assessment provides evidence for meeting the Council’s commitment to equality and the responsibilities outlined above, for more information about the Councils commitment to equality; please visit the Council’s website.

Stage 1 – Names of those involved in preparing the EqIA	
1. Project Lead Tom Hemming	5.
2. Equalities / HR Kathryn Booth	6.
3. Legal Advisor (where necessary) Robin Levett	7.
4. Trade union – N/A	8.

Stage 2 - Description of proposal including the relevance of the proposal to the general equality duties and protected groups. Also carry out your preliminary screening (Use the questions in the Step by Step Guide (The screening process) and document your reasoning for deciding whether or not a full EqIA is required. If a full EqIA is required move on to Stage 3.

The proposal concerns the introduction of a Fixed Penalty Notice (FPN) for fly-tipping offences at the maximum statutory level of £400, with no early payment option.

The Fixed Penalty can be levied by authorised officers giving those believed to have committed flytipping offences a FPN payable within a limited period as an alternative to prosecution or serving a notice. These penalties range from between £80 for residents and £300 for businesses, depending on the exact offence, and prosecution is unlimited.

The introduction of a FPN for flytipping provides an additional tool for councils to tackle flytipping. It does not replace the use of existing tools and means that the Council would retain existing powers to issue FPNs at lower amounts for small scale infringements such as litter and would, as a matter of course, still prosecute for more serious offences.

The Fixed Penalty will apply equally to anyone committing this offence regardless of background. The policy is intended to have a positive impact on local communities in terms of improving the local environment, by helping keep the Borough cleaner and safer.

Stage 3 – Scoping Exercise - Employee data used in this Equality Impact Assessment
Identify the main sources of the evidence, both quantitative and qualitative, that supports your analysis. This could include for example, data on the Council’s workforce, equalities profile of service users, recent surveys, research, results of recent relevant consultations, Haringey Borough Profile, Haringey Joint Strategic Needs Assessment and any other sources of relevant information, local, regional or national.

Data Source (include link where published)	What does this data include?
This proposal does not have any implications for employees.	N/A

Stage 4 – Scoping Exercise - Service data used in this Equality Impact Assessment
This section to be completed where there is a change to the service provided

Data Source (include link where published)	What does this data include?
No equality data is collected on those that commit offenses. All areas of the borough are affected by flytipping, flytipping is not area specific.	N/A

Stage 5a – Considering the above information, what impact will this proposal have on the following groups in terms of impact on residents and service delivery:

Positive and negative impacts identified will need to form part of your action plan.

	Positive	Negative	Details	None – why?
Sex				No data available on the sex of the offender in relation to Fixed Penalty Notices. However, it is not anticipated that the policy will have a disproportionate impact on this protected group.
Gender Reassignment				No data available on gender reassignment in relation to Fixed Penalty Notices. However, it is not anticipated that the policy will have a disproportionate impact on this protected group.
Age	Age is a potential mitigating factor in implementing the policy and requires officer discretion.		The general practice is not to issue a Fixed Penalty Notice to anyone below the age of 18 years old.	
Disability	Learning disability and mental health issues are potential mitigating factors for issuing		Fixed Penalty Notices would not be issued on persons with certain disabilities, such	

	Fixed Penalty Notices and therefore require officer discretion.		as issuing a Fixed Penalty Notice for dog fouling on a visually impaired person with a dog, or persons with mental health issues. Discretion is also applied in other instances such as persons with manual dexterity.	
Race & Ethnicity	Language barrier is a potential factor requiring different forms of engagement.	Adopting the maximum statutory amount of £400 is an increase on current Fixed Penalty Notices used which is around £80 to £100 pounds, but in some cases £300. No payment could lead to increased prosecutions.	The policy aims to take a stronger enforcement approach but also recognises the need for engagement. Where language is a barrier steps to ensure the warning stage is communicated will be made. Income data suggests that BME communities are more likely to be on lower incomes and could be therefore more affected by a higher charge.	
Sexual Orientation				No data available on sexual orientation in relation to Fixed Penalty Notices. However, it is not anticipated that the policy

				will have a disproportionate impact on this protected group.
Religion or Belief (or No Belief)				No data available on religion or belief in relation to Fixed Penalty Notices. However, it is not anticipated that the policy will have a disproportionate impact on this protected group.
Pregnancy & Maternity				No data available on pregnancy or maternity in relation to Fixed Penalty Notices. However, it is not anticipated that the policy will have a disproportionate impact on this protected group.
Marriage and Civil Partnership (note this only applies in relation to eliminating unlawful discrimination (limb 1))				No data available on marriage and civil partnerships in relation to Fixed Penalty Notices. However, it is not anticipated that the policy will have a disproportionate impact on this protected group.

Stage 5b – For your employees and considering the above information, what impact will this proposal have on the following groups: Positive and negative impacts identified will need to form part of your action plan.

	Positive	Negative	Details	None – why?
Sex				Policy has no impact on employees
Gender Reassignment				As above
Age				As above
Disability				As above
Race & Ethnicity				As above
Sexual Orientation				As above
Religion or Belief (or No Belief)				As above
Pregnancy & Maternity				As above
Marriage and Civil Partnership (note this only applies in relation to eliminating unlawful discrimination (limb 1))				As above

Stage 6 - Initial Impact analysis	Actions to mitigate, advance equality or fill gaps in information
<p>The impact assessment highlights that different engagement interventions may be required to ensure that offenders who face language barriers understand the enforcement process and are able to respond to final warnings.</p> <p>Low income groups are likely to have greater difficulty in meeting increased charges. Certain protected groups, such as BME households, are currently disproportionately likely to be on low incomes. The impact assessment suggests that certain groups may have increased difficulty in complying with the policy due to factors such as age or a disability.</p>	<p>Where possible the service will use communication material that is visual and other engagement tactics such as door-stepping. Discretion to be used in implementation of the policy where required and informal enforcement/warnings already in place will continue to be used.</p> <p>Discretion to be used in implementation of the policy where required and informal enforcement/warnings already in place will continue to be used.</p> <p>Discretion will continue to be used in the issuing of Fixed Penalty notices where required and informal enforcement/warnings already in place will continue to be used.</p>

Stage 7 - Consultation and follow up data from actions set above	
Data Source (include link where published)	What does this data include?
<p>Relates to increase to existing fees and charges. There is no specific public consultation planned as this is a statutory fine. Consultation with London Councils was undertaken which</p>	<p>N/A</p>

recommended setting the fine at the statutory level. Members and council officer have also been consulted.	
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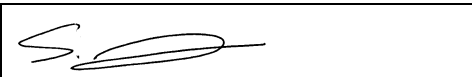
Stage 8 - Final impact analysis

The service does not currently collect data on the breakdown of Fixed Penalty Notices by different equalities groups. However informal policy restrictions are currently adopted or used at the discretion of the officer, thereby protecting groups that may be disadvantaged. These groups include those who may be more vulnerable or less able to comply with the policy on account of their age or disability. Enforcement activities focus on engagement to ensure that offenders are aware of the enforcement process and the consequences of not complying. The service currently uses a range of engagement mechanisms, including more visual communications and face-to-face engagement where possible and therefore will continue to do so.

It is noted that certain groups may be more affected by the increase in the Fixed Penalty Notice rate where they are on low incomes. The focus of the policy is to take a stronger approach to enforcement and it is therefore important that the policy is implemented consistently wherever a crime has been committed. However, income may be taken into account during the prosecution and subsequent fine setting process.

Overall conclusion is that no one group will be disadvantaged as a result of introducing a new Fixed Penalty for Flytipping. If mitigation measures addressed within this equality impact assessment are implemented.

Stage 9 - Equality Impact Assessment Review Log

Review approved by Director / Assistant Director		Date of review	6-10-2016
Review approved by Director / Assistant Director		Date of review	

Stage 10 – Publication

Ensure the completed EqIA is published in accordance with the Council’s policy.