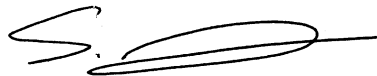


**Report for:** Cabinet Member Signing - 14 October 2016

**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 9<sup>th</sup> 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>

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