PROPOSAL TO INCREASE FINE LEVEL FOR FLY-TIPPING FIXED PENALTY NOTICES

Report to: Portfolio Holder report for decision
Ward(s): All
Key Decision: No
Appendix 1: None
Papers relied on: Basingstoke and Deane Borough Council’s General Enforcement Policy
                          Sentencing Council Guidelines for Environmental Offences (2014)

Foreword – Cllr Hayley Eachus, Cabinet Member for Regulatory Services and the Environment

Fly-tipping is a serious criminal offence. Our enforcement team thoroughly investigate all reported incidents of fly-tipping and the council will not hesitate to prosecute anyone who is found to be responsible for this dangerous and anti-social activity. Anyone found guilty of this offence could face an unlimited fine and face up to 5 years in prison. However in some circumstances it is appropriate to issue a fixed penalty notice (FPN) as an alternative to prosecution. In order to recognise how seriously the Council views this type of behaviour I support the proposal to increase the FPN fine level from £200 to the maximum level of £400 (reduced to £250 if paid early).

Recommendation to Portfolio Holder:
To approve the immediate increase in the Fixed Penalty Notice fine level for fly tipping to £400, reduced to £250 if this is paid within 10 calendar days of the date of issue.
Background, corporate objectives and priorities

This report seeks Portfolio Holder approval to increase the fine level for fixed penalty notices issued in relation to fly-tipping. This recognises how seriously the council views this type of anti-social behaviour and will act as a strong deterrent. This forms part of our work to try and reduce the incidence of fly-tipping around the borough and links with the council’s priority to improve residents’ quality of life by protecting our communities and countryside.

Glossary of terms

<table>
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<tr>
<th>Term</th>
<th>Definition</th>
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<tr>
<td>Fly-tipping</td>
<td>The prohibition on unauthorised or harmful, deposit, treatment or disposal of waste (Environmental Protection Act 1990 s.33)</td>
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<td>FPN</td>
<td>Fixed Penalty Notice</td>
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<td>Duty of Care (DoC)</td>
<td>Duty of care as respects to waste – the duty of everyone to ensure their waste is handled and disposed of in a lawful way and does not lead to an offence under s.33 (fly-tipping) (Environmental Protection Act 1990 s.34)</td>
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Main considerations

1 Executive Summary

1.1 In May 2016 The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 came in to force. This made available to local authorities, fixed penalty notices (FPNs) as a method of discharging the offence related to fly-tipping.

1.2 The default fine level set by the regulations was £200 in all circumstances. However the regulations gave local authorities discretion to set their own fine level between a minimum of £150 and a maximum of £400.

1.3 To date the council has issued 7 FPNs for fly tipping.

1.4 This report recommends that the fine level for this type of fixed penalty notice issued by the council, to be increased to £400 with an early payment option of £250.00.

2 The Proposal

2.1 The current fine level for FPNs as stipulated by the relevant regulations is £200.00. In order to maximise the sanction and deterrent effect of an FPN for fly-tipping it is proposed to increase the fine level to £400.00. This will be reduced to £250.00 where payment is received within 10 calendar days.

2.2 Failure to pay within 28 calendar days, as is already the case, would lead to prosecution proceedings being commenced against person served with an FPN.
3 Key issues for consideration

3.1 The impact of fly-tipping on our communities and countryside are significant. Whether it is risks posed to the public by abandoned waste, harm that is caused to flora and fauna, costs associated with clearance and disposal, or the visual impact on communal land in our communities and prized amenity space and countryside, fly-tipping is a reckless act which can affect us all.

3.2 Holding persons accountable for fly-tipping can be difficult, and there will often be insufficient evidence to hold persons accountable. Where sufficient evidence does exist, optimising the sanctions available to the council would send a very clear and strong message to those who have, and those who might participate in fly-tipping. The risk of a high fine should serve as a deterrent and will support our attempts to reduce the amount of fly-tipping taking place.

3.3 There is no particular formula or method for setting a fine level. It can be set anywhere in the range of £150 to £400. However, the costs of investigating and clearing a fly-tip will almost always exceed £200 (the current fine level) given the officer time involved investigating the offence, collecting and disposing of waste (on public land), interviewing suspects and determining a course of action.

4 Options Analysis

4.1 Option 1

4.2 Increase the FPN fine level for offences under section 33 of the Environmental Protection Act 1990 (fly-tipping) from £200 to £400. Where payment is received within 10 calendar days of the issue of the FPN, an early payment option of £250 would be available.

4.3 Increasing the FPN fine level to the maximum amount sends a strong message to the public that the council treats fly-tipping very seriously. The maximum amount (£400) is a significant amount of money and will serve to deter people who consider fly-tipping. It is also better reflects the typical costs associated with investigating this type of offence. The council has long advocated taking a serious stance against fly-tipping, and increasing the fine to the maximum level reinforces and gives increased credibility to that position.

4.4 The early payment option proposed, gives significant incentive to recipients to pay as soon as possible and would represent a saving of £150.00 than if paying later. This marked difference, should improve payment rates where FPNs are issued.

4.5 There is always a risk of non-payment associated with FPNs. In these circumstances the next step would be to instigate prosecution proceedings against the individual/company concerned. Those found guilty by a court of fly-tipping face an unlimited fine and or a custodial sentence of up to 5 years.

4.6 Implementing this option could be done immediately. This change would be actively publicised, and accompanying any announcement about the
increased fine level, would be educational messages to the public through the council’s website and social media on how to dispose of waste appropriately.

4.7 A number of local authorities nationally have already increased fine levels. Of the other Hampshire authorities, we are only aware of Rushmoor BC having increased their fine to £400. Option 1 is the preferred option.

4.8 **Option 2**

4.9 *Reduce the existing fine level to the minimum amount (£150) and offer an early re-payment option of £120.*

4.10 This option represents the lowest possible fine level. This would not be consistent with how seriously the council views fly-tipping. It is likely to have minimal impact as a deterrent or sanction. It is anticipated there would be minimal impact or benefit to the council where the fine is set at this level. It would also mean that the council was not recovering the costs associated with responding to fly-tipping incidents. The officer time involved investigating a case to a point where a fine can be issued or prosecution taken will typically be upwards of 10 hours. This does not include clearance costs associated with clearing the waste.

4.11 Any non-payment would be followed by commencing prosecution proceedings.

4.12 **Option 3**

4.13 *Maintain the default fine level set by regulations at £200.*

4.14 While it is a stronger sanction than option 2, it remains at the lower end of the fine spectrum. However it does not maximise an opportunity to send a strong message to the public that the council views and treats fly-tipping very seriously and does not reflect the council’s costs associated with responding to incidents of fly tipping. The officer time involved investigating a case to a point where a fine can be issued or prosecution taken will typically be upwards of 10 hours. This does not include clearance costs associated with clearing the waste.

**Corporate implications**

5 **Legal Implications**

5.1 The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 permits the Council, as the waste collection authority, to issue FPNs in respect of fly tipping offences. The default FPN fine level is set at £200, but local authorities have the discretion to set the fine level themselves between a minimum of £150 to a maximum of £400.

5.2 The scheme of officer delegations in the Council's Constitution provides for the Regulatory Services Manager (RSM) to implement of The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016. The RSM can also authorise officers to issue fly tipping FPNs. Currently only certain officers in the Environmental Health team are authorised to issue FPNs.
5.3 Decisions over when it is appropriate to issue a FPN are made with regard to the Council’s General Enforcement Policy, The Code for Crown Prosecutors’ and the Environmental Offences Sentencing Guidelines. FPN is not an appropriate sanction for:

- Operators in the waste management industry
- Repeat offenders
- Those responsible for large-scale fly-tipping or the fly-tipping of hazardous waste.

5.4 These types of incident will continue to be enforced by local authorities using existing prosecution powers.

5.5 As this is a significant change it is appropriate for the decision to be approved by the Cabinet Member. This also serves as a record that a decision has been taken to implement and enforce The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016.

6 Financial implications

6.1 In the past 10 months 7 fly-tipping FPNs were issued, with 5 paid to date, representing an income of £1000. Any additional income as a result of the proposed increase in fine levels would partially offset some of the costs associated with fly-tipping.

7 Risk management

7.1 A risk assessment has been completed in accordance with the council’s risk management process and has identified no significant (Red or Amber) residual risks that cannot be fully minimised by existing or planned controls or additional procedures.

8 Equalities implications

8.1 There are no identified equality concerns arising from this report.

9 Consultation and communication

9.1 The Communications team has drafted a communication strategy to support a waste responsibility campaign linked to fly-tipping. The objectives of this are to encourage residents to take pride in where they live by reporting incidents of fly-tipping and supporting residents with information on what they should do with their waste. This aims to contribute to reducing incidents of fly tipping in the borough through awareness of waste responsibility along with the risk of fines and prosecution.

9.2 Key messages for the campaign include how the council is cracking down on people illegally dumping their rubbish, reminding people that fly-tipping not only spoils the countryside and local community, but also could also lead to an unlimited fine and even a prison sentence.
9.3 Communications methods within the strategy include; media relations, social media including targeted advertising and communications within groups that offer ‘man in van’ services, Basingstoke & Deane Today, community magazines and also direct and digital media.

10 HR implications

10.1 There are no HR implications associated with this report.

11 Conclusion

11.1 Approval is sought to increase the existing fine levels for fixed penalty notices associated with the offence covering fly-tipping. It is proposed that the fine level be increased to the maximum amount allowed by regulations to £400 with an early payment option of £250.

12 Summary and reason for the decision

12.1 The council has long advocated taking a serious stance against fly-tipping and offenders. Increasing the fine level for fixed penalty notices is consistent with that position.

13 The options considered and rejected

13.1 The options to reduce the fine level (Option 2) or maintain the existing fine levels for FPNs (Option 3) are rejected.

Date: April 2017
Decision taken by: Portfolio Holder
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<th><strong>Lead officer</strong></th>
<th>Colin Rowland, Head of Environmental Services</th>
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<tr>
<td><strong>Report author</strong></td>
<td>Rhys Gilbert, Principal Environmental Health Officer</td>
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<tr>
<td><strong>Version</strong></td>
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<td><strong>Dated</strong></td>
<td>14 April 2017</td>
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<td><strong>Confidentiality</strong></td>
<td>It is considered that information contained within this report (and appendices) do not contain exempt information under the meaning of Schedule 12A of the Local Government Act 1972, as amended, and therefore can be made public.</td>
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