

Decision Maker: Environment Portfolio Holder

For Pre-Decision Scrutiny by the Environment PDS Committee on:

Date: 8th November 2016

Decision Type: Non Urgent Executive Non Key

Title: **ADOPTION OF FIXED PENALTY NOTICES FOR FLY-TIPPING OFFENCES**

Contact Officer: Toby Smith, Enforcement Manager, Neighbourhood Management
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Chief Officer: Nigel Davies, Executive Director of Environment & Community Services

Ward: All Wards

1. Reason for report

Regulations introduced on 9 May 2016 granted Local Authorities the power to issue fixed penalty notices (FPNs) for contraventions of section 33 (1)(a) of the *Environmental Protection Act 1990 (EPA)* concerning fly-tipping. This report sets out the case for introducing FPNs in Bromley and recommends the level of FPN is set at £400 with no early payment discount.

2. **RECOMMENDATIONS**

That the Environment Portfolio Holder:

- 2.1 Approves the introduction of FPNs for fly-tipping offences within the borough.
- 2.2 Agrees to set the level at £400 per penalty notice and agrees not to offer a discount for early payment.
- 2.3 Agrees to delegate authority to the Executive Director of Environment & Community Services regarding authorising appropriate officers to issue fixed penalty notices (FPNs), under section 33ZA of the Environmental Protection Act 1990 (EPA), to persons whom the officer has reason to believe have committed a small scale fly tipping offence.

Impact on Vulnerable Adults and Children

1. Summary of Impact: The ability to issue FPN's for fly tipping on the public highway should have a positive impact on the health and well being on vulnerable adults and Children.
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Corporate Policy

1. Policy Status: Not Applicable Existing Policy New Policy: Further Details
 2. BBB Priority: Quality Environment, Safer Bromley,;
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Financial

1. Cost of proposal: Net nil as the income generated from the FPN's covers the estimated additional cost of administration.
 2. Ongoing costs: Estimated net nil
 3. Budget head/performance centre: Street Regulation & Enforcement
 4. Total current budget for this head: £353k
 5. Source of funding: Existing revenue budget for 2016/17
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Staff

1. Number of staff (current and additional): 7
 2. If from existing staff resources, number of staff hours: 210 hrs (30 FPN's x 7hrs)
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Legal

1. Legal Requirement: Fixed Penalty Notices may now be issued in respect of offences committed contrary to Section 33 of the Environmental Protection Act 1990 Regulation 9 of the Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016.
 2. Call-in: Applicable:
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Procurement

1. Summary of Procurement Implications: N/A
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): All residents and Visitors
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? No
2. Summary of Ward Councillors comments: N/A

3. COMMENTARY

3.1 Fly-tipping, that is the illegal and unauthorised dumping of waste, is a significant problem to local communities and a risk to the environment. It is a drain on council resources and undermines legitimate waste businesses, where unscrupulous operators undercut those that operate within the law. Numbers of reported incidents have been on the increase in recent years in Bromley:

Year	Number of Incidents
2011/12	2,180
2012/13	2,495
2013/14	2,681
2014/15	3,377
2015/16	3,343

3.2 Committee report [ES16017](#) (2 March 2016), set out details of the £250k fund released by Members to develop fly-tipping and envirocrime initiatives. Since then, Officers have developed a number of projects aimed at reducing and tackling fly-tipping incidents, e.g. through using enforcement & surveillance, communications campaigns and the installation of barriers.

3.3 Section 33(1)(a) of the Environmental Protection Act 1990 creates the offence of depositing controlled waste or knowingly permitting controlled waste to be deposited on any land unless the person has a valid permit. A person found to have contravened this provision is liable to prosecution. However, prosecutions are time consuming and expensive to pursue for both local authorities and magistrate's courts, and even if prosecutions are successful, full costs are not always granted or recovered.

3.4 From 9 May 2016, it has been possible for local authorities to introduce FPNs for fly-tipping under the Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016, which amend section 33 of the Environmental Protection Act 1990. The Regulations introduce new powers for local authorities to issue FPNs for small scale fly-tipping, providing Councils with an alternative remedy to prosecutions.

3.5 This change provides local authorities with a more immediate, efficient and proportionate response to fly-tipping, and the introduction of these FPNs would provide an additional tool for LB Bromley to tackle fly-tipping. The new fixed penalty notices for small scale fly tipping will not be appropriate for operators in the waste management industry, repeat offenders or those responsible for large-scale fly tipping, or the fly tipping of hazardous waste.

3.6 The London Councils Transport and Environment Committee (TEC) [recommended on June 16th 2016](#) a maximum FPN of £400 for fly-tipping; each borough can decide what level of discount, if any, should be granted for early payment of the fine.

3.7 LB Bromley is permitted to set its own penalty levels within the limits set by government i.e. between £150 and £400, as well as any discount criteria, as shown in the table below:

Offence	Default penalty	Minimum full penalty	Maximum full penalty	Minimum discounted penalty
Fly-tipping	£200	£150	£400	£120

See [Government Guidance on Fixed penalty notices: issuing and enforcement by councils](#)

- 3.8 The statutory minimum fine is £200 with an early payment discount of £120 if paid within 14 days .Officers consider that imposing the maximum £400 fine, with no early-payment discount, would have the greatest deterrent effect. The intention is that this will lead to a decrease in the number of small scale fly-tipping incidents in Bromley, helping the borough remain clean and safe.The control of fly tipping is the responsibility of Street Scene and Greenspace Division ‘s enforcement team . The issuing of the FPN’s would be undertaken by the Council’s enforcement team and the current security contractor (Ward Security).
- 3.9 It is also recommended that delegated authority is awarded to the Executive Director of Environment & Community Services to delegate authority to appropriate officers to issue fixed penalty notices (FPNs), including LB Bromley Street Enforcement Officers and *Ward Security* Officers.
- 3.10 In accordance with the Environmental Protection Act 1990 and the new supporting Regulations, the income received by Local Authorities from FPN’s should be spent on functions relating to litter, dog fouling and cleansing. It is not to be used as a means of generating income for other uses.
- 3.11 The Council’s Parks Security and Street Enforcement Contractor, Ward Security, currently issue FPNs for other Environmental offences, and the admin costs and methods of recovery are intended to be the same as what is currently in place. Failure to pay an FPN within 14 days will lead to cases being referred to the LB Bromley Legal team.
- 3.12 The estimated annual number of FPNs that may be issued for fly-tipping is 30. At this stage it is not expected to generate a surplus of income as the income received is estimated to cover the additional administration costs for street regulation and enforcement, finance and legal.

4. IMPACT ON VULNERABLE ADULTS AND CHILDREN

No negative impact expected.

5. POLICY IMPLICATIONS

5.1 Building a Better Bromley.

5.2 The Environment Portfolio Plan 2016 -19 Identifies that the quality of the street scene- especially its cleanliness - continues to be a priority for the Council and residents alike.

6. FINANCIAL IMPLICATIONS

6.1 The estimated income from the issue of the FPNs will cover the additional estimated cost of administration, monitoring and prosecutions as shown in the table below: -

	£
Estimated incomde generated by the 30 FPNs at current recovery rate	-7,400
Estimated additional costs for administration, monitoring & legal	7,400
Net additional cost/income	0

7. LEGAL IMPLICATIONS

- 7.1 These penalties have been introduced by Defra nationally in England, as amendments to section 33 of the Environmental Protection Act 1990 (See [Unauthorised Deposit of Waste \(Fixed Penalties\) Regulations 2016](#)).

8. PERSONNEL IMPLICATIONS

- 8.1 The introduction and issuing of the new fixed penalties for small scale fly-tipping will be achieved within existing resources.

Non-Applicable Sections:	Procurement Implications
Background Documents: (Access via Contact Officer)	<ul style="list-style-type: none">• Environment Portfolio Plan 2016/19• The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 - http://www.legislation.gov.uk/uksi/2016/334/contents/made• Explanatory Memorandum to The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 - http://www.legislation.gov.uk/uksi/2016/334/memorandum/contents• The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 Department for Environment, Food and Rural Affairs Regulatory Policy Committee - http://www.legislation.gov.uk/uksi/2016/334/pdfs/uksiod_20160334_en_001.pdf• The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 Validation Impact Assessment - http://www.legislation.gov.uk/uksi/2016/334/pdfs/uksiod_20160334_en.pdf