

TITLE OF REPORT: Introduction of Fixed Penalty Notices for flytipping and review of current environmental fixed penalty charges

REPORT OF: Paul Dowling, Strategic Director, Communities and Environment

Purpose of the Report

1. The report asks Cabinet to consider the introduction of Fixed Penalty Notices for flytipping and review of current environmental fixed penalty charges.

Background

2. In March 2016 in response to widespread requests from Local Authorities the Government enacted the Unauthorised Deposit of Waste (Fixed Penalty Notice) Regulations 2016. These Regulations give the Council a new power to deal with the offence of flytipping by Fixed Penalty Notice ('FPN'). Previously, all flytipping matters had to be dealt with by lengthy and expensive prosecutions. The new legislation came into force in May 2016. Therefore, authority is now being sought to introduce this power, in Gateshead, which will be an invaluable tool in quickly and efficiently dealing with fly-tipping incidents which because of a range of factors it would have been disproportionate to prosecute.
3. The new flytipping FPN will be another addition to the suite of notices that the Council already has available. Those existing FPNs have been introduced over a period of time. In that time there have been no increases in the tariffs attached to those notices. This has resulted in the amount of the penalties now being relatively low, for what the public perceive to be major issues in Gateshead. Having a low penalty amount reduces the effectiveness of the threat of being caught and given FPN as a deterrent against carrying out those acts in the first place. Against a background of increasing budget cuts it makes sense for the Council to get its fines at a level that reflect the cost of dealing with such issues.
4. In terms of the timing of the review there are two influencing factors, firstly the Council is introducing a range of Public Space Protection Orders (PSPOs) which carry a higher penalty than many of the existing FPNs. It is therefore considered appropriate to bring the current FPNs in line with the new PSPO FPNs. Secondly, survey and consultation work undertaken recently has once again confirmed that environmental issues such as littering, flytipping and dog fouling remain one, if not the biggest concern to Gateshead residents and businesses. Therefore, it is considered appropriate to increase the penalties, to enable the Council to deal robustly with perpetrators that contribute to this area of significant concern to residents and who degrade the environment in which people must live and work on the basis that the 'polluter pays' ie those causing a poor environment for Gateshead's residents and visitors should be fined a suitable amount which covers the Council's costs in taking action.

5. With the use of FPNs there are a range of implications and considerations, as when FPNs were first introduced these issues have been revisited and there are three main areas to report. Firstly whether FPNs are issued to those people under 18. The current situation is that those under 18 are sent a warning letter which also goes to their parents, it is considered this position should be maintained and subject to a review in the future in light of further data analysis. Secondly the Council previously set a relatively low Fixed Penalty charge, therefore, there was no opportunity to introduce a discount for prompt payment. With the increase in the charges a prompt payment discount in respect of some notices, of 25%, is proposed. Finally, the Council has introduced PSPOs as mentioned above, this is a new development and includes some areas which link closely to the existing FPNs. For example the PSPO includes the provision that dog walkers should have the means to clear up after their dog, and actually using it to clear up after your dog, is covered by an existing FPN. In order that the integrity of the Council's Enforcement Regime be maintained it is considered essential that these penalties align. This alignment has been achieved through the review of the existing FPNs.

Proposal

6. It is proposed that the Council introduce the new 'flytipping' fixed penalty notice in line with the Table 1 below. It is also proposed that the current fixed penalty notice tariffs are amended in line with Table 2 below.

Table 1: New Flytipping Fixed Penalty Notice

Description of Offence	Current Fixed Penalty	Proposed Fixed Penalty	Discounted Amount for Early Payment to be paid	Maximum Penalty on conviction
Flytipping	None	£400	£300	Unlimited fine

Table 2: Review of Current Fixed Penalty Tariffs

Description of Offence	Current Fixed Penalty	Proposed Fixed Penalty	Discounted Amount for Early Payment to be paid	Maximum Penalty on conviction
Littering	£50	£100	£75	£2500
Failure to comply with a Public Space Protection Order	£100	£100	£75	£1000
Failure to comply with a Community Protection Notice	£100	£100	N/A	£2500 (individual) £20,000 (company)
Failure to produce waste transfer documents	£300	£300	N/A	Unlimited fine
Failure to produce waste carrier documents	£300	£300	N/A	Unlimited fine
Failure to clear up after your dog	£50	£100	£75	£1000
Graffiti / Flyposting	£50	£100	£75	£2500

Abandoning a vehicle	£200	£200	N/A	£2500
Failure to comply with a waste receptacle warning Notice	£50	£100	£75	£100

Recommendations

7. It is recommended that Cabinet recommend to full Council that:

- i) The Council introduce a new Fixed Penalty Notice in respect of Flytipping in line with Table 1 above.
- ii) The Council amend their Fixed Penalty Notice tariffs in line with Table 2 above

For the following reason:

In order to support the protection of the environment in Gateshead through the use of an effective enforcement toolkit whose penalties reflects the seriousness with which residents view the issues and more closely reflects the true costs to the Council of enforcement work.

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APPENDIX 1

Policy Context

1. Of particular relevance are two of the big ideas in Vision 2030 Sustainable Gateshead and Active and Healthy Gateshead. These big ideas are about making Gateshead more sustainable and making Gateshead one of the healthiest communities in the country. This means looking at how we use and protect our public spaces to encourage people to use them to take up opportunities to improve their health and lifestyle.
2. Within the Council Plan the two themes of Live Love Gateshead and Live Well Gateshead are relevant. Under the heading of Live Love Gateshead the Council's ambition is to encourage people to look after their own area in order to support them in doing this the Council needs to have the powers available to take robust action against those who pollute and degrade the environment. Under the heading of Live Well Gateshead the Council is encouraging people to lead healthier lives this requires use of the public realm for a variety of purposes including utilising more health modes of transport and exercising. In order to ensure the public realm is safe, attractive and ready for use the deterrent of formal enforcement action needs to be present to dissuade people from doing the wrong thing and in doing so making areas less attractive and therefore less likely to be used.

Background

3. Fixed penalty notices are a means of dealing with an offence without undertaking a full prosecution. The Council is permitted to utilise FPNs to dispose with a whole range of matters, including, littering, dog fouling and other waste related offences.
4. The Council has introduced FPNs to deal with many of these issues over time but the tariffs associated with each Notice have never been reviewed
5. A number of recent changes, including the introduction of PSPOs and new legislation has resulted in a need to review those FPNs relating to environmental issues and also to adopt the new 'Flytipping' FPN.

Alternative Options

6. There are three alternative options. The first is not to introduce the Flytipping FPN. This will mean that officers will have to pursue expensive and time consuming prosecutions in all flytipping cases or take no action if a prosecution would be disproportionate. The second is to leave the current FPN tariffs as they are which would not relate well to the new PSPO FPNs and would not attach a penalty commensurate to the strength of public feeling on such matters. The final option is that the FPN tariffs could be changed to some other sums, however the sums suggested, together with early payment discount in some instances is considered to be suitably robust whilst still being fair and proportionate.

Implications of Recommended Option

7. Resources

- a. **Financial Implications** – The Strategic Director, Corporate Resources, confirms that there are no additional financial implications arising from this report although it is noted that any income from the new flytipping FPNs will be retained by the Council.
- b. **Human Resources Implications** - There are no human resource implications arising directly from this report.
- c. **Property Implications** - There are no property implications arising directly from this report

8. **Risk Management Implications** – Failure to deliver statutory responsibilities may result in government intervention.

9. **Equality and Diversity Implications** – An Equality Impact and Needs Assessment of these plans has indicated a neutral impact.

10. **Crime and Disorder Implications** – There are no crime and disorder implications arising directly from this report.

11. **Health Implications** – It is hoped that by improving the quality and attractiveness of the public realm people will be encouraged to use it for bona fide purposes which include walking, cycling and exercising.

12. **Sustainability Implications** – There are no sustainability implications arising directly from this report.

13. **Human Rights Implications** – There are no human resource implications arising directly from this report.

14. **Area and Ward Implications** - This report affects all wards equally

Background material

- PSPO consultation response summary
- Residents survey 2016 results

EXECUTIVE SUMMARY

A report asking Cabinet to consider the introduction of a new Fixed Penalty Notice ('FPN') for the offence of fly-tipping which will have a tariff of £400 (reduced to £300 if paid within ten days). Consideration is also sought to amend the tariffs associated with the Council's current FPNs so far as they relate to environmental matters for a number of reasons, not least, the levels of concern residents and businesses of Gateshead about these issues.