

LONDON BOROUGH OF HAMMERSMITH & FULHAM

Report to: Cabinet

Date: 03/06/2024

Subject: Amendments to Fixed Penalty Notice charges to be issued by the Law Enforcement Team

Report of: Councillor Rebecca Harvey, Cabinet Member for Social Inclusion and Community Safety

Report author: Mohammed Basith, Law Enforcement Manager

Responsible Director: Matthew Hooper, Chief Officer - Safer Neighbourhoods & Regulatory Services

SUMMARY

In a Cabinet report on 4 December 2017 the Council set the Fixed Penalty Notices charges (hereby referred to as FPNs) for Littering and Fly tipping offences. This report proposes some minor amendments to these FPNs and introducing an FPN charge for Household Waste Duty of Care offences. These FPNs are now issued by the Law Enforcement Team (LET).

A summary of the changes can be found below along with a table of all the other fines that will be issued by the LET. This report seeks to increase the FPN's charges.

The full table of FPNs that will be issued by the LET can be found in **Appendix 1**. These powers have already been agreed by Council and are included for information.

RECOMMENDATIONS

1. The existing FPN charge for the offence of leaving litter under section 88 of the Environmental Protection Act 1990 is **increased** from £80 (with an early repayment amount of £60) to £150 (with an early repayment amount set at £100).
2. The existing FPN charge for waste deposit (fly tipping) offences involving larger deposits of waste and litter (for example 2 bags and above equivalent) under section 33ZA of the Environmental Protection Act 1990 is **increased** from £200 (with an early repayment amount of £150) to £1000 (with an early repayment amount set at £500).
3. The council **introduces** a new FPN charge for breaches of the Household Waste Duty of Care under section 34(2A) of the Environmental Protection Act 1990 set at £400 (with an early repayment amount set at £250).
4. The Council introduces these changes with effect from 01 July 2024.

Wards Affected: All

Our Values	Summary of how this report aligns to the Hammersmith & Fulham Values
Building shared prosperity	Ensuring a clean and tidy public realm by effectively tackling littering and fly tipping will help to promote shared prosperity.
Creating a compassionate council	Effectively tackling littering and fly tipping is a priority for our residents. LET officers are also trained to recognise equalities considerations, vulnerabilities or additional needs of residents when considering enforcement action.
Doing things with local residents, not to them	Effectively tackling waste offences is a priority for our residents.
Being ruthlessly financially efficient	FPN charges for these offences will contribute towards the cost of removing litter and fly tips and taking enforcement action.
Taking pride in Hammersmith & Fulham	Ensuring a clean and tidy public realm by effectively tackling waste offences will create a borough we can be proud of.
Rising to the challenge of the climate and ecological emergency	Tackling waste offences effectively will help to protect our local environment from pollution, deter vermin and promote public health.

Financial Impact

The proposed FPNs exist to act as a deterrent against littering and fly tipping in the borough. The level of income from the proposed amendments cannot be predicted but will be closely monitored as fines are issued. All funds collected from the FPNs will be used to contribute towards the costs of removing litter and fly tipping and the costs of enforcement. Any costs associated with implementing these amendments and setting of the new FPNs will be contained within the existing Law Enforcement Team budget for 2023/24.

Kellie Gooch, Head of finance (Environment), 11 January 2024.

Verified by Andre Mark, Head of Finance, 11 January 2024

Legal Implications

Section 33ZA of the Environmental Protection Act 1990 provides an authorised officer of the Council who has reason to believe that a person has committed a waste deposit offence (fly tip) to issue the person a notice offering them the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty. A waste deposit offence is an offence of depositing controlled waste or knowingly causing or permitting

controlled waste to be deposited on any land without authority contrary to section 33(1)(a) of the said Act.

Section 33ZA(9) provides that the fixed penalty payable is an amount of no less than £150 and not more than £1000, as specified by the Council. If no amount is specified by the council, then the fixed penalty payable is £200.

Section 33(9) of the Act stipulates that the Council must establish a single fixed rate for the fixed penalty regardless of the type of breach, with no scope for challenge of the level of the fine. In view of this, it is recommended that the fine be increased to £1000, with an early repayment rate of £500. This adjustment will help ensure compliance and provide a suitable deterrent for any potential breaches.

The same applies to the Householder Duty of Care regulations which were introduced under Section 34(2A) of the Environmental Protection Act 1990 with the fixed penalty payable of no less than £150 and not more than £600. Similarly, to the above, if no amount is specified by the Council, then the fixed penalty payable is £200.

S88 of the Environmental Protection Act 1990 allows for a maximum penalty notice of £500.00.

Officers are already authorised to issue FPNs under section 33ZA and S88 of the Environmental Protection Act 1990. All the fines will be issued by the Law Enforcement Team.

Legal Implications: Grant Deg, Assistant Director, Legal Services 11 May 2023

Background Papers Used in Preparing This Report

The following documents disclose important facts on which the report is based and have been relied upon in preparing the report.

[Cabinet Report \(4 December 2017\) – PROPOSAL FOR THE FINANCIAL LEVEL OF NEW RUBBISH DUMPING FIXED PENALTY NOTICES](#)

This report, of 2017, set the following:

Littering FPN was set at £80 with an early repayment amount of £60.
Fly tipping FPN adopted at £200 with an early repayment amount of £150.

There has been no increase in fine levy since this date.

DETAILED ANALYSIS

Proposals and Analysis of Options

1. In order to consider these proposals, work has been undertaken in relation to the Councils values. The service has also considered the impact of any change in value on the community. Recent changes in legislation would

permit higher increases of fine level to be made however this is deemed not appropriate at this time.

2. There are two options proposed with option one recommended for progression:
3. **Option 1:** Increase FPN fines for littering and fly tipping and introduce a new FPN fine for Household Waste Duty of Care offences as outlined below (**this is the recommended option**).

Offence	Existing FPN charge – in place since 2017	Proposed FPN charge – to implement from 01/04/24
Littering	£80 (with an early repayment amount of £60)	£150 (with an early repayment amount of £100)
Fly tipping	£200 (with an early repayment amount of £150)	£1000 (with an early repayment amount of £500)
Breach of Household Waste Duty of Care	No existing charge	£400 (with an early repayment amount of £250)

4. This option is recommended to discourage littering and waste dumping in Hammersmith & Fulham, and to maintain a clean, tidy, and safe public realm. We acknowledge that this new level of Fixed Penalty Notice is an increase from the previous amount. However, the Council has kept the FPN level low since 2017.
5. The increased FPNs will contribute towards the cost of removing litter and fly tips and taking enforcement action. Dumped waste can also present health and safety risks to the community and the environment. Tackling waste offences like littering and fly tipping effectively is important in order to protect our local environment from pollution and harm, prevent vermin infestations and to keep the community safe and healthy by managing public health risks.
6. Waste offences such as littering, and fly tipping are borough-wide issues and are priorities for our residents. These issues can be extremely difficult to tackle and are costly for the council to remove.
7. The ability to issue FPNs for breach of Household Waste Duty of Care will allow the LET to better address issues relating to fly tipping and illegal dumping of waste. The council can issue a Household Duty of Care FPN when an individual fails to comply with their duty of care under section 34(2A) of the Environmental Protection Act 1990 in England.
8. Cases where these can be issued include:
 - a. where fly-tipped waste can be traced back to an individual who is found to have failed to take reasonable steps to ensure that they transferred the waste to an authorised person

- b. where an unauthorised carrier is found to be carrying household waste that was directly transferred to them by the occupier of a domestic property
 - c. where an individual is found to have transferred their household waste to an unauthorised person at a site that does not have a permit or exemption
9. An individual should be given an opportunity to demonstrate that they took reasonable steps to determine the person that took their waste was authorised to do so. If fly-tipped waste is traced to an individual and they are unable to identify who took their waste, or the carrier they identify is unauthorised, then it is reasonable to believe their duty of care was not met.
10. LET officers have also received significant training as part of their role to understand when enforcement action is appropriate and proportionate and to recognise vulnerabilities or additional needs of residents as part of these considerations. Officers have also received training on how to engage with those who have committed a waste offence and to communicate why the FPN has been issued.
11. **Option 2:** Increase current FPN fine amounts and do not introduce FPNs for breaches of Household Waste Duty of Care.
12. **Option 3:** Retain current FPN fine amounts and do not introduce FPNs for breaches of Household Waste Duty of Care.
13. Options 2 and 3 are not the recommended as they will limit the council's ability to effectively tackle fly tipping, litter, and other waste disposal offences.

Reasons for Decision

14. Under the Environmental Protection Act 1990 and the Unauthorised Deposit of Waste (Fixed Penalty) Regulations 2016 the council may specify the amount of the FPN payable for offences under the act and should formally agree these.
15. This report seeks to update the FPN charges in line with the legislation parameters so that it is in line with other boroughs locally and nationally and reflects the severity of the offending and how seriously it is taken in Hammersmith & Fulham.

Equality Implications

16. The proposals contained in this report represent a continuation of current council enforcement activities but brought under a singular team (the new Law Enforcement Team) rather than several different teams. This will ensure a better level of consistency in how enforcement action is taken.
17. The main equalities consideration associated with this report relates to the affordability of the new FPN charges. To manage this the LET will be prioritising

engaging and advising residents about waste offences and the correct disposal methods to prevent these issues arising, by improving compliance and awareness. This engagement work will also support our climate ambitions by helping to promote recycling.

18. However, FPNs will be issued where necessary and proportionate to provide a strong, simple, and consistent deterrent and to effectively tackle persistent littering and fly tipping in the borough. Most residents and visitors comply with the law, present their waste properly and do not litter or dump waste.
19. The council also provides a bulky waste collection service starting from £30 for up to 10 items.
20. A significant discount is also offered for early repayment of the FPN. In some cases, the Council will offer a payment plan to those who are not able to pay at once and continue to refer these individuals to the Cost-of-Living team to help them access support packages available across the Council.

Risk Management Implications

21. The report sets out the legal basis for applying Fixed Penalty Notices with the recommendations proposed being aimed at improving compliance and cleanliness within the borough, which is in line with the Council's objectives. The fee rates proposed are in line with the objective of being ruthlessly financially efficient and income generated is intended to be used to improve the cleanliness of streets and environment across the borough.

Implications completed by: David Hughes, Director of Audit, Fraud, Risk, and Insurance, 27 January 2024

Climate and Ecological Emergency Implications

22. There are no climate and ecological emergency implications associated with this report.

Implications completed by: Jim Cunningham, Climate Policy & Strategy lead, 26 January 2024

LIST OF APPENDICES

Appendix 1 - Table of primary LET offences.