


<p align="center">London Borough of Hammersmith & Fulham</p> <p align="center">CABINET</p> <p align="center">4 DECEMBER 2017</p>	
<p align="center">PROPOSAL FOR THE FINANCIAL LEVEL OF NEW RUBBISH DUMPING FIXED PENALTY NOTICES</p>	
<p align="center">Report of Councillor Wesley Harcourt, Cabinet Member for Environment, Transport & Residents' Services</p>	
<p>Open Report</p>	
<p>Classification - For Decision</p>	
<p>Key Decision: Yes</p>	
<p>Wards Affected: All</p>	
<p>Accountable Director: Michael Hainge, Commercial Director</p>	
<p>Report Author: Andrew Stocker, Street Czar</p>	<p>Contact Details: Tel: 0208753 2266 E-mail: andrew.stocker@lbhf.gov.uk</p>

1. EXECUTIVE SUMMARY

- 1.1. Following the recent publicity on fly-tipping, and the agreement that small scale dumping is an ongoing significant issue requiring appropriate enforcement, the Council has reviewed current powers to deter such behaviour and improve the street scene. Since 9 May 2016, Councils have had the power to serve a Fixed Penalty Notice (FPN) of up to £400 for waste deposit offences. This report seeks agreement to use the maximum Fixed Penalty amount of £200 for waste deposits of 2 bags and above (or equivalent), discounted to £150 if paid within 10 days from the date of the FPN. Such an approach would demonstrate the administration's commitment to even cleaner streets.

2. RECOMMENDATIONS

- 2.1 That officers continue to issue fixed penalty notices under section 88 of the Environmental Protection Act 1990 for the offence of leaving litter, including up to 1 bag of waste (or equivalent). The amount of the fixed penalty which has been specified by the Council for its area is £80 but it is reduced to £60 if it is paid within 10 days of the notice being issued.

- 2.2 That officers issue fixed penalty notices under section 33ZA of the Environmental Protection Act 1990, for a waste deposit offence involving larger deposits of waste and litter, for example 2 bags and above, or equivalent.
- 2.3 That the fixed penalty payable in pursuance of a notice under section 33ZA of the Environmental Protection Act 1990 should be £200 to be reduced to £150 if paid within 10 days following the date of the notice.
- 2.4 That officers use the approach outlined in this report when taking enforcement action in relation to leaving litter and waste deposit offences under section 88 and 33ZA of the Environmental Protection Act 1990

3. REASONS FOR DECISION

- 3.1. Under Section 33ZA the Council may specify the amount of the fixed penalty payable (see below). This report seeks that agreement. This decision is also needed to approve the proposed approach to waste enforcement outlined at point 2 above.

4. LEGAL FRAMEWORK

- 4.1 The Unauthorised Deposit of Waste (Fixed Penalty) Regulations 2016 amends the Environmental Protection Act 1990 by adding a new section, 33ZA, which provides that an authorised officer of the Council who has reason to believe that a person has committed a waste deposit offence in its area, may give the person a notice offering 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.
- 4.2 Section 33ZA(9) provides that the fixed penalty payable is an amount of not less than £150 and not more than £400, as specified by the Council. If no amount is specified by the Council then the fixed penalty payable is £200.
- 4.3 Section 33ZA(1) provides that the Council may make provision for treating the fixed penalty as having been paid if a lesser amount of not less than £120 is paid before the period of 10 days following the date of the notice.
- 4.4 Section 88 of the Environmental Protection Act 1990 provides for the issue of fixed penalty notices for the offence of leaving litter, under section 87 of the said Act. Litter includes the discarded ends of cigarettes, cigars and like products, and discarded chewing-gum and the discarded remains of other products designed for chewing. The amount of the fixed penalty which has been specified by the Council for its area is £80 but it is reduced to £60 if it is paid within 10 days of the notice being issued. This section is already being used by officers of the Council.

4.5 Legal framework verified by Joyce Golder, Principal Solicitor (Litigation) Tel. 020 7361 2181.

5. PROPOSAL AND ISSUES

5.1 It is proposed that officers should issue fixed penalties notices for leaving litter and waste deposits in the following way:

- For the offence of leaving litter, including up to 1 bag of waste (or equivalent), officers should serve a fixed penalty notice under Section 88 of the Environmental Protection Act 1990. The amount of the fixed penalty which has been specified by the Council for its area is £80 but it is reduced to £60 if it is paid within 10 days of the notice being issued.
- For waste deposit offences (larger deposits of waste and litter), for example 2 bags and above (or equivalent), officers should serve a fixed penalty notice under section 34ZA of the Environmental Protection Act 1990. The fixed penalty payable in pursuance of a notice under this section is recommended to be £200 to be reduced to £150 if paid within 10 days following the date of the notice

This would give two levels of deterrent, with a higher financial penalty applicable to the more serious offence, which should be a greater deterrent.

5.2 Officers have researched what other authorities are doing to deter this anti-social behaviour. Brentwood have put a paper to Cabinet suggesting the use of the £400 fine. Birmingham City Council and LB of Islington have confirmed they will be adopting the full fine. In Islington it will be reduced to £200 if paid within 10 days. Waltham Forest are issuing £400 FPNs. Redbridge officers are submitting a report recommending the £400 FPN, discounted to £350 if paid within 10 days. Bromley officers are submitting a report recommending the £400 FPN with no early payment discount. Brent officers are submitting a report recommending the £400 FPN, and are checking what other authorities are doing before signing off. Westminster has issued 741 FPN's for fly-tipping receiving £130,000 in fines.

5.3 This FPN policy has also been endorsed by London Councils as a measure to tackle small scale fly-tipping.

5.5 The general approach will be:

- a) to issue an FPN for the first two offences. Subsequent offences will be prosecuted (to deter repeat offenders);
- b) if the amount of waste dumped is on a large scale the Council may not issue an FPN at all but prosecute instead;
- c) there is no right of appeal against a fixed penalty notice. However, the Council will consider any representations which may be made in respect a fixed penalty notice which has been issued, on an informal basis

5.6 The proposed commencement date for the new fee structure and approach is 12 December 2017.

6. OPTIONS AND ANALYSIS OF OPTIONS

- 6.1 The legal options are outlined in Section 4 of this report. Alternative options include not using the new powers, or applying the minimum financial level to the FPN instead of the amount recommended in this report. Given that rubbish dumping is a borough-wide issue, and one that is extremely difficult to tackle, officers consider that the penalty of £200, with the early payment discount reducing the fee to £150, is appropriate to act as a deterrent to this anti-social behaviour.
- 6.2 The penalty can be publicised so as to raise awareness amongst the public, and to deter as many would-be rubbish dumpers as possible.
- 6.3 At present Enforcement Officer tackle fly-tipping under the powers used for penalising litter and so the lower level of fines is applied.
- 6.4 Up until September 2017 some £14420 was collected from the issue of FPNs for littering which has included the use of this for fly-tipping. It is estimated that some £10,000 of these fines was for fly-tipping.

7. CONSULTATION

- 7.1 The Cabinet Member has been consulted on this proposal and wished to seek colleagues' views, which is the purpose of this report. LBHF having not yet adopted this ability to issue FPNs was raised by the Leader and so this Cabinet Paper is again submitted for consideration and agreement.

8. EQUALITY IMPLICATIONS

- 8.1 The proposals contained in this report would apply across the whole borough. The only equality issue would be affordability of the new Fixed Penalty Notice. However, a strong, simple, and consistent deterrent is needed to tackle this perennial problem, and a discount is given for early payment. Furthermore, compliance with the law is free (proper waste presentation methods that the majority of people use). There is also the bulky waste collection service that chargeable, but is free for Council tenants through their caretaking service.

9. FINANCIAL IMPLICATIONS

- 9.1 The purpose of the penalty charges proposed in this paper is to maintain or improve the cleanliness of the Council's streets, rather than to generate increased income. Additionally, follow-up prosecutions mean legal costs may also increase as a result of enforcing this new charge. As such, it is not appropriate to introduce a new income target for these charges. Additional costs and income should be monitored and reported through the monthly monitoring cycle.
- 9.2 Implications completed by Kellie Gooch, Head of Finance - Environmental Services, telephone 0208 753 2203.

10. IMPLICATIONS FOR BUSINESS

- 10.1 The proposals contained in this report would apply across the whole borough, to residents and businesses alike. Businesses are obliged by law to make appropriate arrangements to dispose of their wastes and so non-compliance can lead to rubbish dumping that the Council then collects, and pays for disposal. These proposals aim to keep the streets clean. Officers already work hard to engage businesses to make them aware of the implications of rubbish dumping. Publicity of this new power would help to raise awareness and act as a deterrent.
- 10.2 Implications completed by Simon Davis head of Commercial Management.
Telephone: 07920 503651

11. OTHER IMPLICATION PARAGRAPHS

- 11.1 Risk Management Implications
The report proposals serve to act as a deterrent for littering and waste dumping offences thus contributing to improvements in the local environment. Offences of this nature can cause other related problems that would impact on the local community and taxpayers including the cost to the council of removal and cleaning of dumped material, additionally there are risks concerning the content of dumped material and the safety of the public and the environment to which it is exposed to.
- 11.2 Implications completed by: Michael Sloniowski, Risk Manager Telephone 020 8753 2587.

12 BACKGROUND PAPERS USED IN PREPARING THIS REPORT

None.