



## Report to Cabinet

<b>Date:</b>	29th March 2022
<b>Title:</b>	<b>Proposed Littering Enforcement Policy</b>
<b>Cabinet Member(s):</b>	<b>Peter Strachan</b> – Cabinet Member for Climate Change & Environment
<b>Contact officer:</b>	<b>Gary Slee</b> – Enforcement Manager
<b>Ward(s) affected:</b>	All
<b>Recommendations:</b>	<ol style="list-style-type: none"><li><b>1. To approve the draft Enforcement Policy against Littering attached as per Appendix A.</b></li><li><b>2. To approve the utilisation of powers to serve Fixed Penalty Notices (FPN's) in response to littering offences.</b></li><li><b>3. To approve the maximum fine of £150.00 be adopted and that this should not be discounted for early payment.</b></li><li><b>4. To approve the level of resources to initially be deployed with 'Silver Package' as described in Buckinghamshire Council Littering Proposal Tiers – Appendix B the preferred level.</b></li></ol>


### **Reason for decision:**

1. As a unitary authority the Council has no existing (or legacy) litter enforcement policies and requires a litter enforcement policy if it wants to undertake Litter Enforcement activities.
2. The Council is committed to the principle of good enforcement as set out in the Legislative and Regulatory Reform Act 2006 with the purpose of enforcement action and as a litter authority we have a duty to ensure that, so far as reasonably practicable, our land is kept clear of litter and refuse ([section 89](#), *Environmental Protection Act 1990*).

## **1. Executive summary**

- 1.1 Buckinghamshire Council as a unitary authority requires a litter enforcement policy in order to undertake Litter Enforcement activities. The legacy Waste Collection Authorities (legacy District Councils) had the legal duties and responsibilities to deal with littering under the Environmental Protection Act 1990. It was for the relevant legacy authorities to consider priorities, investment, disinvestment in service areas including enforcement against Littering. The legacy Buckinghamshire County Council as Waste Disposal Authority were funded by the legacy District Councils to undertake investigations into Fly-Tipping but didn't have the resources and/or duty to tackle Littering.
- 1.2 As a unitary, Buckinghamshire Council has both waste collection and waste disposal tools available including the legal duties, responsibilities and powers. It is therefore proposed that the Council should utilise these available tools and make arrangements to undertake and enforce littering. The Council can utilise a low-level enforcement response and make use of Fixed Penalty Notices (FPNs) for littering.
- 1.3 In the first year of the implementation of the Litter Enforcement policy it will be focused on discovery, communication campaigns, education and some Enforcement activity.

## **2. Content of report**

- 2.1 Currently, there are no adopted littering powers in Buckinghamshire. Littering tends to be a crime which self-perpetuates – often the more people see it the more they are willing to contribute to the problem. Conversely, the more we reduce litter and littering, the less likely it is that people will do it. Furthermore, littering and fly-tipping are contiguous and tend to link with each other.
  - 2.2 Unlike fly-tipping offences, the user of a vehicle is not liable for all offences which took place from the vehicle by default– which means that the driver is not currently criminally liable for the offences of a passenger.
  - 2.3 Both littering and fly tipping need to be enforced due to the 'knock on' effect. The more fly tipping and littering can be reduced collectively, the greater the perceived visual impact on the locality. Residents will also be more aware of general enforcement against both. Communication activities on new enforcement against littering will also seek to reduce fly-tipping.
  - 2.4 The dropping of litter is a 'summary only' criminal offence under s.87 of the Environmental Protection Act 1990 ('summary only' means can only be heard at magistrates' courts).
  - 2.5 Investigators must lay information before the court within 6 months of the date of the offence.
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- 2.6 The offence applies only to a 'public open place' – i.e., somewhere accessible to the public without payment for entry.
- 2.7 The maximum penalty on conviction is currently a fine of up to £2,500 (Level 4 on the standard scale) – no prison term is available for littering.
- 2.8 Fixed penalty notices (FPNs) are available for local authorities to adopt and the maximum FPN level currently is £150.00. It is recommended that FPNs are currently the best enforcement tool to be utilised whilst enforcing Litter offences.
- 2.9 The Littering from Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018 enable councils in England (outside London) to issue a civil penalty notice to the keeper of a vehicle from which litter is thrown. Civil penalties have been considered as an option but discounted at this time due to the higher set up costs and additional resources for back-office processes such as appeals. However, a review will take place in the first year of the Policy assessing the viability of using civil penalties to enforce litter offences.

### **3. Proposed level of the Fixed Penalty Notice**

The Department for Environment, Food and Rural Affairs (DEFRA) provides guidance on the effective enforcement of litter and refuse, suggesting that enforcing authorities may offer recipients a reduction in the penalty to encourage prompt payment. The minimum early payment charge is not less than £50 for litter, with the maximum Fixed Penalty amount for these offences being £150.00.

It is recommended that Buckinghamshire adopts the maximum fine level, in order to help offset the current investigation costs incurred by the Council and in turn, the cost to the taxpayer.

Officers have considered the guidance and do not propose to offer early payment or discount options for an FPN, instead opting for the maximum full penalty of £150.00. The lower maximum rate of £150.00 in comparison to the Fly-Tipping FPN rate of £400.00 represents a proportionate response. Its reduced maximum affords less leeway for discount and may in fact detract from the message being sent out that 'littering is not acceptable in Buckinghamshire'. Given this position, there is no logical reason to issue any of the lower denominations for the lesser offence of Littering. This would not serve to act as a suitable deterrent, nor fall in line with fines issued by Magistrates' Courts.

This stance is supported in schedule 11N.14 of the Codes of Practice: 'Because it is offered in lieu of prosecution, there is no formal right of appeal against a fixed penalty notice. If an alleged offender does not accept their liability for the offence, there is no requirement on them to pay the fixed penalty. The assumption should

always be that if a fixed penalty is unpaid, the case should be prosecuted, giving the alleged offender the opportunity to defend their case in court’.

All FPNs must be issued in a manner proportionate to the situation and in accordance with this policy. A reasonable approach should be taken which may result in giving a warning rather than issuing an FPN. Warnings should be recorded detailing the reasoning behind the decision taken.

All payment arrangements will be issued to the offender electronically via a secure online system.

#### **4. Other options considered**

- 4.1 **‘Do nothing’**– the authority does not adopt a Littering Enforcement strategy from any of the previous legacy councils. We currently do not have an enforcement policy in place despite there being a wide duty to keep the area clear of litter. We continue as such and do not enforce against this issue.
- 4.2 The **‘Do minimum’** option - Adopt the attached (appendix A) Littering Enforcement policy is the recommended option. This option requires suitable staff resources, budget and communication strategy. This would align itself with the Councils strategic priorities and overarching Enforcement Principles.
- 4.3 The **‘Alternative Option’** is - A tiered enforcement options proposal is included as Appendix B. This includes options (Bronze – Platinum) ranging from simple adoption of a policy to dedicated resource and enforcement measures, which require varying levels of investment.
- 4.4 Future options for Litter enforcement could include the use of those staff that are ‘street’ based - for example Civil Enforcement officers or Street Wardens. A future review will be undertaken at a later date, and will give consideration to the use of civil penalties

#### **5. Financial and legal implications**

##### **Financial implications**

- 5.1 The recommended Litter Enforcement resources to kick start the enforcement activities is the ‘Silver Package’ which would require additional funding of £70kpa. It is proposed that this is funded from the additional investment in Street Cleaning/Litter which has been agreed by the Council as part of the 2022/23 budget. There may be some opportunity to recover costs through Fixed Penalty Notices, however overall, initially this will be an investment.

## **Legal implications**

- 5.2 Section 89(1) of the Environmental Protection Act 1990 places a duty on litter authorities to ensure that their land (or land for which they are responsible) is, so far as is practicable, kept clear of litter and refuse.
- 5.3 Local authorities acting in their capacity as litter authorities must have regard to the 'Code of Practice on Litter and Refuse' (updated September 2019) ("the Code") issued under section 89(7) of the Environmental Protection Act 1990.
- 5.4 Part 1A of the Code (as inserted by modification in 2019) contains guidance on the proportionate and effective use of enforcement action against littering and related offences.
- 5.5 Enforcement authorities should set fixed penalties, within the range specified in the Environmental Offences (Fixed Penalties) (England) Regulation 2017, at an appropriate level to reflect local circumstances, including local ability to pay.

## **6. Corporate implications**

- 6.1 This section will need to include the relevant corporate plan priority relating to this report and make reference to any other implication that need to be taken into account such as:
  - a) Property – N/A
  - b) HR – There are recruitment requirements due to new resources which form part of proposals for Medium Term Financial Plans. There may be a need to adjust current ICT and business process systems and therefore these will be managed through the implementation phase.
  - c) Climate change – The adoption of this policy would likely bring about benefits through the promotion of responsible behaviours alongside environmental benefits through improved recycling and waste disposal.
  - d) Sustainability – N/A
  - e) Equality (does this decision require an equality impact assessment) –  
An Equality Impact Assessment has been completed, please see Appendix C.
  - f) Data (does this decision require a data protection impact assessment) – Yes  
A Data Protection Impact Assessment (DPIA) full assessment will be undertaken. A Screening Questionnaire has been completed (please see Appendix D).

*Personal and business information held by the authority will only be shared and processed in accordance with the relevant information sharing protocol*

*or legislation. Individuals or businesses that are successfully prosecuted will be publicised through appropriate communication methods to promote the enforcement activity taken by Buckinghamshire Council.*

*The authority will take a proactive approach to data matching and the sharing of information via agreed secure mechanisms with other regulatory agencies and local authorities about businesses and individuals to help target resources and activities and to minimise duplication of enforcement activity. Any sharing of information will be in compliance with the previous paragraph and the authority's data sharing procedures.*

- g) Value for money – how is this being funded? The recommendation provides an acceptable balance between VfM and service provision requirements compared to alternatives.

## **7. Local councillors & community boards consultation & views**

- 7.1 Not Applicable – Portfolio Holder consulted.

## **8. Communication, engagement & further consultation**

- 7.1 A detailed Communications plan will be developed and implemented straight after this decision and will provide an opportunity to promote measures to reduce littering, community involvement in litter picking and clearance and will have a strong emphasis on education against littering. It is also important that the new enforcement policy and approach to enforcement in the first year is communicated well across Buckinghamshire.

## **9. Next steps and review**

- 9.1 Implement the new Littering Enforcement Policy and for this to be reviewed annually to ensure any legislative changes are adopted or amended as necessary, and to align any financial and resourcing strategies with service requirements and demand.

9.2

Following the decision being made the following next steps will be actioned:

<b>Next Steps</b>	<b>Indicative Date</b>
Full Electronic Surveillance Assessment	<i>Completed – September 2021</i>
Full communication/marketing campaign to be agreed – comms team engagement required	Agreed – Taking place over coming 12 months in conjunction with Waste Prevention Team

Who is enforcing? Enforcement, Waste Management and Kerbside team engagement	Waste Enforcement Team
ICT & Technical Equipment requirements to be assessed, agreed and implemented	April – FT FPN Payment System to be reviewed to incorporate Littering FPN payments
Review of policy	April 2024

## **10. Background papers**

10.1 The following background papers are included with this report:

- Appendix A – Littering Enforcement Policy
- Appendix B – Littering Proposal Tiers
- Appendix C – Equality Impact Assessment
- Appendix D – DPIA Screening Questionnaire

## **11. Your questions and views (for key decisions)**

If you have any questions about the matters contained in this report please get in touch with the author of this report. If you have any views that you would like the cabinet member to consider please inform the democratic services team. This can be done by telephone [01296 382343] or email [democracy@buckinghamshire.gov.uk]