



Report to Cabinet

Date: 21st April 2020

Title of Report:	Proposed Introduction of Fixed penalty notices (FPN's) for Fly-Tipping
Portfolio Holder:	Environment
Responsible Officer:	Enforcement Team Leader
Recommendations:	<ol style="list-style-type: none"> 1. To sign-off agreed Enforcement Policy regarding enforcement against fly-tipping attached as per Appendix A 2. To utilise powers to serve fixed penalty notices in response to low level dumping offences and failures in duty of care by householders 3. To finalise agreed level of FPN issued for fly-tipping offences to be £400 with an early payment discount rate of £300
Corporate Implications:	None observed
Options: (If any)	<p>The options:-</p> <ol style="list-style-type: none"> 1. 'Do nothing'– the authority would not benefit from around £12,000 of income per annum. Its only merit is that the Council would not have to arrange for FPN printing and/or the additional costs of collecting the new FPN income 2. Implement FPNs for a wider range of offending - This could include cases which have been traditionally prosecuted at court in Buckinghamshire. The obvious advantage of this is a reduction in legal costs, but conversely, the Council would not benefit from as strong a zero tolerance position, through the naming and shaming of offenders processed in this manner

	<p>and would also severely limit the opportunities to reclaim costs following conviction. Proportionate and appropriate discretion would be exercised regarding the decision to use an FPN.</p> <p>NB It currently 'costs' on average £300 to prosecute a fly-tipping case at court as we recover only part of the costs we apply for (on average). (Recommended)</p>
Reason:	<p>This will be a tool which shows the new Council taking an even more firm, yet transparently proportionate stance against fly-tipping – we will be able to publicise this as a general hardening of enforcement but cannot publicise FPN actions on an individual basis.</p> <p>There will be some set up costs in arranging for payments to be made, but in the long term it would allow between £10,000 and £20,000 of income to be generated. The additional income can be used to invest in further enforcement work and can also be used as a template for implementing similar measures against littering offences which would also generate income.</p>

1. Purpose of Report

- 1.1 The old authorities in Buckinghamshire did not issue fixed penalty notices against fly-tipping offences. This was mainly due to the two tier system, the Waste Collection Authorities (District) had the legal power whilst the Waste Disposal Authority (County) conducted the investigations into Fly-Tipping but didn't have the power. The new Buckinghamshire Council now has full powers and therefore it is proposed that the new Council should utilise these and make arrangements to issue FPNs for fly-tipping offences at the earliest opportunity. This policy would enable that to happen and would also generate between £10,000 and £20,000 of additional income annually. Also enforcement officers would be enabled to deal with more investigations in a more streamlined manner.

2. Content of Report

The proposed use of **Fixed Penalty Notices (FPNs)** against fly-tipping offences is intended to replace (where deemed proportionate and appropriate) the issuing of simple cautions against offenders who have admitted low grade fly-tipping offences. It is not intended to replace cases where prosecutions are an appropriate response as set out in the previously adopted policy. The evidence secured meeting the threshold to prosecute would mirror that of the issuing of an FPN. This is to safeguard any challenges made to the acceptance of the notice, and normal prosecution would ensue.

Buckinghamshire County Council issued 38 simple cautions in 2019 on behalf of the Waste Partnership for Buckinghamshire in relation to lower level fly-tipping and duty of care offences. There is no bill to the offender in these circumstances.

Proposed level of the Fixed Penalty Notice

The maximum Fixed Penalty amount for these offences is £400 and it is recommended that Buckinghamshire adopts the maximum fine level. Given the clear zero tolerance political stance against fly-tipping there is no logical reason to issue any of the lower denominations as this does not act as a significant deterrent, nor fall in line with fines issued by Magistrates' Courts.

Local Authorities usually offer a 'discounted rate' for early payment of fixed penalty notices. It is recommended that Buckinghamshire adopts a discounted rate of £300 for early payments made within 14 days. The payment of 40 FPNs at the (early payment) discounted rate of £300 would accrue £12,000 to the Council, where currently there are no cost recovery means. This figure is indicative from the 38 simple cautions administered in 2019.

Resourcing the administration of the FPN process

This addition should not attract any adverse financial implications. Existing admin/business support could then be utilised to manage FPN payments processing an average of one FPN per week.

Updated Fly-tipping Enforcement Policy

The existing fly-tipping enforcement policy that was previously adopted by the Waste Partnership for Buckinghamshire has been updated to reflect the ability to issue fixed penalty notice. It also refers to the emerging overarching enforcement policy under which the fly-tipping enforcement policy would sit. The specific fly-tipping enforcement policy could be amended in due course to align with any wider waste enforcement approach that might be developed. The draft fly-tipping

enforcement policy attached at Appendix 1 is recommended to be supported and ultimately adopted by Buckinghamshire Council.

Conclusion

The ability of the new authority to issue Fixed Penalty Notices in relation to low level fly-tipping offences would offer another proportionate tool within the suite of enforcement responses available. It is therefore recommended the updated fly-tipping enforcement policy is supporting along with the proposed level of fines for the FPNs.

3. Financial Implications

- 3.1 The income will need to be built into the ongoing budget setting process and the associated fees and charges schedule. Any costs will need to be monitored to ensure that they do not exceed the income collected.

4. Legal Implications

- 4.1 There is Department of Environment, Food and Rural Affairs (DEFRA) Guidance for Local Authorities on Household Waste Duty of Care fixed penalty notices updated 11th December 2018 which states that a fixed penalty notice is not an appropriate sanction for: operators in the Waste Management Industry; repeat offenders or those responsible for large scale fly-tipping or fly-tipping of hazardous waste.
- 4.2 Statutory Guidance in the form of the Litter and Refuse: Code of Practice (updated 26th September 2019) makes it clear that any revenue from the issue of FPNs relating to fly-tipping can only be used on functions relating to “waste on land”.

5. Other Key Risks

- 5.1 No discernible risks.

6. Dependencies

- 6.1 Please include any dependencies associated with the recommendations outlined in the report and ensure that you have consulted the following officers in preparing this report:

- Programme Board Monitoring Officer
- Programme Board S151 Officer
- Programme Lead

7. Consultation

7.1 Not Applicable.

8. Communications Plan

8.1 A detailed Communications plan will be developed and implemented straight after this decision and will provide an opportunity to promote the enforcement of a high profile area with high public interest. The strategy will closely align to the Scrap IT campaign that is already successfully in use.

9. Equalities Implications

9.1 Do you feel an equalities impact assessment is required? **No**

10. Data Implications

Current issue of simple cautions does not involve the release of names, and neither will the issue of fixed penalty notice. No additional implications are foreseen as this is an enforcement measure that is already in use in many areas of the business – it is not novel in that sense.

11. Next Steps

11.1 Implement the new policy along with full communication campaign.

Background Papers	Appendix A - Buckinghamshire Council Fly-Tipping Enforcement Policy (Version 1.0)
--------------------------	---

12. 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