

 <p>Brent</p>	<p>Cabinet 24 October 2016</p> <p>Report from the Strategic Director of Regeneration & Environment</p>
For Action	
<p>The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016</p>	

1.0 Summary

- 1.1 From 9 May 2016, local authorities in England have been given the power to issue Fixed Penalty Notices (FPN's) for small-scale fly-tipping.
- 1.2 The legislation provides for a default payment level of £200- or £120 for early payment; whilst allowing the opportunity for Councils to set their own levels of charges between £150 and £400.
- 1.3 The Enviro-Crime Enforcement Team is currently using this new power and applying the default payment level. This report seeks authority to set a higher level of charge within Brent.

2.0 Recommendation

- 2.1 It is recommended that Cabinet approves the proposal to set the upper payment level for fly tipping Fixed Penalty Notices to the maximum of £400 with an early payment charge of £350.

3.0 Background

- 3.1 Following a Government consultation on proposals to enhance measures to tackle waste crime early in 2015 it was found that there was a high level of support for the introduction of FPNs for small-scale fly-tipping to complement the existing framework of enforcement sanctions.
- 3.2 As a consequence, from 9 May 2016, local authorities in England have been given the power to issue FPN's for small-scale fly-tipping offences under the *Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016*. This new

FPN may be served as a criminal penalty in lieu of prosecution for a criminal offence.

- 3.3 As explained above, the legislation sets out a default payment level of £200 with a lesser amount of £120 being due if payment is made within 10 days, whilst allowing the opportunity for Councils to set their own levels of charges between £150 and £400 and giving them the discretion to set lower payment rates for charges paid within 10 days from the date of issue.
- 3.4 Currently fly tipping offences committed in Brent are investigated by The Council's Enviro-Crime Enforcement Team with the following possible actions/outcomes:
 - i. No further action- where there is insufficient evidence to pursue, or it has not been possible to locate a suspect
 - ii. Written warning- where it is not considered in the public interest to pursue any further
 - iii. Caution/ warning with costs- where the offence is admitted and there are extenuating circumstances.
 - iv. Prosecution- where no contact has been made with the council, the offence is not admitted to, or the gravity of the nature of the offence is too serious to be dealt with in any other way.
- 3.5 Where appropriate, the Enviro-Crime Enforcement Team has also historically used its powers under Sections 87 and 88 of the Environmental Protection Act 1990 (EPA) to issue FPN's for littering where enforcing against small-scale fly tips of up to 4 black bags; charging offenders £80, with a £50 early payment charge applying if payment is made within the first 10 days. The arrival of this new FPN provides the opportunity to impose a more substantial penalty for fly tipping offences, and will also allow a clear distinction to be made between the activities of the Enviro-Crime Enforcement Team and the new Uniformed Litter Patrols (who are specifically tasked with using the above legislation to tackle littering).
- 3.6 The new FPN sits between option (ii) and (iii) above in terms of the order of "seriousness" of the enforcement action.
- 3.7 It is proposed to set the upper payment level to £400 with an early payment sum of £350 applying. This will send out a strong message that fly-tipping is unacceptable criminal behaviour and that the Council take this issue seriously.
- 3.8 This aligns with the recommendation from London Councils' Transport & Environment Committee, which considered the matter on 16 June 2016, and (although it does not have the legal power to set a pan-London penalty level), agreed to provide a steer for a pan-London penalty for fly-tipping and set it at £400 (with a reduction to £350 if paid within 10 days).

- 3.9 A survey of other London Boroughs, the results of which are shown at Appendix 1, also shows broad alignment among respondents, with the majority either already imposing, or planning to introduce the maximum £400 fine, and nearly half either offering no early repayment option, or providing only a modest discount.
- 3.10 Apart from the payment levels, the difference between a FPN issued for littering and the new Fly tipping FPN is that:
- FPNs for littering can be issued on the spot as littering is a “committing offence” i.e. an authorised officer witnessed the littering and does not need further evidence to issue a FPN.
 - FPNs for fly-tipping cannot be issued on the spot, as fly-tipping is not a “committing offence” and the alleged offender has to be given the opportunity to be interviewed under caution in accordance with the Police and Criminal Evidence Act 1984.

4.0 Financial Implications

- 4.1 The code of practice states that the FPN regime is not intended as an additional source of income for authorities. Any income generated is designed to address all aspects of environmental crime.
- 4.2 Existing budgets already cover the costs of enforcement, including prosecution activities. This report does not propose any measures that are not already funded within existing budgets and, if successful, may generate additional income to the Council through increased fine revenue being received.
- 4.3 In general, as the success of any FPN is advertised, the public become more compliant and fewer offences are committed and less income received, which is the main intention of the policy.
- 4.4 Any additional income received will be used to offset costs associated with issuing the fixed penalty notices which will be met from existing budgets, as well as environmental campaigns to increase education and compliance.

5.0 Legal Implications

- 5.1 The proposed steps are entirely in line with the provisions of the *Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016*.
- 5.2 The steps give full effect to the aim of the new provisions which is: to settle less serious matters by way of fixed penalty notices.
- 5.3 There are therefore no negative legal implications with the action proposed.

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Appendix 1- Comparison with other London Boroughs

Borough	FPN Rate	Early Payment?	Notes
Bexley	400		
Bromley	400*	N/A	Proposals to introduce £400 fine to be considered shortly
Camden	150	120	
City	400	180	
Ealing	400	N/A	
Enfield	200*	N/A	Plan to increase to £400 later this year
Greenwich	400		
Hammersmith & Fulham	400*	150*	Proposals to be submitted shortly
Harrow	200	N/A	
Haringey	200		
Hounslow	400	250	
Islington	400	200	
Kensington & Chelsea	400	N/A	
Lewisham	400	250	
Merton	400		
Newham	400	350	
Redbridge	400*	350	To be considered by Cabinet on 18 October
Sutton	400	N/A	
Waltham Forest	400	N/A	
Wandsworth	400	N/A	