

Gloucester City Council

Meeting:	Cabinet	Date:	6 November 2019
Subject:	Introduction of Fixed Penalty Notices for Household Waste Duty of Care and the Parking of Vehicles on Public Open Space		
Report Of:	Cabinet Member for Environment		
Wards Affected:	All Wards		
Key Decision:	No	Budget/Policy Framework:	No
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Appendices:	None		

FOR GENERAL RELEASE

1.0 Purposes of this Report

- 1.1 To seek approval to adopt and set locally recently enacted Fixed Penalty Notice (FPN) powers relating to the household waste duty of care that has come into force under the Environmental Protection (Miscellaneous Amendments) (England and Wales) Regulations 2018 (the Regulations), which amend section 34 of the Environmental Protection Act 1990.
- 1.2 To seek approval to use £100 FPN level for the breaches of Byelaw 86 in relation to vehicles parked on Public Open Space (discounted to fine payment level of £75) for early payment provided payment is made within 10 days of the date the FPN was issued.

2.0 Recommendations

- 2.1 Cabinet is asked to **RESOLVE** that:
 - (1) the Council adopt the legal maximum FPN level of £400 for all of breaches of household waste duty of care offences and to give discount for early payment of £150 (i.e. discounted fine payment level of £250) provided payment is made within 10 days of the date the FPN was issued.
 - (2) authority be delegated to the Corporate Director to introduce the new fixed penalties for household waste duty of care offences.
 - (3) authority be delegated to the Corporate Director to make appropriate arrangements for the issuing of fixed penalty notices for household waste duty of care offences in accordance with section 34ZA of the Environmental Protection Act 1990.

- (4) authority be delegated to the Corporate Director to make appropriate arrangements for the issuing of fixed penalty notices for breaches of Byelaw 86 with regard to the parking of vehicles on POS.
- (5) the Council adopt a level of £100 for breaches of Byelaw 86 with regard to parking of vehicles on Public Open Space (POS) and give a discount for early payment of £75 provided payment is paid within 10 days of the date the FPN was issued.

3.0 Background and Key Issues

- 3.1 Under Section 34 of the Environmental Protection Act 1990, all occupiers of domestic properties are required to take reasonable measures to ensure that waste produced on their property is only transferred to an authorised person. An authorised person is defined in law and includes the council waste collection service a registered waste carrier or an operator of a registered site (Hempsted Recycling Centre, Gloucester GL2 5FR). This reduces the risk of domestic waste ending up in the hands of those who would fly tip it.
- 3.2 Nationally two thirds of fly-tipping incidents involve household waste¹, often as a result of an individual breaching their duty of care to ensure their waste is taken away by an authorised carrier. The household waste duty of care FPN is intended to reduce the flow of waste to those who would go on to dispose of it illegally or fly tip it. The FPN allows a more proportionate approach to enforcement, both for the council in costs of enforcement, and for householders in size of penalty and avoiding a criminal record.
- 3.3 Examples of where the household waste duty of care has been breached include (but is not limited to):
 - 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 have 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; or
 - 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.
- 3.4 In all investigations of breaches of household waste duty of care, individuals will be given the opportunity to demonstrate 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 that they identify is unauthorised, then it is reasonable to believe they have not met their duty of care.
- 3.5 Examples of evidence which can be used to demonstrate an occupier of a domestic property meet their duty of care can include (but is not limited to):

¹<https://www.gov.uk/government/consultations/reducing-crime-at-sites-handling-waste-and-introducing-fixed-penalties-for-waste-duty-of-care>

- a. Details of business and of any vehicle used which can be linked to an authorised operator
- b. A record of checks made, including operators registration, permit or exemption number;
- c. A receipt for the transaction which includes the businesses details of a registered operator; or
- d. A copy or photograph of the carrier's waste licence or site permit.

3.6 Fly tipping is a significant problem to local communities and a risk to the environment. It is a drain on council resources and undermines legitimate waste businesses, where unscrupulous operators undercut those that operate within the law. Prior to the introduction of the aforementioned Regulations and subsequent FPN powers, the option for dealing with household waste duty of care was limited to prosecution, when other formal action was not possible or suitable.

3.7 The costs to local authorities of investigating, bringing prosecutions, clearance and disposal of fly tipping are considerable. Where fines are issued, as a result of a successful prosecution, they are paid to the court, and prosecuting authorities must seek to recover their costs through a separate process, which often can result in award levels significantly less than the actual costs incurred for the investigation and prosecution.

3.8 The new 2018 Regulations amend section 34 of the Environmental Protection Act 1990 to give new powers to local authorities to deal with household waste duty of care. The Regulations also provide local authorities with a more efficient and proportionate response to breach of duty of care, i.e. the power to issue FPNs, instead of the current enforcement by prosecution.

3.9 Within Gloucester City there are a significant number of domestic waste cases investigated each year, and, of these, over 50% contain evidence, or are witnessed and linked to suspects. Over the last five years, the number of cases reported are as follows:

Year	Number of reported household duty of care cases
2019/20	700 (up to 4 Sept)
2018/19	1725
2017/18	1332
2016/17	1579
2015/16	2088

3.10 FPN's are an effective and visible way of dealing with low level environmental crime and will be supported by the public, provided they are used sensibly, enforced fairly and are seen as a reasonable response to genuine problems.

- 3.11 With regard to the parking of vehicles on areas of Public Open Space this is an increasing problem and there are areas of Gloucester where the local authority has been requested to address this issue. A distinction does need to be made between POS and highway where the ability to enforce is reduced. There are large areas of land adjacent to the road that are classified as highway where City Council byelaws are not relevant.
- 3.12 Advice from One Legal has indicated that so long as correct signage is erected to make clear the requirements of the byelaw we will be able to enforce against parking on POS. Byelaw 86 makes it an offence to park on POS and any person offending against the byelaw shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale (£500), and this offence can be prosecuted by the Council or the Police. Given this is a long winded and timely process it is proposed to the use a Fixed Penalty notice as a more appropriate measure with a charge similar to that of littering i.e. £100 or £75 if paid within 10 days.
- 3.13 The council has already approved the use of FPNs, as an alternative to prosecutions, when dealing with other environmental crimes including littering, dog fouling, small-scale fly tipping and commercial waste offences. These FPNs may be issued by authorised officers within the Council's Community Wellbeing Team, City Improvement & Environment Team in addition to 3GS. The same authorised officers will continue to be responsible for issuing FPNs for breaches of the already adopted FPNs and of the new household waste duty of care.
- 3.14 The FPN powers relating to household waste duty of care allow an enforcement authority to set a fine payment level between £150 and £400, with a minimum early payment of £120. This ensures the combination of illegal disposal and penalty is higher than the cost of legitimate disposal. If a person pays the notice within 14 days of the date of the notice, they cannot be convicted for the offence.
- 3.15 In determining the appropriate FPN levels for breaches of the household waste duty of care, the council will need to take into account the deterrent effect of different levels of peoples' readiness to pay and the levels of fines for breaches of household waste duty of care currently imposed in the magistrates' courts. Fixed penalties that are set too high for local conditions or are likely to be higher than the Court imposed fine in the event of non-payment, will lead to substantial non-payment rates and so are counter-productive.
- 3.16 In January 2017, FPNs were introduced by the council, as an alternative to prosecution, for small scale fly tipping that came into force under The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016. In introducing FPNs for small scale fly tipping, the Council adopted the upper limit level of £400 and to give discount of £100 for payment within 10 days. In accordance with the City Council's January 2017 decision to adopt the FPN upper limit level for small scale fly tipping it is proposed that the City Council continues to adopt the upper limit charge level for all future environmental offences.
- 3.17 There is a set legal standard payment period of 14 days for the payment of fixed penalties. Once a FPN has been issued, an authority cannot prosecute for the alleged offence, if the FPN is paid within this 14 day period, and this must be stated on the notice itself. For this reason, the period, during which a discount for early payment is

offered, must be less than 14 days; and, in line with the Regulations, cannot be more than 10 days. Again, this will be consistent with the standards set by other local authorities and the approach already in place for other environmental crime FPNs issued by Gloucester City Council.

- 3.18 Payment for fixed penalties can only be accepted by the council for the full amount. As such the council will continue not to accept payment by instalments or payment plans. However, in cases of extreme financial difficulties, officers will continue to have discretion to be able to extend the lower threshold payment period (subject to legal restrictions) and will work together with those issued fixed penalties to avoid prosecution where possible.
- 3.19 Under the Regulations there is no right of appeal (which is the case for the other environmental FPNs issued by the council). However, with the household waste duty of care FPN, there is the right to challenge the appropriateness of the enforcement; or to dispute the alleged offence. An alleged offender, issued an FPN, would be entitled to make representation, which the council will be required to consider, in conjunction with the evidence of the case. Any such representation would be considered in line with the council's Corporate Enforcement Policy.
- 3.20 FPNs shall remain inappropriate for repeat offenders, or those responsible for large-scale environmental offences, offences involving hazardous waste, those who are non-compliant with enforcement officers or those who do not wish to be issued a FPN. These types of offences will continue to be enforced by prosecution in line with the Corporate Enforcement Policy.
- 3.21 The council's new FPN powers, for breaches of household waste duty of care, will be used as part of the package of enforcement options available in accordance with the council's Corporate Enforcement Policy.
- 3.22 In accordance with the Environmental Protection Act 1990 and new Regulations, the income received by local authorities from FPN's must be spent on functions relating to waste, enforcement and cleansing. It is not to be used as a means of generating income for other uses.

4.0 Alternative Options Considered

- 4.1 **Do nothing**; it is likely that the situation would become worse resulting in increasing numbers of reported incidents of fly tipping and an increase in associated costs to investigate, remove and dispose of fly tipped waste. Vehicles would continue to damage POS and compromise people's ability to enjoy it.
- 4.2 **Doing the minimum**; introducing the minimum fine of £150 is also anticipated to result in high or increasing levels of fly tipping. There is also an expectation by residents and businesses that the City Council will reduce the number of fly tipping incidents and take robust action against those responsible. We could enforce the Byelaw through the courts, but this would be time consuming and expensive.

5.0 Reasons for Recommendations

- 5.1 To reduce the number of reported fly tipping incidents across the City and County and thus reducing the overall associated costs/resources of dealing with fly tipping.
- 5.2 To work more closely with existing partners and seek out new stakeholders who can assist with reducing the number of fly tip incidents and deal with organised crime.
- 5.3 To ensure that areas of POS can be used and enjoyed for their original purpose and that they are not damaged by irresponsible parking.
- 5.4 One of the City Plan's objectives is a Greener Gloucester, and to "Produce a Cleaner/Greener (Enforcement) strategy for the City" which the increase in FPN's will form part of.
- 5.5 To continue to investigate and utilise additional sources of funding and resources to deliver improvements by reducing fly tipping incidents across the City.
- 5.6 To investigate improving the effectiveness of our resources with the aid of new technology, better signposting and assisting communities with taking ownership of the problem.
- 5.7 Issuing increased FPN fines for smaller fly tipping incidents will be less resource intensive for the authority than taking a prosecution, look to focus minds and will free up valuable court time for more serious offences. Those FPN's which are not paid in full will be followed up by prosecution.
- 5.8 The local authority is also likely to come under increasing pressure to introduce fines for FPN's given the number of reported fly tipped incidents within the city.

6.0 Future Work and Conclusions

- 6.1 The City Council will continue to prioritise resources and engage with partner agencies to deal with the issue of fly tipping to improve our communities and the City overall.
- 6.2 The City Council will look to invest in new technology to assist with the reduction in the number of fly tipping incidents and will use the technology to secure prosecutions wherever possible.
- 6.3 The City Council will continue to work with partner organisations to share information, knowledge and best practice to deliver improvements.
- 6.4 An update report will be provided for Members on an annual basis regarding; number of reported fly tip incidents, number of FPN's issued, number of prosecutions taken, update on the progress and results of the joint fly tipping group.
- 6.5 In areas of problematic parking on POS signage will have to be erected and residents notified that Byelaw 86 will be enforced.

7.0 Financial Implications

- 7.1 In accordance with the Regulations, FPN receipts will be used for the purpose of exercising functions to improve the environment by increasing street cleanliness and enforcement of offences. To allow officers to issue FPN's will further reduce the need to pursue costly prosecution in some cases and enable a more flexible approach in dealing with specific offences under the Environmental Protection Act 1990.

(Financial Services have been consulted in the preparation this report)

8.0 Legal Implications

- 8.1 Local authorities are responsible for dealing with investigating, clearing and taking appropriate enforcement action in relation to smaller scale fly-tips on public land (including public roads and highways within their responsibility).
- 8.2 Setting a fine level for fixed penalty notices for fly tipping will mean that some cases do not proceed to court for prosecution but will offer an expedient deterrent alternative in all but the more serious of cases.
- 8.3 Under the Local Government Act 1972, s237A gives a local authority the power to offer the opportunity of discharging any liability to conviction for breach of byelaws by payment of a fixed penalty. Such amount can be specified by the authority which made the byelaw (s237B).
- 8.4 The local authority will comply with the relevant legislation and continue to consult with One Legal as and when required in relation to the use of mobile CCTV cameras.
- 8.5 An initial assessment identified no implications in relation to protected characteristics.

(One Legal have been consulted in the preparation of this report)

9.0 Environmental Implications

- 9.1 There are no adverse environmental implications. The introduction of FPNs for household waste duty of care will deliver a net positive climate change impact, through the reduction in illegal waste disposal and fly tipping; and associated additional vehicle movements required to clear and dispose of it. A reduction in fly tipping and irresponsible car parking will also deliver an increase in the quality of the local environment, a reduction in associated environmental pollution and contamination and associated improvements in public perception, health, civic pride and inward investment.

10.0 Social Value Considerations

- 10.1 There are no adverse social value implications. Improvements to personal accessibility to the wider public realm are likely to have a positive effect thus improving the value of the wider environment in addition to public safety.

11.0 Risk & Opportunity Management Implications

11.1 See table below -

Risk	Opportunities
<p>Income generated</p> <p>The introduction of the FPN's to deal with small scale fly tipping may be seen as income generation driven.</p>	<p>The City Council will be able to deal with smaller scale fly tipping offences with a lesser burden of evidence than is required for a prosecution and for offences that we have not previously been able to deal with due to resources and the public interest test.</p> <p>We will be able to demonstrate to our communities that we are able and willing to take robust action against those responsible.</p> <p>Income generated from the issuing of FPN's can be used to purchase mobile CCTV cameras and the ongoing associated costs.</p> <p>To prioritise resources on hotspot areas and to work with partners to deliver outcomes this may include the training of additional officers to issue FPN's including the Police and PCSO's.</p> <p>Press Release to raise the issue of fly tipping and Householder Duty of Care and the City Council's commitment to deal with the issue of fly tipping and rogue traders.</p> <p>The City Council to work with communities to promote the implementation of FPN's and to encourage participation i.e. reporting incidents and offenders, organising clean up events etc. This can also have a number of positive outcomes including residents taking ownership of their area and feeling better about the area in which they live.</p>

12.0 People Impact Assessment (PIA):

- 12.1 The introduction of fines for FPN's will not prejudice against any one group or community. Reducing fly tipping is essential to providing re-assurance and comfort to those communities and groups affected by this crime.
- 12.2 The introduction of FPN's will also support legitimate businesses who are involved with the transportation and disposal of waste.
- 12.3 The PIA Screening Stage was completed and did not identify any potential or actual negative impacts; therefore a full PIA was not required.

13.0 Other Corporate Implications

Community Safety

- 13.1 The reduction in fly tipping incidents has a critical role to play in relation to residents feeling safe in the areas where they live, visit and play whilst reducing the risk of attracting other low-level crimes.
- 13.2 There are no adverse community safety implications. Improvements to personal accessibility and the wider public realm are likely to have a positive effect upon access and public safety.

Sustainability

- 13.3 Given the ongoing reductions to local authority resources there is a need to support communities to become more resilient by supporting them to take ownership of their areas and the associated issues including fly tipping and low-level crime.
- 13.4 It is anticipated that the cost of purchasing and the ongoing costs of mobile CCTV cameras can be offset by the reduction in fly tipping incidents and the associated costs involved in addition to the issuing of FPN's.

Staffing & Trade Union

- 13.5 The potential need to train additional staff to issue FPN's for fly tipping incidents.

Background Documents:

<https://www.gov.uk/government/consultations/reducing-crime-at-sites-handling-waste-and-introducing-fixed-penalties-for-waste-duty-of-care>