

# Cabinet

22 March 2017



<b>Title</b>	<b>Issue of Fixed Penalty Notices for Fly Tipping Offences</b>		
<b>Purpose of the report</b>	To make a decision		
<b>Report Author</b>	Jackie Taylor, Group Head Neighbourhood Services / Martin Cole Joint Enforcement Team (JET) Officer		
<b>Cabinet Member</b>	Councillor Nick Gething	<b>Confidential</b>	No
<b>Corporate Priority</b>	Clean and Safe Environment		
<b>Recommendations</b>	<ol style="list-style-type: none"><li>1. Set the Penalty Charge for Unauthorised Deposit of Waste (Fixed Penalty Notices) at £400 (four hundred pounds) with no early payment discount as detailed in <b>2.1</b></li><li>2. Delegate authority to the Group Head of Neighbourhood Services to issue fixed penalty notices (FPN's) under section 33(1)(a) of the Environmental Protection Act 1990 (EPA), to persons whom the officer has reason to believe have committed a small scale fly tipping offence.</li></ol>		
<b>Reason for Recommendation</b>	The implementation of a Fixed Penalty Charge of £400 for the Unauthorised Deposit of Waste (fly-tip) will contribute to the Council's commitment to a stronger approach to Enforcement.		

## 1. Key issues

- 1.1 Fly-tipping, is the illegal and unauthorised dumping of waste, it 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. The number of incidents have been on the increase in recent years in Spelthorne:

Year	Number of reported incidents
2011/12	684
2012/13	752
2013/14	820
2014/15	888
2015/16	964

- 1.2 To help tackle a variety of issues of anti-social behaviour in Spelthorne the Council set aside funding in June 2014 to support the creation of a Joint Enforcement Team (JET). Since their formation the JET have spent a vast

majority of their time dealing with all aspects of littering and fly tipping, both small and large scale. They have undertaken a number of projects aimed at reducing and tackling fly tipping incidents e.g. through using enforcement & surveillance, communications campaigns, and the installation of barriers. The JET have also been working with Surrey County Council to develop a fly tipping strategy for the County.

Year	Fly tipping reports investigated by JET
2015	369
2016	680

- 1.3 Section 33(1)(a) of the Environmental Protection Act 1990 creates the offence of depositing controlled waste or knowingly permitting controlled waste to be deposited on any land unless the person has a valid permit and the deposit is in accordance with the permit. A person found to have contravened this provision commits an offence and is liable to prosecution. However prosecutions are time consuming and expensive to pursue for both local authorities and magistrates courts, and even if prosecutions are successful, full costs are not always granted or recovered.
- 1.4 From May 2016, it has been possible for local authorities to introduce FPNs for fly tipping under the Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016, which amend section 33 of the Environmental Protection Act 1990. The Regulations introduce new powers for local authorities to issue FPNs for small scale fly tipping, providing Councils with an alternative remedy to prosecutions and providing the offender an opportunity to avoid a criminal conviction.
- 1.5 This change provides local authorities with a more immediate, efficient and proportionate response to fly tipping, and the introduction of these FPNs would provide an additional tool for Spelthorne to tackle fly tipping. The new FPNs for small scale fly tipping would not be appropriate for operators in the waste management industry, repeat offenders or those responsible for large-scale fly tipping, or the fly tipping of hazardous waste.
- 1.6 Under these regulations Spelthorne is permitted to set its own penalty levels within the limits set by the government i.e. between £150 and £400, as well as any discount criteria, as shown in the table below:

Offence	Default penalty	Minimum full penalty	Maximum full penalty	Minimum discounted penalty
Fly-tipping	£200	£150	£400	£120

See - Government Guidance on Fixed penalty notices: issuing and enforcement by councils <https://www.gov.uk/guidance/issued-penalty-notices-issuing-and-enforcement-by-councils>

- 1.7 The statutory minimum fine is £200 with an early payment discount of £120 if paid within 14 days. Officers consider that imposing the maximum £400 fine,

with no early payment discount would have the greatest deterrent effect. The intention is that this will lead to a decrease in the number of small scale fly tipping incidents in Spelthorne, helping the borough remain clean and safe. The control of fly tipping is the responsibility of the Councils Neighbourhood Services division and the Joint Enforcement Team. The issuing of these additional FPNs would be undertaken by the Councils Joint Enforcement Team.

- 1.8 Fly-tips can vary hugely in their scale, impact on the environment and cost of clearing and it is useful to have a range of sanctions available to us which can be implemented in proportion to the severity of the offence. This gives the option to issue a penalty without the need to allocate the time to prepare prosecution papers and attend at court.

## **2. Options analysis and proposal**

- 2.1 The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 allows the fine for an FPN to be set between £150 and £400. Taking into account the cost of clearing up small fly tips, enforcement and investigation time, setting the level at the maximum £400 with no reduction for early payment is appropriate and is the preferred and recommended option.
- 2.2 This level of fine would properly reflect the damage to the environment and local community and the cost to the local authority in clearing the waste material and detecting the offence. It should also act as a deterrent against future offending.
- 2.3 In setting the charge the Council's Environmental Protection Fixed Penalty Notice Enforcement Policy (Environmental Offences) will need to be amended to reflect the introduction of a penalty charge (FPN) for Unauthorised Deposit of Waste.

## **3. Financial implications**

- 3.1 In accordance with the Environmental Protection Act 1990 and the new supporting Regulations, the income received by Local Authorities from FPNs should be spent on functions relating to litter, dog fouling and cleansing. It is not to be used as a means of generating income for other uses. Income will also be used to widely communicate the potential consequences when residents do not carry out their duty of care when arranging for disposal of the waste generated from their property.
- 3.2 The introduction and issuing of the new fixed penalties for small scale fly-tipping will be achieved within existing resources.

## **4. Other considerations**

- 4.1 The ability to issue FPN's for fly tipping on the public highway should have a positive impact on the health and well-being of all residents of the borough including vulnerable adults & children.
- 4.2 Communication of this additional FPN for fly tipping is key to ensuring that our residents are equipped with the relevant information on how to safeguard themselves from becoming a victim of the illegitimate waste carriers. Whilst much information has been publicised by both Spelthorne & Surrey we will continue to highlight this issue via the Bulletin, commencing with an article in the Spring 2017 issue.

- 4.3 A key aim of the Spelthorne Corporate plan 2016-2019 identifies a priority to provide a place where people want to live work and enjoy their leisure time and feel safe to do so.

## **5. Legal Implications**

- 5.1 The Spelthorne Joint Enforcement Team currently issue FPNs for other environmental offences, and the admin costs and methods of recovery are intended to be the same as what is currently in place. Failure to pay an FPN within 14 days will lead to cases being referred to the Spelthorne legal team to pursue.

- 5.2 These penalties have been introduced by DEFRA nationally in England, as amendments to section 33 of the Environmental Protection Act 1990. See Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016.

<http://www.legislation.gov.uk/uksi/2016/334/made>

### **Background documents:**

- The unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 - <http://www.legislation.gov.uk/uksi/2016/334/contents/made>
- Explanatory Memorandum to the Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016  
<http://www.legislation.gov.uk/uksi/2016/334/memorandum/contents>