

# North Tyneside Council Report to Cabinet Date: 9 October 2017

## ITEM 6(g)

Title: A New Approach to  
Tackling Environmental  
Crime

Portfolio(s): Environment

Cabinet Member(s): Mayor Norma Redfearn

Report from Service Area: Environment, Housing and Leisure

Responsible Officer: Phil Scott, Head of Environment, Housing and Leisure  
Tel: 0191 643 7295

Wards affected: All

### PART 1

#### 1.1 Executive Summary:

Tackling environmental crime including fly tipping, littering and dog fouling is a key priority for our residents and the Mayor and Cabinet have asked what more can be done to tackle this.

Also the introduction of Public Space Protection Order legislation means our existing policy is in need of refresh.

The purpose of this report is to seek approval to make the policy changes required to be compliant with the Public Space Protection Order legislation and introduce a revised approach to tackling environmental crime, covering the following areas:

- Dog fouling
- litter and waste related issues
- fly tipping
- graffiti and fly posting

#### 1.2 Recommendation(s):

It is recommended that Cabinet:

1. agree the proposed Fixed Penalty Notice (FPN) fee structure set out in Appendix 1;
2. authorise the Head of Environment, Housing and Leisure in consultation with Cabinet Member responsible for Environment, the Head of Law and Governance and the Head of Finance to set future Fixed Penalty levels relating to environmental matters in accordance with legislation; and
3. agree the actions set out in 1.7 of this report.

### **1.3 Forward Plan:**

Twenty eight days notice of this report has been given and it first appeared on the Forward Plan that was published on 11 August 2017.

### **1.4 Council Plan and Policy Framework:**

This report relates to the following priorities in the 2016-19 Our North Tyneside Plan.

Our places will:-

- Be great places to live, and attract others to visit or work here
- Provide a clean, green, healthy, attractive and safe environment

### **1.5 Information:**

#### **1.5.1 Background**

Tackling environmental crime in the borough is a key policy priority. In the 2016 Resident's Survey 46% of residents highlighted a clean environment as being most important to them.

Whilst a number of successful actions have already been taken against perpetrators, environmental crimes continue to present a challenge. It is therefore important that the Authority constantly reviews its approach to enforcement to deal robustly with offenders.

The current fixed penalty policy was adopted in 2001 but because of subsequent legislative changes it is now out of date and in need of refresh.

The proposed changes in this report incorporate legislative changes highlighted in point 1.5.2. below. Of particular note is the introduction of Public Spaces Protection Orders and fixed penalty notice level under the Anti-Social Behaviour, Crime and Policing Act 2014.

#### **1.5.2 Legislative Framework**

The Authority has a number of legislative powers that enables it to tackle environmental crime through enforcement which includes fixed penalty notices.

The Anti-social Behaviour, Crime and Policing Act 2014 (the 2014 Act) introduced Community Protection Notices (CPNs). The purpose of a CPN is to stop an individual aged 16 or over or body unreasonably committing anti-social behaviour, which has a detrimental effect of a persistent or continuing nature on the quality of life of those in the locality. CPNs can be issued to tackle anti-social behavior including neighbourhood nuisance such as noise, rubbish, or waste from commercial premises that has been disposed of inappropriately, waste in back lanes and back yards, etc.

Failure to comply with a CPN is a criminal offence. As an alternative to prosecuting an individual who has failed to comply with the requirements of a CPN, a Fixed Penalty Notice (FPN) can be issued to that individual. The 2014 Act states that the Fixed Penalty must be no more than £100. Failure to pay the Fixed Notice by an individual makes them liable to prosecution for the offence of failing to comply with the CPN. On conviction of this offence, an individual is liable to a fine of up to £2,500, or in the case of a body an unlimited fine.

The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 came into effect in May 2016. These Regulations introduced new FPN provisions for the offence of fly-

tipping as an alternative to prosecution. The Fixed Penalty payable under such a notice is an amount of not less than £150 and not more than £400.

The Deregulation Act 2015 introduced section 46A of the Environmental Protection Act 1990 (EPA) and the concept of written warnings and FPNs being issued to residents who fail to dispose of waste as specified by their local authority. Such an approach is an alternative to prosecution under section 46 of the EPA. Section 46B of the EPA states that the amount of the Fixed Penalty, if not specified by the Authority, will be £60.00. Non payment of the Fixed Penalty will be recoverable as a civil debt.

The EPA provides for the enforcement of the legislation by the use of written warnings and FPNs for:-

- Littering offences
- Fly tipping
- Business breach of duty of care arrangements in place with a registered waste carrier to collect their waste
- Business failure to comply with requirements to place waste in receptacles for collection
- Resident failure to comply with requirements to place residential waste in receptacles for collection as specified by the local authority

The Authority currently does not issue FPNs for the following, although enforcement action is taken where considered appropriate by way of prosecution:

- Fly Tipping
- Failure to produce waste carrier's licence
- Failure to provide waste documents
- Offences related to waste receptacles

Some of the legislation provides for two amounts of Fixed Penalty to be included in the Notices and for the Notice to specify that, if the lower amount is paid within a period of less than 14 days of the Notice being issued, that the lower amount is the amount of the Fixed Penalty. If however payment is made on or after the 14<sup>th</sup> day of the issue of the Notice, the higher amount of Fixed Penalty must be paid.

### 1.5.3 Current enforcement position

The Authority takes a multi-pronged approach to tackling environmental crime including:

- Education – presentations to schools through the Council's 'Waldo' campaign.
- Campaigns – Love Your Street, Big Spring Clean, Autumn Campaign and West Way Vet Campaign
- Enforcement - currently, it is a key part of the Community and Public Space Protection Officers' role to issue fixed penalty notices for environmental crime.

There are also a number of frontline workers across Environment, Housing and Leisure who have the delegated powers to issue Fixed Penalty Notices. However this is not the main purpose of their role and therefore not the main focus of their activities.

As part a proposed new approach, we will work across teams to ensure a more focussed priority is given to tackle issues of environmental crime.

#### 1.5.4 Current performance

Current performance shows that we carry out a number of successful actions in relation to environmental crime.

In 2016/17 the Authority issued:

- 44 fixed penalty notices (27 for litter and 17 for dog fouling)
- 17 prosecutions (7 litter, 3 fly-tipping, 7 dog fouling)
- 42 warnings of a Community Protection Notice
- over 300 warning letters for dog fouling and litter

144 Member Enquiries regarding litter and 226 Member Enquiries regarding dog nuisance were received. It is important to note that the vast majority of dog owners in North Tyneside are responsible; it is the actions of a significant minority who make this such an important matter for all residents including and especially many responsible dog owners.

#### 1.5.5 Current Policy on Fixed Penalty Notices

The current FPN policy was adopted in April 2001. As a result of subsequent legislative changes it is no longer fit for purpose.

Once a FPN has been issued and paid within the requisite period of time set in legislation, namely no less than 14 days, the Authority cannot prosecute for the original offence. For this reason the period for which any lesser Fixed Penalty can be offered must be no less than 14 days. Where a Fixed Penalty is not paid within the specific time limit (usually 14 days) then the case will be considered for prosecution.

Under the Environmental Protection Act 1990 there is no right of appeal against the majority of FPNs issued under the EPA, other than via the courts or first-tier tribunal. It is proposed that officers will investigate introducing an informal representation process allowing customers the opportunity to provide mitigation in writing for consideration so a decision can be made as to whether the FPN should stand. Such a process would, of course, not interfere with an individual's right to appeal against a Notice to the court or the first-tier tribunal.

Appendix 1 contains a full list of all the various FPNs available for use by the Authority in relation to environmental crime. It includes details of particular FPN and existing levels of Fixed Penalty where notices are currently used.

#### 1.5.6 The Authority's future approach to enforcement:

With the proposed introduction of the Public Space Protection Orders (PSPOs) in October this year, the Authority will be expanding powers across other areas, and reviewing this with the Capita Civil Enforcement Team and Streetworks Inspectors.

The following measures are therefore proposed:

- Increase the amount for fixed penalty notices with higher level Fixed Penalties and discounts for early payments as detailed in Appendix 1 (Some Fixed Penalty amounts are already fixed by legislation or must be set within a prescribed band).

- Trial more visible and larger capacity litter bins at Tynemouth Longsands, encouraging optimal use in relation to the disposal of litter and dog waste. Options are currently being considered and proposals include bright and bold coloured containers with beach themed stickers.
- Introduce new signage across the borough should Public Space Protection Orders be introduced.
- Create a new 'litter and dog fouling enforcement' camera controlled vehicle.
- Introduce a responsible dog ownership initiative involving dog owners.
- In line with the proposed introduction of the Public Space Protection Orders expand fixed penalty notice powers across other teams, including; the Capita Civil Enforcement Team and Streetworks Inspectors.

## **1.6 Decision options:**

The Authority could continue with its current arrangements for tackling environmental crime. However, the Authority needs to continually be proactive in preventing or addressing the range of environmental crime issues that residents face.

Available Options:-

1. Agree the recommendations as set out at section 1.2.
2. Agree the recommendations subject to changes in specific aspects of the FPN structure, in which case those agreed elements would be incorporated into the new FPN structure and implemented.
3. Refer back to officers for further consideration of specific issue(s).
4. Reject the proposed FPN structure and leave the current system in place

## **1.7 Reasons for recommended option:**

Option 1 is recommended for the following reason:

Introducing a new FPN structure would improve the Authority's enforcement functions, including providing the Authority with the ability to set Fixed Penalty levels that demonstrate a determination to tackle enforcement issues. In particular, tools and powers will be made available that will enhance the way that the Authority tackles environmental crime.

## **1.8 Appendices:**

Appendix 1 - FPN proposed fee structure

## **1.9 Contact officers:**

Paul Worth, Senior Manager, Housing Operations; Tel 0191 643 7554  
 Colin MacDonald, Senior Manager, Technical & Regulatory Services; Tel 0191 643 6620  
 Samantha Dand, Senior Manager, Local Environmental Services; Tel 0191 643 7294  
 John Barton, Lawyer Tel 0191 643 5354  
 Alison Campbell, Senior Business Partner, tel. (0191) 643 7038

## **1.10 Background information:**

The Anti-Social Behaviour, Crime and Policing Act 2014  
<http://www.legislation.gov.uk/ukpga/2014/12/contents>

The Anti-Social Behaviour, Crime and Policing Act 2014, Explanatory Notes

<http://www.legislation.gov.uk/ukpga/2014/12/notes/data.pdf>

North Tyneside Council Statement of Enforcement Policy

<http://my.northtyneside.gov.uk/category/691/statement-enforcement-policy>

Environmental and Protection Act 1990

<http://www.legislation.gov.uk/ukpga/1990/43/contents>

Equality Impact Assessment

[October EIA Fixed Penalties Report Sept 2017.docx](#)

Fixed penalty notices: issuing and enforcement by councils

<https://www.gov.uk/guidance/fixed-penalty-notices-issuing-and-enforcement-by-councils>

## **PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING**

### **2.1 Finance and other resources**

There are financial implications involved with the creation of a 'litter and dog fouling enforcement' camera controlled vehicle estimated at £6,000 (for the purchase of cameras). The cameras will be attached to an existing vehicle. The budget for the cameras will be funded through the Council's Housing Revenue Account (HRA) as the vehicle and cameras will also be used by the Community Protection Team.

It is envisaged that the costs of introducing new bins, signage and dog initiative can be managed within HRA and Environmental budgets.

There are rules in which the Authority can use income from FPNs (see 'Fixed penalty notices: issuing and enforcement by councils' in point 2 'Back ground information').

To ensure the Authority comply with these rules, the income generated from environmental fixed penalty notices is retained and reinvested back into the street cleaning service. There are separate subjective codes established within the environmental protection cost centre to monitor the income received.

### **2.2 Legal**

The report sets out the various pieces of legislation that the Authority can utilise to protect the environment and sets out the various methods of enforcement which includes the use of written warnings, Fixed Penalty Notices, Community Protection Notices and ultimately prosecution through the courts.

The setting of the levels for the Fixed Penalties is a matter for Cabinet.

### **2.3 Consultation/community engagement**

#### **2.3.1 Internal Consultation**

Internal consultation has taken place on the introduction of the refreshed environmental crime fixed penalty fee structure with the Cabinet Member for Housing and Transport, and the Cabinet Member for Environment.

#### **2.3.2 External Consultation / Engagement**

There is no requirement for external consultation, however consultation on FPN's will be included in the introduction of PSPO's.

## **2.4 Human rights**

There is a right to challenge a FPN issued to an individual and ultimately it will be a matter for the Courts to determine if an offence has been committed. This process provides an individual with a right to a fair and public hearing by an independent and impartial tribunal in accordance with Article 6 of the European Convention of Human Rights.

## **2.5 Equalities and diversity**

FPN's were introduced in the Authority through the implementation of the Enforcement Policy which was approved in April 2001. The implementation of changes to FPN fees structure does not present potentially significant equality issues. The Enforcement Policy includes consideration of children, young persons and vulnerable adults.

An equality impact assessment has been undertaken in relation to the proposed changes. Having assessed the impacts and analysed the results it was concluded that none of the characteristics were disproportionately affected. Therefore no significant mitigation measures are required.

We will continue to monitor the use of FPNs to see if any further action could assist any protected characteristic group.

## **2.6 Risk management**

There are no risk management implications arising directly from this report. Risks are managed via the established risk management arrangements in place within Environment, Housing and Leisure which form part of the corporate risk management framework.

## **2.7 Crime and disorder**

The purpose of a FPN fee structure is to provide the Authority with the ability to effectively tackle anti-social behaviour, which can amount to crime and disorder.

## **2.8 Environment and sustainability**

The existence of FPN can improve the environment for the community by preventing behaviour that has a detrimental effect on the community from occurring or recurring.

### PART 3 - SIGN OFF

- Deputy Chief Executive  x
- Head(s) of Service  x
- Mayor/Cabinet Member(s)  x
- Chief Finance Officer  x
- Monitoring Officer  x
- Head of Corporate Strategy  x



## Appendix 1

### **Fixed Penalties for Environmental Offences**

Offence	Legislation	What is the Council is trying to achieve by using fixed penalty powers?	Existing level	Proposed level
Graffiti and Fly-posting	S 43/43A Anti-social Behaviour Act 2003	Cleaner buildings and structures by strengthening the powers to deal with graffiti removal and fly-posting	Currently issue £50 FPN	Can be set at local level between £50-£80. Recommend £80 Discount of £50 recommended.
Failure to produce waste carriers licence	S 5B(2) Control of Pollution (Amendment) Act 1989	Reduce illegal waste disposal by targeting illegal waste carriers who may fly-tip their load or dispose of it unlawfully thereby preventing harm to the environment.	Currently issue a prosecution notice	Amount fixed at £300. No discount recommended.
Failure to provide waste documents	S 34A(2) Environmental Protection Act 1990	Identifying business operators and the public who transfer their waste irresponsibility which may lead to unlawful disposal or fly-tipping.	Currently issue a prosecution notice	Amount fixed at £300. No discount recommended.
Offences related to waste receptacles	S 47ZA(2) Environmental Protection Act 1990	Attempting to resolve waste storage and collection issues on domestic and commercial premises which can give rise to odours and rats. In the domestic situation encourage participation in the Council's recycling service.	Currently issue a prosecution notice	Can be set at local level between £60 - £80. Recommend £80 with discount to £60 in domestic circumstances for early payment.
Dog Fouling	Anti-Social Behaviour, Crime and Policing Act 2014	Linked to the proposed introduction of Public Protection Orders. Increase awareness of the problems caused by dog fouling. Reduce the number of incidents of dog fouling in the Borough resulting in cleaner streets and public places. Reduction in serious public health risk.	Currently issue £50 FPN under S3 Dog Fouling of Land Act 1996	Will be up to £100 under PSPO (if introduced) including a discounted amount.
Fly Tipping	S 33ZA The Unauthorised Deposit of Waste	Attempting to resolve illegal fly tipping and tipping charges to the authority. Resulting in cleaning streets, public spaces and impact of blight in the borough.	Currently issue a prosecution notice	Can be set at local level between £150 - £400. Recommended £400 No discount recommended
Leaving Litter	S88 Environmental Protection Act 1990	Cleaner streets and public places by strengthen existing powers to prevent residents from throwing down, dropping or otherwise depositing litter	Currently issue £50 FPN	Can be set at local level between £60 - £80. Recommend £80 with discount to £60 for early payment