

WELWYN HATFIELD BOROUGH COUNCIL
ENVIRONMENT OVERVIEW AND SCRUTINY COMMITTEE – 23 SEPTEMBER 2019
REPORT OF THE CORPORATE DIRECTOR (RESOURCES, ENVIRONMENT AND
CULTURAL SERVICES)

INTRODUCTION OF FIXED PENALTY NOTICES FOR HOUSEHOLD WASTE DUTY
OF CARE

1 Executive Summary

- 1.1 The Council has powers to investigate instances of fly tipping and the subsequent enforcement under S.33 and S.34 of the Environmental Protection Act 1990.
- 1.2 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 (i.e. household waste duty of care).
- 1.3 In January 2019, the Environmental Protection (Miscellaneous Amendments) (England and Wales) Regulations 2018 were updated to allow a Fixed Penalty Notice (FPN) to be issued for offences related to household waste duty of care i.e. offences whereby residents breach their duty of care by not taking all reasonable measures available to them to ensure that their waste is disposed of properly, which can often result in waste being fly tipped.
- 1.4 The introduction of an FPN for such breaches is an alternative to prosecution. It allows an individual to discharge liability for the duty of care offence by payment of a financial penalty. There is no obligation for the Council to offer an alleged offender the option to discharge liability through an FPN. However, it can be more proportionate than prosecution through the courts in some cases.
- 1.5 In line with the regulations, an FPN can be issued in the following circumstances:
 - 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 transferred the waste to an authorised person.
 - where an unauthorised carrier is found to be carrying household waste that was directly transferred to them by the occupier of a domestic property.
 - 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.

2 Recommendation(s)

- 2.1 Members note the contents of the report and the introduction of a FPN to allow individuals to discharge liability for the duty of care offence by payment of a fixed penalty notice.

- 2.2 Members to note that the Duty of Care “FPN” will be issued by current authorised officers (Community and Environment Officers and Street Wardens).
- 2.3 Members recommend to Council that the level of fine should be set at £300, reduced to £200 for early resolution (if paid within 10 days).
- 2.4 Members recommend to Council that the existing level of FPN for fly tipping offences should be amended to £300, reduced to £200 (currently £180) for early resolution (if paid within 10 days). This will ensure that the FPN that can be issued for fly tipping is consistent with the above FPN for duty of care breaches and is in line with other Authorities in Hertfordshire who have introduced the fixed penalty notice.

3 Explanation

- 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 (ie. bulky waste collection), a registered waste carrier (i.e. an authorised skip company) or an operator of a registered site (i.e. household waste recycling centre). This reduces the risk of household waste ending up in the hands of those who may fly tip it.
- 3.2 Currently, the only options available to the Community & Environment team when a breach of duty of care occurs is to prosecute, issue a Simple Caution or take no action. The introduction of this FPN will allow officers to deal effectively with low level breaches and send out a stronger message than the current system allows.
- 3.3 Accordingly, an FPN can be issued in the following circumstances:
- 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 transferred the waste to an authorised person.
 - where an unauthorised carrier is found to be carrying household waste that was directly transferred to them by the occupier of a domestic property.
 - 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 a resident met their duty of care could include details of business and of any vehicle used which can be linked to an authorised operator, a record of checks made, including operators registration, permit or exemption number, a receipt for the transaction which

includes the businesses details of a registered operator, or a copy or photograph of the carrier's waste license or site permit.

Implications

4 Legal Implication(s)

- 4.1 The relevant statutory provisions are covered in the body of the report.
- 4.2 All enforcement will be undertaken in line with the Council's Enforcement Policy.

5 Financial Implication(s)

- 5.1 There are no financial implications associated with this recommendation.

6 Risk Management Implications

- 6.1 There are no risks related to this recommendation.

7 Security and Terrorism Implication(s)

- 7.1 There are no security and terrorism implications associated with this recommendation.

8 Procurement Implication(s)

- 8.1 There are no procurement implications associated with this recommendation.

9 Climate Change Implication(s)

- 9.1 Fly-tipping can have a negative impact on the climate, local communities and the surrounding environment. It can also be dangerous and hazardous to human health and animals.
- 9.2 It is anticipated that the introduction of this FPN will allow further enforcement to be taken against individuals who breach their duty of care.

10 Human Resources Implication(s)

- 10.1 There are no human resources implications associated with this recommendation.

11 Health and Wellbeing Implication(s)

- 11.1 There are no health and wellbeing implications associated with this recommendation.

12 Communication and Engagement Implication(s)

- 12.1 In line with the Council's Corporate Enforcement Policy, the Community & Environment team will continue to provide advice and awareness around duty of care and fly tipping.
- 12.2 Welwyn Hatfield continues to be an active member of the Hertfordshire Waste Partnership's WasteAware and Fly Tipping Groups, both of which have strong

public facing campaigns with regard to fly tipping and more general recycling and waste messages.

The #SCRAPflytipping campaign (www.hertfordshire.gov.uk/flytipping) launched across Hertfordshire in March 2018 and is designed to ensure residents are aware of what fly tipping is, the penalties and where to go for more information to ensure proper disposal of waste.

13 Link to Corporate Priorities

- 13.1 The subject of this report is linked to the Council's Corporate Priority, Environment, and specifically to the achievement of keeping our streets clean and enhancing our green spaces and is linked to a statutory requirement, under the Environment Protection Act 1990.

14 Equality and Diversity

- 14.1 An EqIA was not completed because this report does not propose changes to existing service-related policies or the development of new service-related policies.

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Date	<i>02 September 2019</i>

Background papers to be listed

- Environmental Enforcement, Report of the Director (Finance and Operations), Cabinet, 14 June 2016
- Corporate Enforcement Policy https://www.welhat.gov.uk/media/9449/Corporate-enforcement-policy/pdf/Corporate_Enforcement_Policy.pdf?m=636842737144200000
- Guidance for local authorities on household waste duty if care fixed penalty notices <https://www.gov.uk/government/publications/household-waste-duty-of-care-fixed-penalty-notice-guidance/guidance-for-local-authorities-on-household-waste-duty-of-care-fixed-penalty-notice>