

Bedford Borough Council – Environment and Sustainable Communities Overview and Scrutiny Committee

Date of Meeting: 26 September 2024

Report by: Chief Officer Environment

Subject: Review of Fixed Penalty Notices for Environmental Offences

1. EXECUTIVE SUMMARY

- 1.1 This report has been prepared to provide the committee with an update on Environmental Enforcement, review of Fixed Penalty Notices issued for environmental offences.

2. RECOMMENDATIONS

- 2.1 **That the Committee supports the new level of Fixed Penalty Notice proposals.**

3. REASONS FOR RECOMMENDATIONS

- 3.1 To bring the Councils Fixed Penalty Notice levels in line with current legislative guidance.

4. THE CURRENT POSITION

- 4.1 The Council issues Fixed Penalty Notices for a range of environmental offences such as fly tipping, littering, householder duty of care, abandoned vehicles and for breaches of a Public Spaces Protection Order which includes dog fouling and skateboarding, electric scooters and cycling in a restricted area.

4.2 The current Fixed Penalty Notice levels for each offence has remained unchanged since 2021 with the majority of the Fixed Penalty Notices at the same level as 2018. The Fixed Penalty Notice level for a breach of a Public Spaces Protection Order has also not changed since 2018.

5. **DETAILS**

- 5.1 Fly tipping, littering and other environmental offences such as abandoned vehicles and dog fouling are not only Anti-social but also a crime. Fixed Penalty Notices were introduced as an alternative to prosecution and allow for a person to discharge their liability for an offence by payment of a Fixed Penalty Notice. Fixed Penalty Notices help reduce the costs associated with bringing a person to justice who commits an environmental offence as the offence can be dealt with without the need for the matter to be heard in Court.
- 5.2 Following the introduction of Environmental Offences (Fixed Penalties) (amendment) (England) Regulations 2023 Statutory Instrument the Fixed Penalty amounts previously set for some environmental offences has been increased.
- 5.3 The Statutory Instrument states: Littering, graffiti, fly-posting and fly-tipping blight communities, impose avoidable costs on the public purse and can harm the environment, with fly-tipping being aggravated by householders giving waste to unauthorised carriers. Fixed penalty notices (FPN) provide the relevant enforcing authorities with an effective and visible way of responding to these environmental crimes and a lower-cost alternative to prosecution. In the 2023 Anti-social Behaviour Action Plan, the then Government explained that it wanted to see councils take a much tougher approach to these forms of anti-social behaviour and set out new upper limits for fixed penalties notices. This instrument increases the upper limit for the fixed penalties that can be issued for these offences.
- 5.4 There are currently three Public Spaces Protection Orders within the Borough.
- Dog Control - dog fouling, dog excluded areas, dog on lead areas and dog on lead by direction.
 - Bedford Town Centre – cycling, electric scooter and skateboarding restrictions.
 - Bedford Town Centre – Alcohol restrictions

Legislation states that the FPN for breaches of a PSPO can be set at £100 and an early discount is permitted. The Councils current FPN for a PSPO breach does not include an option for an early payment discount.

- 5.5 When setting the FPN amounts it is important to strike a balance between increasing the FPN whilst ensuring it is at an amount that incentivises payment at both full and discount amount rather than having the matter brought before the Courts. Payment rates for the current FPNs issued shows 92% of FPNs paid for fly tipping over the past year were at the discount amount and it is therefore important that the discount amount is set at a level that not only incentivises payment but is also an appropriate financial penalty for the offence committed.

- 5.6 There is also an anomaly with the current FPN for fly tipping as it does not take in to account the size of the fly tipping and the FPN is the same level for a person who fly tips two black bags of waste as it is for a person who fly tips a van size load of waste and the new proposed FPN levels seeks to address this as it is only fair that a person who fly tips more waste is issued a greater penalty.
- 5.7 Not all offences a FPNs can be issued for have been included in the Statutory Instrument and the levels remain the same for Abandoned Vehicles and Community Protection Notices which are used for a number of offences related to waste.
- 5.8 Current FPN level and Proposed FPN level

Offence	Current full amount	Current discount amount	Proposed New full Amount	Proposed New discount amount
Fly-tipping (small scale - Litter FPN issued)	£100	£75	£300 For Small scale fly tipping – A single bin bag containing waste /One small piece of furniture or equipment. There may also be a few small items that would not on their own constitute a fly-tip	£200
Fly-tipping (no size specified)	£400	£300	£600 For Medium scale fly tipping - The rubbish could be broken down and squeezed into a large boot of a car. About 1 cubic metre maximum. Up to 5 large bin bags.	£400
			£1000 For Large scale fly tipping - Bigger than the car boot load but that the rubbish could be broken down and squeezed into an Astra size van. About 4 cubic metres. Between 6 and 15 bin bags.	£600
Failure to comply with duty relating to the transfer of	£300	£180	£600	£400

household waste.				
Littering including low level fly tipping	£100	£75	£150 (Litter only)	£100 (Litter only)
Graffiti	£100	£75	£150	£100
Fly Posting	£100	£75	£150	£100
Public Spaces Protection Order	£75	N/A	£100	£75

5.9 Increasing the level for FPNs may create the perception they are be used as an income generator for the Council. However, the guidance is clear that FPNs should not be used in this way, with The Code of Practice on Litter and Refuse Section clearly setting out what purposes the income from fixed penalty notices may be spent as shown on the below table:

Offence	Penalty receipts may be spent on functions relating to:
Litter Graffiti Fly-posting	Litter and refuse (including keeping land and highways clear of litter and refuse, and enforcement against littering and littering from vehicles); graffiti and fly-posting; controlling and enforcing against the unauthorised distribution of free literature
Fly-tipping	Waste on land
Household waste duty of care	Waste on land

5.10 It will not always be appropriate to issue an FPN for an offence. Fly tipping incidents greater than a transit van size, those that include hazardous waste and those committed by a registered waste carrier will be considered for prosecution without Fixed Penalty Notice being offered.

6. ALTERNATIVES CONSIDERED AND REJECTED

- 6.1 The alternative is to make no changes to the current fines, that would not bring the Councils Fixed Penalty Notice levels in line with current legislative guidance. It would also not act as suitable level of fiscal penalty to act as a deterrent to those thinking or actually carrying out environmental offences. Due to the pressure on the public purse through increased clearance costs and leading to a perception of a Borough in neglect this option of doing nothing is rejected.

7. KEY IMPLICATIONS

7.1 Legal Issues	Sections 33, 34 and 87 of the Environmental Protection Act 1990 and Section 43 of the Anti-Social Behaviour Act 2003 sets out the relevant environmental offences. The Fixed Penalty Notices levels are updated by The Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023. Section 67 of Anti-social Behaviour, Crime and Policing Act 2014 set out the offence of failing to comply with a Public Spaces Protection Order.
7.2 Policy Issues	The Council's Corporate Plan 2022-2026, vision of the period of this Plan is: We want Bedford Borough to thrive as a place, that people are proud of, want to live in and move to. To do this we need a growing and strong local economy and an active response to climate change. From this foundation, our residents will be able to thrive and realise their potential, supporting and celebrating our diverse and inclusive communities.
7.3 Resource Issues	It is envisaged that the increased fines would be sufficient deterrent to have minimal impact on the level of income received.
7.4 Risks	Fixed Penalty Notices become less of a deterrent and fly tipping and littering increase placing pressure on the public purse through increased clearance costs and leading to a perception of a Borough in neglect.
7.5 Environmental Implications	There are no adverse environmental implications, reducing environmental crime will lead to a reduction in environmental pollution and contamination and the risk of disease associated with vermin.

7.6 Equalities Impact	<p>In preparing this report, due consideration has been given to the Council’s statutory Equality Duty to eliminate unlawful discrimination, advance equality of opportunity and foster good relations, as set out in Section 149(1) of the Equality Act 2010.</p> <p>It is considered that no issues arise in relation to the Council’s duties under the Equality Act 2010 at this current time. It is acknowledged that there may be an impact upon the rights of freedom of expression and freedom of assembly set out in the European Convention on Human Rights but that such impacts protect the health of the public and prevent crime and are prescribed by law.</p>
7.7 Impact on Families	Fly tipping, litter and poor waste management practices can create a dangerous environment for families, children, pets and wildlife.
7.8 Community Safety and Resilience	There are no adverse community safety implications
7.9 Impact on Health and Wellbeing	Fly tipping and litter can be a health hazard. It can cause unpleasant smells, attract vermin which spread disease and be damaging for the local environment.

8. SUMMARY OF CONSULTATIONS AND OUTCOME

8.1 The following Council units or Officers and/or other organisations have been consulted in preparing this report:

- Deputy Mayor & Portfolio Holder for Environment
- Director of Environment – Craig Austin
- Interim Monitoring Officer – Lee Phanco
- Chief Officer for Finance – Rhian Bevan

All relevant comments have been incorporated into the report, as necessary.

9. WARD COUNCILLOR VIEWS

9.1 This report is not relevant to an individual ward but effects all wards.

10. CONTACTS AND REFERENCES

10.1 Please see references in the table below:

Report Contact Officer	Paul Pace – Chief Officer (Environment) paul.pace@bedford.gov.uk ext. 47275
File Reference	I: Environment/Committees/Reports
Previous Relevant Minutes	None
Background Papers	None
Appendices	None