

Classification	Item No.
Open	

Meeting:	Cabinet
Meeting date:	21 July 2021
Title of report:	Introduction of a Fixed Penalty Notices (FPNs) and Penalty Charge Regime for Fly Tipping Offences
Report by:	Cabinet Member for Environment, Climate Change and Operations
Decision Type:	Key Decision
Ward(s) to which report relates	All

1.0 Executive Summary:

- 1.1 Fly-tipping is a criminal offence and one of the most common forms of anti-social behaviour, that poses a significant environmental, social and financial problem nationally and here in Bury.
- 1.2 The Council can prosecute where there is evidence of fly tipping, but this is a lengthy process. We must meet both the evidential and public interest test when deciding to prosecute and a prosecution has to be proportionate to the offence, in line with our enforcement policy.
- 1.3 Under the Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016, new powers were introduced into the Environmental Protection Act 1990, which allow authorised officers of local authorities to issue on the spot fixed penalty notices (FPN's) offering offenders the opportunity to pay up to £400 for anyone caught in the act of fly-tipping, as an alternative to being prosecuted.
- 1.4 This report recommends that Bury Council introduces this regime for the issue of FPN's in such circumstances and approves the setting of the penalty charge at £400 for the Unauthorised Deposit of Waste, with no reduction for early payment.

- 1.5 This will allow the Council to take swifter action to tackle fly tipping in the borough and provides an alternative remedy to prosecutions where appropriate.

2.0 Recommendation(s)

That Cabinet:

- 2.1 Notes the contents of the report.
- 2.2 Approves the introduction of a Fixed Penalty Notice regime as provided for under section 33ZA of the Environmental Protection Act 1990 and sets the penalty charge at £400, with no reduction for early payment, and the option to pursue the matter in court.
- 2.3 Delegates to the Executive Director of Operations the power to authorise appropriate officers for the purposes of giving FPN's pursuant to this regime.

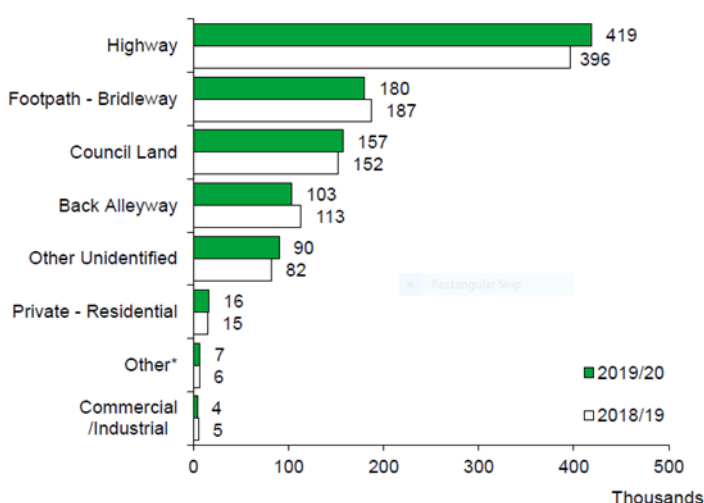
3.0 Background

- 3.1 Fly-tipping is a criminal offence and one of the most common forms of anti-social behaviour that poses a significant environmental, social and financial problem nationally and here in Bury.
- 3.2 Illegally deposited waste blights the streets, neighbourhoods, and countryside, is a threat to local wildlife and livestock, a source of pollution and a danger to public health. It also attracts other forms of anti-social behaviour and enviro-crime into our communities and impacts on the pride that residents have in their local area.
- 3.3 Fly-tipping can also deter investment in an area, and impact on residential and commercial property values. It undermines legitimate waste businesses, with illegal operators avoiding waste disposal costs and giving them an unfair advantage over those who abide by the law.
- 3.4 The consequences of fly-tipping are not only the health and environmental risks it poses to our local communities, but also the considerable and unnecessary draw on reducing local authority resources, which could be better directed to providing services elsewhere.
- 3.5 To reduce incidents of fly tipping the Council has undertaken a wide range of education programmes, encouraging residents and businesses to change their behaviour and dispose of their waste correctly. The Council also acknowledges the work undertaken by community volunteers, who can play an important role in supporting environmental crime intelligence and enforcement. Further work with volunteers is being explored to address fly tipping.

4.0 The National Picture

4.1 Latest annual figures on fly-tipping incidents nationally, were released on 24 February 2021. These statistics show that in 2019/20 there were 976,000 fly-tipping incidents reported across the UK, an increase of 2% from 957,000 in 2018/19. Highways (pavements and roads) have consistently been the most common land type for fly-tipping incidents over time, accounting for over two fifths (43%) of all incidents in 2019/20. In 2019/20 there were 419,000 incidents, an increase of 6% from 2018/19 (396,000 incidents).

Figure 1: Trends in locations affected on a national basis in England, 2019/20 compared to 2018/19.:



5.0 The Local Picture

- 5.1 Over the past three years, reports of fly-tipping in Bury have gradually increased, with incident locations mirroring the national picture. (full breakdown detailed in Figure 2)
- 5.2 Fly-tipping remains a problem in Bury and is persistent and costly to Council taxpayers, despite the fact that there are plenty of ways to dispose of waste legally. In Greater Manchester we have 21 recycling centres where resident can take waste free of charge for disposal. The Council is aware of a number of fly-tipping hotspots across the borough and is actively pursuing those who do not dispose of their waste properly. The Council responds to many reports made by local residents across the borough, to gather evidence and try to identify those responsible.
- 5.3 The most common items dumped generally include broken or old items of furniture and white goods, builders/construction waste and commercial waste from small businesses. However, we are now also seeing fly tipping of waste from cultivation of Cannabis, which is a Class B drug, becoming an increasing issue. Historically,

residents in some neighbourhoods of the borough hold the false belief that the Council should clear waste abandoned in their back streets at no charge.

- 5.4 The Council exercises a consistent and robust approach that any individual suspected of being involved in a fly-tipping offence, will be automatically challenged, investigated and dealt with accordingly.
- 5.5 Resources to investigate Fly Tipping and prosecute those responsible are small and the Public Protect Team have secured funding to create two additional Enforcement Officer posts for a 12-month period, which will focus on fly tipping investigation and enforcement and seek to ensure more action is taken against those responsible.

Figure 2: Trends in numbers of fly-tipping reported in Bury 2017/18 to 2020/21:

Land Types	2018/19	2019/20	2020/21 (to 25/03)
(Totals)	2816	2998	3898
Allotment	2	4	6
Council car park	20	42	35
Cemetery	7	7	11
Metrolink land	2	1	3
Motorway or slip road	0	4	1
Other	115	123	385
Pavement	233	296	438
Private land	178	164	195
Public right of way	174	160	121
Road or Street	1812	1963	2376
Subway	3	2	4
Water body	29	35	85
Six Town Housing (Council) land	61	57	38
Open space	98	107	131
Park or play area	82	33	69
(Totals)	2816	2998	3898

6.0 Existing Penalties for Fly-Tipping

- 6.1 Fly-tipping is a criminal offence that is punishable by a fine of up to £50,000- or 12-months imprisonment if convicted in a Magistrates' Court.
- 6.2 The offence can also attract an unlimited fine and up to 5 years imprisonment if convicted in a Crown Court.
- 6.3 Prior to new Regulations being introduced, the only formal sanctions available for such offences were a prosecution or a simple (formal) caution.

7.0 Current Enforcement Powers – Minor Tipping Offences

- 7.1 Currently, the Council uses a range of measures to enforce against fly-tipping. One such measure includes adapting the FPN that is currently available for littering offences under section 87 of the EPA (£80 on the spot fine) and using this control measure to deal with low-level fly-tipping instances.
- 7.2 This FPN does not reflect the seriousness of the offence, nor does it cover the cost to the Council of dealing with the offence and removal and disposal of the waste, which in many cases can be considerable, but on balance does not warrant the effort and cost of preparing a section 33 fly-tipping prosecution.

8.0 New Enforcement Process

- 8.1 Section 33(1)(a) of the Environmental Protection Act 1990 (EPA 1990) creates an offence for depositing controlled waste or knowingly permitting controlled waste to be deposited on any land unless the person has a valid permit authorising him to do so. A person found to have contravened this provision is liable to prosecution.
- 8.2 The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 came into force on 9th May 2016. These regulations amended section 33 of the Environmental Protection Act 1990 by inserting a new section (33ZA) into the EPA 1990.
- 8.3 The Regulations introduce new powers for local authorities to issue FPNs for such offences, including medium scale fly tipping. This provides Councils with an alternative remedy to prosecutions. The Regulations allow Local Authorities to set their fixed penalty rate between £150 to £400, with a minimum reduced rate of £120 if paid within 10 days. If no rate is set by the local authority the default rate is £200.
- 8.4 Enforcement Officers are authorised under the Councils Scheme of Delegation to enforce the provisions of Section 33 (1) (a) of the Environmental Protection Act 1990 and to serve the FPNs for medium-scale fly tipping incidents.
- 8.5 Prosecutions for fly-tipping are difficult and expensive to pursue whilst FPNs will be immediate and easier to issue. The changes provide local authorities with a more

efficient and proportionate response to medium-scale fly-tipping of waste and a better deterrent via an increased financial penalty.

- 8.6 This report seeks authorisation to adopt the fixed penalty notice scheme and set the level of penalty charge for fly-tipping FPNs at the £400 maximum, with no option of reduction for early payment. It is believed that the level of penalty sought will be an appropriate level of deterrent and brings us in line in what is happening in GM.
- 8.7 The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 will enable the Council to take a faster and more direct approach to ensuring that perpetrators are made accountable.
- 8.8 The adoption of these new powers FPN process will commence with immediate effect. Existing resources within the Public Protection Team, including two new Fly Tipping Enforcement Officers, will utilise the new powers proportionately in line with the Councils enforcement policy.
- 8.9 It is expected that training will need to be delivered to officers exercising this new approach. To avoid reputational repercussions, it is important that authorised officers understand which situations are appropriate to exercise use of the new FPN.
- 8.10 Income raised through payment of FPNs will remain in the Public Protection Service budget and will be ring fenced and used to facilitate delivery of future Environmental Crime education and enforcement strategies.

9.0 Fixed Penalties

- 9.1 Fixed penalties are part of a wider enforcement strategy, designed to address all aspects of environmental crime. This will ensure that resources are focused on priority areas and that an appropriate balance is struck between resources devoted to fixed penalties and those spent on prosecutions, following non-payment of fixed penalties and for more serious incidents.
- 9.2 The FPN will allow the Council to act more efficiently when dealing with offenders as the FPN will provide a much quicker alternative to prosecuting fly-tippers through the Courts. Prosecution will remain an option for the Local Authority in punishing large-scale fly tipping and waste offenders and in circumstances where there are aggravating factors such as abusive or threatening behaviour towards staff.
- 9.3 The option also helps to step up and increase the profile of enforcement and demonstrate that the Council is committed to improving the condition of the boroughs streets/highways and reducing the cost of cleaning them.

10.0 New Emerging Threat

- 10.1 Over recent years there has been a noticeable increase in advertisements on social media for waste removal services. Facebook in particular has become a popular

advertising platform for rogue traders who pose online as legitimate waste removal companies, but then dump the rubbish they collect after taking payment.

- 10.2 If fly-tipped waste can be traced back to its owner, the owner can be fined even if they had acted in good faith and were not aware the waste was going to be fly-tipped. More communication and awareness raising will take place over the coming year to ensure residents understand their responsibility when handing their waste over to different companies, including skip hire.
- 10.3 Every individual and business has a 'duty of care' to ensure they correctly dispose of their waste and many unsuspecting householders are being caught out by these rogue traders, drawn by their attractive low rates, compared to legitimate operators. Where businesses are unable to provide waste transfer notes the Council has existing powers to issue a FPN for £300 which is reduced to £150 for early repayment.
- 10.4 Further promotion will take place on social media to improve awareness.

11.0 Financial Implications

- 11.1 The introduction of FPNs will generate some additional income that can be reinvested back into the fly tipping enforcement and reduction programme. It is difficult to predict how much income will be received and the adoption of the FPNs is about creating a deterrent and increasing efficiency in our processes, rather than generating revenue.
- 11.2 At present, the costs of taking Court action against perpetrators are high and even if prosecutions are successful, full costs are rarely granted, and can be very difficult to recover.
- 11.3 The introduction of a fly-tipping FPN, pitched at a level which reflects the seriousness of the offence, will be a more streamlined and cost-effective way of dealing with perpetrators of more serious offences, as an alternative to prosecution through the courts.

Other options considered

The FPN could be set at a low fine level, or no amount set, where the default amount would be £200 as set out in the legislation. However, it is felt it needs to be set at the maximum to ensure it is a deterrent to fly tippers and the figure proposed is in line with other GM authorities. The FPN rates for other Greater Manchester Authorities was considered and are shown below:

Greater Manchester Authorities Comparison

- Salford £400 and £300 early repayment
- Rochdale £400 and £250 early repayment
- Bolton £400 with no reduction

- Manchester £400 with no reduction
 - Oldham £400 and £280 early payment.
 - Wigan £400 and £200 early payment.
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Community impact/links with Community Strategy

Local Neighbourhoods: The Public Protection Team are a strong driver for building cohesive and resilient local neighbourhoods by reinforcing the fact that environmental crime is unacceptable, community confidence, intolerance towards environmental crime, and respect for the area will all increase.

Enterprise: Educating communities and businesses is fundamental when combating Environmental Crime. Residents and business need to be made aware of the law and their responsibilities to comply with legislation. The Council has to consistently look at new ways to clamp down on those who illegally dump their waste, whilst attempting to try to persuade them not to do it in the first place.

Delivering Together: Through regular campaigns and press releases, the Council actively encourages all residents to report fly-tipping and provide any other information that will help enforcement officer identify and hold offenders to account.

Equality Impact and considerations:

The policy will apply to fly tipping offender(s) and has no discriminatory factors.

24. *Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:*

A public authority must, in the exercise of its functions, have due regard to the need to -

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;*
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.*

25. *The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services.*

Assessment of Risk:

The following risks apply to the decision:

Risk / opportunity	Mitigation
The proposal outlined in this report affects individual(s) responsible for fly tipping offences equally. The use of this new enforcement option benefits all residents of Bury equally.	None Required.

Consultation:

N/A

Legal Implications:

The legal implications are as set out within the report. A decision of Cabinet is required to introduce the proposed regime and set the level of FPN. Further additional authorisations of officers will be required.

Financial Implications:

The proposed level is set at the maximum, but is in line with other authorities within GM. It is proposed that any income achieved will be retained by the service, but consideration will need to be given to how much work is required by the sundry debts team or legal services to recover these funds should payment of the fixed penalty notice not be paid and the success in recovery of these fines.

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Background papers:

1. Unauthorised Deposit of Waste (Fixed Penalties) regulations 2016 - [Link](#)

2. Department for Environmental Food and Rural Affairs: Fly-tipping statistics for England 2019/20 - [Link](#)
3. Equality Impact Assessment – Available upon request

Please include a glossary of terms, abbreviations and acronyms used in this report.

Term	Meaning
EPA	Environmental Protection Act 1990
FPN	Fixed Penalty Notice
K	1000 (numerical value)