



Environment and Climate Change Committee

9th June 2022

Title	Tackling Fly Tipping and Littering
Report of	Chair of Environment and Climate Change Committee
Wards	All
Status	Public
Urgent	No
Key	Non key
Enclosures	Appendix 1: Fly tipping and littering current and proposed Fixed Penalty Notice sums
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Summary

Following the May 5th 2022, Barnet Local Government Elections the Council has a new Labour Administration. The new administration has made several commitments, which officers now need to develop a work programme to deliver - one of the commitments is 'take tough enforcement action against those that dump rubbish or commit other enviro-crime' this commitment is in line with the community safety restructure and the revised approach and proposals as set out within the report to tackle fly tipping and littering

The new administration has also made a commitment to 'bring back community skips' - this commitment is also one that also now requires officers within street scene service to consider how the introduction of community skips might be used as an opportunity to raise public awareness of the importance of, and options for, disposing of waste and litter properly, to

develop options and proposals with a with a further paper brought back to this committee in due course and prior to implementation.

This report provides an update on the Council's revised approach to tackle fly tipping and littering. This follows a review and restructure of the Community Safety Team, previously agreed at Constitution and Purposed Committee in January 2022, and implemented in April 2022.

Following the Community Safety Team (CST) restructure the responsibility for all such environmental waste enforcement reverted to the in house expanded Community Safety Team. The necessary, and by mutual consent, legal contract exit notification was issued and implemented to previous contractor accordingly.

The report therefore sets put the background, rationale, and proposed amendments to the Fixed Penalty Notice process and amounts - which it seeks to implement as soon as practicable following committee.

Officers Recommendations

1. That the Committee acknowledge the changes to the structure of Community Safety Team and the subsequent impact upon the environmental waste enforcement contract.
2. That the Committee consider and approve the amendments to the sums for environmental crime offences Fixed Penalty Notices (FPN's) as at Appendix 1 of this report.
3. To reintroduce the early payment option for FPNs for the offences detailed in Appendix 1.
4. To introduce a scaled approach to the level of FPN fine applied to S33 and S34(2) of the Environmental Protection Act 1990 fly tipping type offences as at Appendix 1 of this report.
5. To request the Director of Street Scene to develop options for Community Skips – to be brought back at a future meeting.

1. WHY THIS BRIEFING IS NEEDED

Community Skips

- 1.1 The new administration has made a commitment to 'bring back community skips' - this commitment is one that now requires officers to consider how the introduction of community skips might be used as an opportunity to raise public awareness of the importance of, and options for, disposing of waste and litter properly, develop options and proposals with a with a further paper brought back to committee in due course and prior to implementation.

Fly Tipping and Littering

1.2 At the Environment Committee on the 13th September 2018 the Environment Committee resolved to:

- i. Instruct officers to urgently examine the option to provide a lower rate for a first offences for occupants of residences for FPN issued for littering/fly tipping in the vicinity of their home.
- ii. The availability of a review process for members to review any FPN issued to residents.

1.3 In accordance with the then Strategic Director of Environment's 2018 report titled 'Responding to fly tipping and littering in Barnet'; and the decisions agreed by the Environment Committee on the 28th November 2018; an interim solution was implemented regarding the majority of the recommendations agreed. However due to the impact of Covid19 item 1.1 (i) above remains unresolved and this report seeks to address this.

Internal Case Review Process

1.4 Item 1.1 (ii) above (Internal Case Review Process) was introduced and remained in place and since 1st April 2020 all fly tipping offences must be subjected to an internal case review by the Community Safety Team prior to any FPN being issued. This internal process has been developed in line with relevant legislation and standard investigate process and procedures.

1.5 The previous tri-borough contractor for environmental waste enforcement was Kingdom Services Group (now Kingdom Local Authority Support known as LAS) which commenced in February 2019. Barnet, Ealing, and Harrow were the tri-borough partners in this contract and Ealing was the contract lead authority.

- i. In Barnet this contract was suspended on 23rd March 2020 due to the impact of the Covid19 pandemic on the authority of the Director of Assurance.
- ii. In Barnet this contract was reinitiated on the 5th July 2021 on the authority of the Director of Assurance. The contract has resumed on the pre-existing terms and conditions for FPN sums.
- iii. In Barnet the contractor was not issuing any FPNs for fly tipping unless the case has been investigated by a Community Safety Team officer and the use of an FPN has been approved by the Community Safety Team Manager and countersigned by the Assistant Director Counter Fraud, Community Safety and Protection.
- iv. Following the Community Safety Team restructure approved by the Council' General Purposes Committee on 5th January 2022 the responsibility for all such environmental waste enforcement reverted to the Community Safety Team. The necessary, and by mutual consent, legal contract exit notification was issued and implemented to Kingdom Services accordingly. The contract with the Council and Kingdom/LAS ended on the 28th February 2022.

- v. Effective 1st April 2022 all environmental crime waste enforcement has been operated and managed by the Council's Community Safety Team.

1.6 All enforcement activity for waste and littering must be carried out in accordance with the Council's Corporate Prosecution and Enforcement Policy agreed at the Policy and Resources Committee on the 21st March 2017.

1.7 The Community Safety Team restructure approved by the Council's General Purposes Committee on 5th January 2022 has introduced a named Investigation and Enforcement officer for each ward in the borough. These 21 officers will be responsible for the neighbourhood management of their wards which includes tackling all forms of anti-social behaviour including environmental crime in all its manifestations. These officers will now deploy Monday through Sunday and are fully uniformed and patrol with body worn cameras.

1.8 Now that we have developed an in house multi-disciplinary Community Safety Team we are able to ensure that they are focused on tackling the most serious of offenders/offences whilst have the capability and relevant powers and training to deal with all environmental crime of any level. We also aim to use the team to engage, educate and warn those locally of the potential consequences of committing waste offences and inform the public how to report offenders to the Council.

Littering, Fly Tipping, Duty of Care - what is the difference?

1.9 'Dropping litter in an open area to which the public have access is an offence. Litter is everything from food packaging to cigarette butts and chewing gum. This offence is a criminal offence and is classified under Sections 87 and 88 of the Environmental Protection Act 1990¹. Because such an offence is witnessed at the time it is considered an absolute offence.

1.10 The Act describes the depositing waste, liquid or solid as the legal term for what the Council and public most often referred to as Fly tipping. It can vary in scale significantly, from a bin bag of rubbish to larger bulky waste items being dumped, such as mattresses or white goods. This offence is a criminal offence and is classified under Sections 33 and 34(2) of the Act.

1.11 Businesses have a duty of care to ensure their waste is removed by a licensed waste carrier. If we suspect a business is not disposing of their waste correctly, we can issue a notice requiring the production of waste transfer documents. Failure to produce the documents results in the issue of a fine. This offence is a criminal offence and is classified under Section 34 of the Act.

¹ The Principal Act being Environmental Protection Act 1990 subsequently referred to in this report as 'The Act'

Use of Fixed Penalty Notices (FPNS) for the offences of Littering and Fly tipping.

- 1.12 The Act introduced the use of FPNs for Local Authorities and there are no formal grounds of appeal against a FPN. It is an invitation for an individual to discharge their liability to prosecution. In essence, this means that whilst this is not an admission of an individual's guilt, it is an agreement that the individual accepts that an offence has been committed and that by paying the sum of money specified, no further action will be taken by, or on behalf of the Council.
- 1.13 This method of dealing with offences not only saves time involved for everyone in prosecuting cases at court, but the cost associated with an FPN is likely to be substantially lower than any fine imposed by the courts and seeks to support compliance by all parties in their duty of care to control their waste either as an individual or as a business.
- 1.14 Adhering to the Council's Corporate Enforcement and Prosecution Policy an FPN should only be cancelled in the following circumstances:
- Upon review of the FPN the reviewing officer is satisfied that an offence did not take place e.g. the FPN was issued as the result of a missed waste collection or;
 - There is a material defect in the FPN for example the name of the individual the FPN was issued to is misspelt by comparison to the evidence the name was secured upon or the date/time of the offence on the FPN does not match the photo evidence secured by the officer at the time of the offence therefore creating an administrative error.

2. REASONS FOR RECOMMENDATIONS

- 2.1 For reasons stated in section 1.2 through to 1.8 of this report the Environment and Climate Change Committee is asked to agree the officer's recommendations to address the outstanding action for the Committee and introduce a scaled approach for first time fly tipping offenders.
- 2.2 As requested by the Environment and Climate Committee of officers, this adjustment would ensure that as a Council the sanction imposed for a minor infraction is proportionate to impact upon the area affected. The person(s) being held accountable for the offence will still be offered the opportunity to avoid their liability to a criminal prosecution in minor fly tipping incidents.
- 2.4 The Committee is asked to approve the reintroduction of the discounted early payment option for FPNs for Environmental Enforcement in order to further encourage offenders to discharge their liability at their earliest opportunity.
- 2.5 The Council reserves its right in cases of fly tipping to not use the FPN process and refer the matter for prosecution through the courts for serious or persistent offenders involved in the illegal dumping of waste.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

3.1 Do nothing

This option is not recommended as it would not meet the requirements agreed by the Environment Committee prior to the Covid 19 Pandemic's impact.

3.2 Amending the first-time offence of residential fly-tipping to one of littering.

This option is not recommended as the offences are clearly defined by the act and the offence of littering must be witnessed at the time of the offence.

4. POST DECISION IMPLEMENTATION

4.1 If the Environment and Climate Change Committee agrees the recommendations within this report The Community Safety Team will complete the steps in 4.1 and 4.2 above and update the Council's website and FPN correspondence by no later than the 31st March 2022.

4.2 The changes to the FPN sums will thus take effect from 10th June 2022.

5 IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

5.1.1 After the May 5th, 2022 elections the Council has a new Labour administration. The new Administration has made several commitments, one of which 'take tough enforcement action against those that dump rubbish or commit other enviro-crime' is in line with the revised approach as set out in this paper.

5.1.2 The new administration has also made a further commitment to 'bring back community skips' - this commitment is one that now requires officers within street scene to consider how the introduction of community skips might be used as an opportunity to raise public awareness of the importance of, and options for, disposing of waste and litter properly, develop options and proposals with a further paper brought back to committee in due course and prior to implementation.

5.1.3 The changes being proposed to the FPN sums and re-introduction of the early payment options reflects the Council's commitment in seeking to reduce the levels of anti-social behaviour related to littering and fly tipping.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

5.2.1 By the introduction of these changes the FPN income/monies paid will be solely the income of the Council to financially support the ongoing action and activities of the Community Safety Team enforcement functions.

5.2.2 There are no property implications.

5.2.3 There are no staffing implications as the required staffing to support this change in environmental enforcement functions has been achieved by the increase in officers following Community Safety Team restructure (from 6 to 21 Investigation and Enforcement officers).

5.3 Social Value

5.3.1 Not relevant for this report

5.4 Legal and Constitutional References

5.4.1 Litter offences are criminal offences and are classified under Sections 87 and 88 of the Environmental Protection Act 1990.

5.4.2 Fly tipping (not a legal term) is the illegal dumping of waste (liquid or solid) and is a criminal offence as classified under Sections 33 and 34 of the Environmental Protection Act 1990.

5.4.3 If a business fails to produce their licensed carrier of waste documents, they commit a criminal offence and as classified under Section 34 of the Environmental Protection Act 1990.

5.4.4 Under the Barnet Constitution, the Environment and Climate Change Committee has 'Responsibility for all borough-wide or cross-constituency matters relating to the street scene including, parking, road safety, lighting, street cleaning, littering, fly-tipping, fly-posting, graffiti, transport, waste, waterways, refuse, recycling, allotments, parks, trees, crematoria and mortuary, trading standards and environmental health.

5.5 Risk Management

5.5.1 A risk highlighted is the potential for the Council's corporate reputation being brought into disrepute in how it deals with low level fly tipping first time offences. This risk is partially mitigated by the case investigation adopted as described in section 1.4 (iii, iv and v) of this report.

5.6 Equalities and Diversity

5.6.1 If the recommendations in this report are agreed, pursuant to the Public Sector Equality Duty under section 149 of the Equality Act 2010, the current equalities impact assessment (EIA) will be required to be reviewed to ensure the approach does not have a disproportionate adverse impact on persons, particularly those with protected characteristics under the Equality Act 2010.

5.6.2 Being fair and giving equal chances to all our residents and businesses is central to the council's strategic equalities objective, (SEO), that "Citizens will be treated equally, with understanding and respect, and will have equal access to quality services which provide value to the taxpayer". Barnet and

organisations acting on its behalf are committed to fair treatment for all our citizens balancing their different needs and rights as we support our more vulnerable residents and incorporate the principles of equality into everything we do as a Council.

5.6.3 The public sector equality duty is set out in Section 149 of the Equality Act 2010. A public authority must, in the exercise of its functions, have *due regard* to the need to:

(a) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

5.7 Corporate Parenting

5.7.1 The decisions are not considered to have a direct or indirect impact on children in care.

5.8 Consultation and Engagement

5.8.1 Not relevant for this report as the actions are those agreed by way of the Environment and Climate Change Committee as detailed within this report.

5.9 Insight data

5.9.1 Not relevant for this report

5. BACKGROUND PAPERS

Recent papers to various committees on enforcement and some examples of web links to the council's service specific enforcement actions are listed below.

Environment Committee link Item 6; dated 13th September 2018

<https://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=695&MId=9477&Ver=4>

Environment Committee link Item 14; dated 28th November 2018

<https://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=695&MId=9478&Ver=4>

Environmental Protection Act 1990 (and amendments).

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

Barnet Council Corporate Enforcement and Prosecution Policy approved at the Policy and Resources Committee on 21st March 2017.

<https://barnet.moderngov.co.uk/documents/s38749/Appendix%203%20-%20Barnet%20Enforcement%20and%20Prosecution%20Policy.pdf>

Environmental Crime – Fixed Penalty Notices.

<https://www.barnet.gov.uk/citizen-home/parking-roads-and-pavements/Street-cleaning/litter-enforcement/fixed-penalty-notice.html>

Street Scene Enforcement Policy and Procedure.

<https://barnet.moderngov.co.uk/documents/s30193/Streetscene%20Enforcement.pdf>