

# NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

## Streetscene & Engineering Cabinet Board

2 March 2018

### Report of the Head of Streetcare

M. Roberts

#### Matter for Decision.

**Wards Affected:** ALL WARDS

#### **Fixed Penalty Notice for Fly Tipping**

##### **1. Purpose of Report**

- 1.1. To advise Cabinet Board of the introduction of new Fixed Penalty Notices to deal with fly tipping under the “Unauthorised Deposit of Waste (Fixed Penalty) (Wales) Regulations 2017”.
- 1.2. To seek a decision to set the level of the Fixed Penalty Notice to the maximum of £400, with an option of an early payment incentive.

##### **2. Executive Summary**

- 2.1. Fly tipping is an offence under section 33(1) of the Environmental Protection Act 1990. The act prohibits, subject to certain exemptions, the deposit of controlled waste or extractive waste in or on any land other than in accordance with an Environmental Permit. A person who commits an offence under section 33 (1) is liable on conviction:
  - In a Magistrates Court to imprisonment for 12 months and a fine of up to £50,000 or both.
  - In Crown Court, to imprisonment for 5 years and an unlimited fine or both.
- 2.2. The new regulations amend the Environmental Protection Act 1990 to insert a new section which enables Welsh Waste Collection Authorities to issue a Fixed Penalty Notice for small-scale fly-tipping offences. Such Fixed Penalties may not be less than £150 and not more than £400; if no amount is specified a

default amount of £200 will apply and a discount may be applied for early payment.

### **3. Background**

- 3.1. In 2016/17 local authorities in Wales received 38,614 reports of fly tipping, costing the Welsh Tax payer over 2.18 million to clear. Neath & Port Talbot CBC received 1050 reports of fly tipping, a reduction of 17% on the previous year's amount of 1271, costing over £76,000 to clear (according to the nationally agreed evaluation methodology).
- 3.2. Enforcement action continues to be taken to deal with perpetrators of fly tipping; however this is a complex and time consuming process which requires significant input of staff resources and cannot be guaranteed to be successful. The fines from any successful prosecutions are paid to the court and not to the local authority. In response to public concerns about fly tipping and appropriateness of sanctions available, the Welsh Government brought forward the "Unauthorised Deposit of Waste (Fixed Penalties) (Wales) Regulations 2017" which came into force on the 25th October 2017.
- 3.3. The Regulations introduce a new power enabling an authorised officer of a Welsh Collection Authority to serve a Fixed Penalty Notice on a person found to be responsible for fly tipping offences. The explanatory note within the legislation explains that the Regulations provide local authorities with an option of a more efficient and proportionate response to the small scale fly tipping of waste as opposed to enforcement by prosecution. In addition it allows an individual to discharge their liability for conviction of the offence by payment of the Fixed Penalty Notice. Fixed Penalty Notices also provide an opportunity for first time "non-habitual" offenders to avoid court and a possible criminal record. They offer a more efficient and proportionate response to tackling small-scale fly-tipping incidents which will also help ease the burden on our legal section and the court system.
- 3.4. The Regulations give local authorities the power to set the level of the Fixed Penalty Notice within the range of £150 to £400 with a default amount of £200 if no other amount is specified. Local Authorities can choose to make arrangements to accept a reduced amount for early payment of no less than £120 if paid within 10 days following the date of the notice. Fixed Penalty

Notice receipts can be retained by the council and may be used in exercising its functions in relation to fly tipping. Fixed Penalty Notices can be used on both public and privately owned land. If the Fixed Penalty Notice is not paid then the council's recourse will be to prosecute via the normal court process

3.5. Fixed Penalty Notices should not be issued to repeat offenders. Where an offender is taken to court, the fact that they have been issued with a previous Fixed Penalty Notice may influence the court's assessment of the offender's suitability for a particular sentence. In Wales an "Enforcement Working Group" facilitated by Fly Tipping Action Wales has produced guidance on what constitutes small scale fly tipping. On occasions there may be individual circumstances that will need to be considered, but the guidance will assist in ensuring that a consistent approach is adopted throughout Wales when issuing Fly-Tipping Fixed Penalty Notices; the guidance proposes that the following criteria should apply when considering the suitability of a Fixed Penalty Notice:

- First time non-habitual offenders only
- Non-hazardous waste only
- Up to a car boot load
- Up to 8 black bags
- One or two bulky items (e.g. furniture, white goods)

3.6. Fly-tipping blights our communities and it damages our environment. These powers will provide Local Authorities with an additional enforcement tool for small-scale fly-tipping offences where a prosecution is considered disproportionate. The ability to issue Fixed Penalty Notices will not eradicate the problem of fly tipping but it is a positive step in tackling an issue that has an impact across the County Borough.

3.7. Experience has shown that over the last two years fines issued by the courts for small scale tips are ranging between £150 and £250, together with a Victim Surcharge of perhaps £30. In addition to this the officer's investigatory costs and clean-up cost are applied for; these costs are generally awarded in full. Typically the total penalty awarded in the court for a small scale fly tip has been in the range of £250/£350, but have also been much higher.

- 3.8. When determining the level of the Fixed Penalty Notice it is clearly important that it acts as a deterrent. It is also important that it is not set at a level which incentivises the offender to ignore the fine and take the option of a court hearing. Of course the outcome of legal proceedings cannot be pre-determined, but an analysis of financial penalties imposed for relevant offences in recent years indicates that typically it would cost an offender less to pay the Fixed Penalty Notice at the maximum of £400 than to be found guilty in court as for example, it also allows the individual to avoid any costs associated with legal representation.
- 3.9. As stated above Local Authorities can choose to make arrangements to accept a reduced amount for early payment of no less than £120 if paid within 10 days of the date of issue on the notice. Whilst a discount can encourage an early payment it also has the effect of reducing the financial penalty which would impact upon the deterrent effect of the Fixed Penalty Notice. It is therefore proposed that the Fixed Penalty Notice is set at the maximum level of £400 with an early discount payment of £280.

#### **4. Delegated Powers**

- 4.1. To implement the new Fixed Penalty Notices will require associated powers to be delegated to the Director of Environment and the Head of Streetcare to issue Notices on behalf of the Authority, and to appoint named competent Waste Enforcement Officers to issue such Fixed Penalty Notices on their behalf.

#### **5. Financial Impact**

- 5.1. In order to issue a Fixed Penalty Notice for fly tipping the investigatory process would be no different than if we were going down the prosecution route; the evidence must be conclusive. However, during the financial year 2016/17 the Waste Enforcement team dealt with 29 cases that would have constituted a “small scale fly tip” and if the proposed Fixed Penalty Notice regime had been in force it may have generated an income of between £8,120 - £11,600. Any income gained as a result of this regime may be used to support the Waste Enforcement team in their efforts to combat fly tipping.

#### **6. Equality Impact Assessment**

6.1. A Screening Assessment has been undertaken to assist the Council in discharging its Public Sector Equality Duty under the Equality Act 2010. After completing the assessment it has been determined that this proposal does not require an Equalities Impact Assessment

## **7. Workforce Impact**

7.1. There are no workforce impacts associated with this report

## **8. Legal Impact**

8.1. There are no legal impacts associated with this report, but the use of Fixed Penalty Notices will reduce the burden on this council's legal services.

## **9. Risk Management**

9.1. There are no risk management issues associated with this report.

## **10. Consultation**

10.1. There is no requirement under the constitution for external consultation on this item.

## **11. Recommendations.**

11.1. It is recommended that Members:

- Adopt the use of Fixed Penalty Notices for the small scale fly tipping of Household Waste in accordance with the Unauthorised Deposit of Waste (Fixed Penalties) (Wales) Regulations 2017.
- Set the level of Fixed Penalty Notice at £400 with an early payment incentive reducing the fine to £280 if paid within ten days of the FPN being issued.
- Give delegated authority to the Director of Environment and the Head of Streetcare to issue Fixed Penalty Notices under the new legislation, and to appoint specific named competent Waste Enforcement Officers to issue such Fixed Penalty Notices on their behalf.

## **12. Reasons for Proposed Decision**

12.1. The adoption of FPN's for small scale fly tipping of household waste will improve the authority's effectiveness in tackling fly

tipping and allow officers to deal with small scale fly tipping more proportionally and efficiently. Any monies accrued as a result of issuing notices will help to offset the associated investigatory costs/removal costs of fly-tipped waste and reduce the amount of case files submitted to the Authority's Legal Section.

### **13. Implementation of Decision**

- 13.1. The decision is proposed for implementation after the three day call in period.

### **14. Appendices**

- 14.1. Equalities Impact Screening Assessment

### **15. List of Background Papers**

- 15.1. Nil

### **16. Officer Contact**

- 16.1. Mr Andrew Lewis, Waste and Neighbourhood Services Manager.  
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