

Portfolio Holder decision record sheet

Name of decision maker:	Cllr Janice Marshall
Portfolio:	Environmental, Sustainability and Regulatory Services
Date of Portfolio Holder decision:	

Title of decision:	Adoption of fees and approach in response to The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016.
Part II:	
Part II reason:	

Decision made and reasons:	<p>To introduce and agree a response to The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016.</p> <p>Under the context of Dacorum Borough Council membership of the Hertfordshire Fly Tipping Group, to recommend the adoption of a level of fines in common with other local authorities in Hertfordshire.</p> <p>Related to the regulations to seek formal approval for the definition of fly tipping to be used for future reporting purposes.</p> <p>That delegate authority to the Assistant Director (Neighbourhood Delivery) to make appropriate arrangements for the issuing of fixed penalty notice.</p>
Reports considered:	See below
Officers/Councillors/Ward Councillors/Stakeholders consulted:	Hertfordshire Waste Partnership's Directors Group
Monitoring Officer comments:	<p>The use of fixed penalty notices should act as a deterrent to the unauthorised deposit of waste. The report provides some clarity on the definition of "fly-tipping" but it is acknowledged that each case will need to be considered individually before action is taken to enforce.</p>
Chief Financial Officer comments:	<p>The proposed charges will be considered by members as part of the scrutiny of fees and charges for the 2017/18 budget.</p> <p>All charges will reflect costs incurred and forecast and will be built into the budget setting process once there is certainty around likely costs and income.</p>
Implications:	
<u>Financial</u>	The fines levied should help offset the cost of investigation of individual offences and service of fixed penalty notices. It is unlikely that any net income will be generated for the council as it is anticipated that the number of notices served will be low
<u>Value for Money</u>	The introduction of fixed penalty notices is seen by the government as being a cost effective enforcement tool as it should avoid the need for

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taking costly prosecutions in court.
Options considered and reasons for rejection:

Portfolio Holder's signature:
Date:
Details of any interests declared and any dispensations given by the Standards Committee:

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Date decision record sheet received from portfolio holder:	
Date decision published:	Decision no:
Date of expiry of call-in period:	
Date any call-in received or decision implemented:	

The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016

Author: Dave Austin Assistant Director (Neighbourhood Delivery)

1. Purpose of Report

- 1.1. To introduce and agree a response to The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016.
- 1.2. Under the context of *Dacorum Borough Council* membership of the Hertfordshire Fly Tipping Group recommend the adoption of a level of fines in common with other local authorities in Hertfordshire.
- 1.3. To seek formal approval for the definition of fly tipping to be used for future reporting purposes.

2. Background

- 2.1. In 2014/15 Hertfordshire as a whole recorded approximately 12,500 fly tipping offences. In common with the rest of the UK approximately 60% of these relate to 'low level' fly tipping offences linked to incorrect handling and presentation of 'black bagged' residual waste by individuals and local businesses.
- 2.2. To date borough and district councils have only had limited options where there is sufficient evidence to enforce on fly tipping. These are either to prosecute offenders in court or where there is a small scale fly tipping, such as a few bags of waste treat this as littering and issue a fixed penalty notice up to £80. However, for some offences a fine of £80 is not enough and taking cases to court is time consuming and often not reflected in the fines issued when prosecutions are successful.

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- 2.3. Recent Government consultations have highlighted the inherent difficulties and costs involved in achieving successful prosecutions for fly tipping. As a result local government representatives and other stakeholders have for some time been calling for the introduction of new fixed penalty notices (FPNs) for fly tipping with higher levels of fine to both properly reflect the costs involved as well as act as a deterrent.

3. The Hertfordshire Fly Tipping Group

- 3.1. The Authority is a member of the Hertfordshire Fly Tipping Group (FTG), which is a County wide partnership including representatives from:

- All ten borough / district Councils
- Hertfordshire County Council
- Hertfordshire Constabulary
- Office of the Police and Crime Commissioner
- Hertfordshire Fire & Rescue Service
- Local Authority Community Safety Manager Representative
- The Environment Agency
- National Farmers Union (provides a link in with farmers as private land owners affected by fly tipping).
- M25 Connect

- 3.2. The purpose of the FTG is to:

- To provide a policy forum for development and review of fly tipping issues.
- To ensure there are clear reporting processes between local authorities, housing authorities, the Police and the Hertfordshire Fire and Rescue Service.
- To encourage private land owners to report fly tipping to their local authority.
- To encourage timely, accurate and appropriate information sharing between partners tackling fly tipping.
- To ensure good communication between agencies to progress investigations in a timely manner.
- To co-ordinate opportunities to capture and analyse data to inform problem profiling and strategic needs assessments.
- To initiate and support opportunities for joint agency operations.
- Sharing and co-ordinating crime prevention opportunities.
- Assisting in sharing good practice and national updates.
- To develop protocols for how the problem is publicised and by whom.
- To develop and maintain a media plan for the partnership to raise awareness of the problem, to promote the initiatives and successful prosecutions, to reassure the public that the crime of fly-tipping is being addressed and to act as a deterrent to perpetrators.

- 3.3. At FTG's last meeting held on the 1st June 2016 a range of stakeholders expressed concern with respect to possible implications that may arise from the 10 districts developing individual approaches to The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 discussed below. This could result in differing levels of fines and therefore inconsistency across the County possibly resulting in fly tipping problems being moved across district boundaries.

- 3.4. In response at a meeting of the Hertfordshire Waste Partnership's Directors Group on the 27th June 2016 it was agreed that the boroughs and districts would postpone any local

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consideration of the new regulations in order to give the FTG time to develop a County wide approach as recommended below.

- 3.5. It should be noted that the HWP has recently taken over Chairmanship of the FTG and is currently making changes to formally integrate the FTG into the waste partnership thereby providing political oversight and scrutiny of the work carried out by the group.

4. The Unauthorised Deposit of Waste (Fixed Penalties Regulations) 2016

- 4.1. In response to local government's concerns on the 9th May 2016 the Government introduced the Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 herein referred to as *the Regulations*.
- 4.2. *The Regulations* are intended to address small scale fly tips, which historically make up the bulk of the incidents reported by local authorities. *The Regulations* amend Section 33 of the Environmental Protection Act 1990 permitting statutory authorities to issue a "Fixed Penalty Notice" (FPN) for fly tipping offences where the statutory authority believes an FPN is more appropriate than taking the offence to Court.
- 4.3. However, the Government has made it clear that they should only be used for small scale fly tipping offences with enforcement bodies still expected to pursue prosecutions for more serious cases of fly tipping.
- 4.4. In deciding how best to interpret *the Regulations* local authorities need to be mindful of existing FPNs for offences such as littering and therefore set the new fly tipping FPN at a level which:
- reflects the more serious nature of fly tipping as an offence;
 - better reflects the potential costs involved;
 - via appropriate public relations coverage acts as a deterrent.
- 4.5. *The Regulations* set a range at £150 - £400 with a default level of £200. When setting the fly tipping FPN Hertfordshire local authorities have considered the levels set for other environmental offences. For example the FPN for failing to provide a waste carriers licence or waste transfer note is £300. In common with other FPN regimes the regulations also allow for fines to be discounted if paid within 10 working days.
- 4.6. Taking the above into account officers are recommending that the fly tipping FPN be set at £300, reduced to £200 if paid within 10 days.
- 4.7. Officers believe this level of penalty demonstrates the seriousness of the fly tipping offence, but is set at a level, that makes the option to pay the penalty, preferable to going to Court. Setting the reduced penalty at £200 if paid within 10 days continues to emphasise the more serious nature of fly tipping compared to littering but also reflects existing practice by Magistrates who reduce 'sentences' by a third in response to early guilty pleas.

5. Definition of fly tipping

- 5.1. Until recently the number of fly tipping incidents recorded in each borough / district were not comparable as a result of different definitions of fly tipping leading for example to some incidents being classed as littering when in fact they constituted fly tipping under Defra guidance.

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- 5.2. However, recent surveys conducted by the FTG with respect to the levels of enforcement activity carried out across the County indicate a better degree of alignment between Hertfordshire's boroughs and districts on this issue.
- 5.3. That said anecdotal evidence still indicates differences in interpretation. In addition given the issue is one of policy it is unclear what actions have been taken locally to seek formal agreement from Members with respect to the definition of fly tipping used for reporting purposes.
- 5.4. Technically there is no definition of fly tipping other than the offences set out in section 33 of the Environmental Protection Act 1990, i.e. the illegal disposal of controlled waste. The Litter & Refuse Code or Practice published by Defra in 2006 noted that a single plastic sack of rubbish should usually be considered fly tipping rather than litter. However, the use of the term 'usually' indicates an acceptance that definitions cannot be rigid.
- 5.5. Under this context it is commonly assumed that fly tipping is as a result of deliberate negative behaviour ranging from those that care little about their local amenities to those seeking to profit from the illegal dumping.
- 5.6. However, it is common knowledge that a significant proportion of the fly tipping incidents recorded each year stem from individuals acting in what they believe to be a fair and reasonable manner, i.e. leaving out additional black bags to be collected alongside their refuse bin on collection day where the motivation is not negative but rather is intended as being responsible. In Hertfordshire some authorities would class this as fly tipping and some would not, which again is leading to an inconsistency in reporting.
- 5.7. Taking the above into account and in order to further improve the level of consistency when it comes to the definition of fly tipping in relation to black bags it is recommended that incidents that occur on collection day, i.e. plastic bags placed to next to a bin on collection day should not be defined as fly tipping.
- 5.8. However, the following incidents may still be considered fly tipping:
 - Plastic bags left out on non-collection days;
 - Plastics bags / sacks or other 'containers' containing hazardous materials such as bonded asbestos, chemicals, paints etc;
 - Plastic bags / sacks left out next to a bin where it cannot be reasonably determined that the sacks and bin belong to the same premise;
 - Plastic bags / sacks left out in numbers that indicate unusual waste behaviour, i.e. the illegal deposit of trade waste as domestic;
 - Repeat offenders, i.e. those that regularly leave out excess waste for example as a result of refusing to engage with the comprehensive recycling services now offered by Hertfordshire's boroughs and districts;
 - Plastic bags / sacks left out by commercial customers contrary to their contracted waste arrangements. Such incidents should continue to be treated as either fly tipping or alternatively as '*Duty of Care*' offences.
- 5.9. That said, whilst paragraphs 5.7 and 5.8 correctly try to underpin a common definition for use across the County it has to be recognised that flexibility is still needed in the overall approach in order to account for the potential range of circumstances that could be encountered as part of any single incident.

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- 5.10. Based on this approach the FTG has agreed that trade waste deposited in domestic bins or trade waste deposited in domestic bins will not be treated as fly tipping but could be treated as Duty of Care offences,
- 5.11. Therefore pragmatically it is recommended that whilst there would be general adherence to the definition noted above; ultimately in determining whether to issue a FPN for littering, a £300 FPN or to prosecute the partner authorities may consider factors such as waste type, size, location, effect on environment and attitude of the offender in accordance with district and borough Councils own enforcement policies.

6. Stakeholder Views

- 6.1. As noted above the FTG includes a number of non-local authority partner organisations each of which has a particular viewpoint when it comes to dealing with the impact of fly tipping and wider illegal waste activity.
- 6.2. The views of these organisations are noted below in order assist and support the issues raised in the report as well as consideration of the recommendations below.

6.3. Herts Constabulary / Office of the Police & Crime Commissioner

- 6.3.1. The Police and Crime Plan, Everybody's Business (2015-2020), outlines the Commissioner's intention to respond to concerns raised by the public, this includes fly-tipping and other low level anti-social behaviour (ASB). In order to understand the problem the Constabulary has been working closely with the Hertfordshire Waste Partnership, the Environment Agency, local councils and others over the last 12-months.
- 6.3.2. During this time it has become evident that a more consistent approach is required across the county to:
- a) Agree a single definition of fly-tipping across each of the 10 Community Safety Partnerships (CSPs) and Constabulary in line with the Department for Environment, Food and Rural Affairs (Defra) guidelines, and
 - b) Ensure all CSPs use the national Defra software data management system, WasteDataFlow, in order to achieve a standardised recording process across the county.
- 6.3.3. This will enable more efficient capture of data and better quality information which can be analysed to understand the nature of the problem and the response required. This can then feed in to the strategic assessments, which will assist in aligning resources in the coming year.
- 6.3.4. The Constabulary has agreed to ensure an effective triage process is introduced in the Force Control Room to ensure better coordination of fly-tipping and a Single Point of Contact in each Safer Neighbourhood Team. Although we do not have primacy in respect of these crimes we have responsibilities to deal with it when it is reported to us as a crime in action and we are often called as the first point of contact when a member of the public come across illegally dumped waste. A joined up approach in all respects is essential to ensure we can articulate the scale of the problem, allow good information and intelligence sharing and support a common approach to prosecutions, which includes fixed penalty notices. Without this we will continue to have only part of the picture of the problem and with inconsistent enforcement action we will undoubtedly just cause activity to be displaced.

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6.3.5. The Commissioner has committed funding to support councils to deal with fly-tipping and other low level ASB issues through a ring-fenced 'Partnership Fund' of £100k each year for four years. This will enable councils to apply for match funding to support stubborn and persistent issues. Further details on how the fund will work will be announced over the coming months.

6.4. National Farmers Union

6.4.1. The National Farmers' Union (NFU) is a trade association representing 47,000 farmers and growers in England and Wales, 600 of these in Hertfordshire. Fly tipping is estimated to affect two thirds of farmers nationally. As waste dumped on private land is the responsibility of the landowner to clear, fly-tipping can put a significant and undue financial burden on farmers and landowners as well as cause significant business disruption.

6.4.2. In order to represent the interests of farmers and private landowners in Hertfordshire the NFU has been working with the Herts Fly Tipping Group to work towards solutions that alleviate the problem for our members. Recent conversations at FTG meetings have centred on consistency of approach to enforcement and reporting between Local Authorities, specifically in relation to Fixed Penalty Notices and the definition of fly tipping for reporting purposes. The NFU's views on these are as follows.

6.4.3. In relation to FPNs issued under the new regulations the NFU is concerned that FPNs may be seen as a convenient replacement for prosecution. While noting that paragraph 4.3 of this report explains that Government has made clear that FPNs should only be used for small scale fly-tipping offence and prosecutions should be sought for more serious cases, no attempt is made to define what constitutes "small scale" versus "serious". Are these differentiated on volume alone, and if so what volume, or is waste type (i.e. hazardous/non-hazardous) also taken into account? An agreed definition of these terms is necessary for a consistent approach toward issuing FPNs.

6.4.4. The NFU has previously suggested (in our response to DEFRA's waste crime consultation) that a sliding scale should be adopted where the amount of the FPN is relative to the volume and type of waste collected. However, in the case where agreement is reached that FPNs should only be issued for (defined-volume) small-scale, non-hazardous waste then a single-value FPN is appropriate and £300, as suggested by the FTG, is considered to be of a suitable level to act as a deterrent to would-be fly-tippers. However, we believe that FPNs should only be issued to first-time offenders and in cases of repeat offence then full prosecution should be sought.

6.4.5. With respect to the definition of fly tipping the NFU notes that fly tipping is a criminal offence. In the NFU's opinion consistency of approach between local authorities when reporting fly tipping incidences is essential to ensure the accuracy and reliability of data, which provide supporting evidence for policy decisions and allocation of resources.

6.4.6. As a trade association representing the interests of farmers and growers, our concern is the illegal dumping of waste on private farm land, or on public land blocking access to private land, where people intentionally act in an irresponsible and anti-social manner either for monetary profit or as a cost-avoidance measure.

6.4.7. In order to gain a clear picture of the criminal extent of the problem, the NFU welcomes a shared definition of fly tipping in accordance with DEFRA guidelines, recognising that reasonable exceptions in certain circumstances where there was no criminal intention to dump waste (such as the example given in paragraph 5.6) are appropriate. We would stress however that a true picture of the extent of the problem will only be gained if consistent reporting procedures apply to private as well as public land.

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6.5. Environment Agency

6.5.1. S.33ZA(1) states:

“Where an authorised officer of an English waste collection authority has reason to believe that a person has committed a waste deposit offence in the area of the authority, the officer may give the person a notice under this section in respect of the offence.”

6.5.2. As the Environment Agency is not a waste collection authority, the new FPN ability would not apply to us. However we support the FPN approach that the FTG and all local authorities will now be able to utilise in the fight against such small scale, persistent offending.

6.5.3. With regards to the paragraphs relating to the FTG’s approach on Fly tipping, the EA certainly welcomes a consistent County wide approach.

6.6. Hertfordshire Fire & Rescue Service

6.6.1. Hertfordshire Fire & Rescue fully support the joined up approach as set out in this report.

6.6.2. Our Integrated Risk Management Plan 2014-18 States in relation to secondary fires

“We will continue to activate, initiate and support environmental action days and other arson reduction initiatives, including the rapid removal of abandoned vehicles and rubbish from our streets and open spaces in an attempt to mitigate the risk of these incidents occurring”

6.6.3. Our own figures show that secondary fires involving refuse, which are predominately caused by arson or anti- social fire setting is by far the largest group we record.

6.6.4. HFRS will, while carrying out it Risk Based Inspection Program with businesses, continue to advise on the appropriate management of waste and will advise business on The Unauthorised Deposit of Waste (Fixed Penalties Regulations) 2016 and the scale of fines by Fixed Penalty Notice.

6.6.5. We will also continue our anti arson / vigilance patrols where fire crews and volunteers conduct local audits identifying arson risks. These patrols incorporate both rural and urban areas and domestic and business premises. One of the key elements of the patrols is to find and report fly tipping or inappropriate storing of waste which could present a target for Arsonists. Currently this information is fed back into local authorities via their own reporting processes.

7. Recommendations

That the relevant Member:

- a) Endorses the need for a consistent approach to the application of The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 across the County.
- b) In response to the new regulations approves the suggested level of fines and discounts as outlined in paragraphs 4.6 and 4.7.

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- c) Approves the interpretation of the Defra 2006 guidelines with respect to the definition of fly tipping to be used for future reporting purposes as discussed in paragraphs 5.1 – 5.10.
- d) Instructs officers to formally write to the Chairman of the Hertfordshire Fly Tipping Group outlining the Authority's response to the recommendations noted above including any additional observations the Authority wishes the Fly Tipping Group to take on board.