

Decision Report

7th March 2024

Tackling Litter and Fly tipping

Ordinary Decision



Report of Head of Environment, Oliver Sherratt

Councillor Mark Wilkes, Cabinet Portfolio Holder for Neighbourhoods and Climate Change

Electoral division(s) affected:

Countywide

Purpose of the Report

- 1 To provide an update on the council's approach to litter and fly tipping.
- 2 To consider and agree options for setting new fixed penalty notice levels for litter and fly tipping, householder duty of care, graffiti and fly tipping.
- 3 To outline the use any additional income.

Executive summary

- 4 In England, the issue of littering and fly-tipping has become a significant national concern, with widespread environmental, social, and economic implications. Despite public awareness campaigns and legislative measures, littering continues to be a pervasive problem, affecting urban and rural areas alike. Fly-tipping, the illegal dumping of waste, further compounds the issue, straining local resources and contributing to environmental degradation. The national context reveals a need for comprehensive strategies to address the root causes of littering, enforce existing regulations, and foster a culture of responsibility. Efforts to combat litter and fly-tipping in England must integrate community engagement, technological solutions, and policy enforcement to create a cleaner and more sustainable environment for all.
- 5 In Durham we have sustained a balanced approach of education, engagement, and tough enforcement through a range of measures. In February 2023 it was agreed to remove the early discounts for FPN's across environmental crime unless there was an eLearning course in place.
- 6 The Environmental Offences (Fixed Penalties) (Amendment) (England)

Regulations 2023 that came into force on the 31st July 2023 have given local authorities the option to increase the fines issued under fixed penalty notices for the littering, unauthorised or harmful deposit, treatment, or disposal of waste (fly tipping), duty of care for household waste and graffiti/ flyposting.

- 7 These changes do not cover the full range of FPN's with changes in the future expected for those related to Public Space Protection Orders (PSPO) and Community Protection Notices (CPN), a future report will consider these when the full details are known.
- 8 Durham has a good reputation for tackling the fly tipping and littering with innovation and a strong 'Civic Pride' approach. Overall Durham issued more than 2000 FPN's last year with 1300 of these being issued for the offences in the table below. This table details the FPN's affected by the Regulations, their existing maximum levels, and the new ones available.

Offence	Previous maximum FPN level	New maximum FPN level
Graffiti	£150	£500
Flyposting	£150	£500
Littering	£150	£500
Household waste duty of care	£400	£600
Fly-tipping	£400	£1000

- 9 Setting new levels needs to a balance of a range elements which the recommendations account for including:
 - (a) A strong message
 - (b) Likely payment rates
 - (c) No discounts unless an eLearning package exists.
 - (d) Impact on behaviour change
- 10 Nationally there have been some authorities that have adopted updated FPN levels although these vary significantly, Darlington and Chelmsford for example have increased the rates to the maximum, others have decided to increase to old maximum levels such as Hull City Council and Birmingham (littering) and finally Cambridge who have introduced a differential rate based on perceived harm.
- 11 The recommendations consider a range of options, balancing criteria set out in paragraph 9 and supports a differential approach with the maximum fines possible for some second offences within a 3 year period from the first offence.

It is also recommended that Immediate Justice is supported through referrals for Graffiti and Flyposting offences.

- 12 During the BSC period spring there was more than 4000 hours of volunteer hours although community activity, since Covid community litter picking has increased significantly not just based around the campaign period but all year-round.
- 13 It is proposed that any additional income is ringfenced to support future MTFP's and educational activity around environmental crime.

Recommendation

- 14 It is recommended that the Head of Environment in consultation with the Head of Legal and Democratic Services:

(a) FPN's to have the maximum available FPN with no discounted levels unless an eLearning course is available as detailed in the table below:

	Current DCC		Proposed DCC	
	Full Rate	eLearning	Full Rate	eLearning
Littering	£150	£85	£250	£125
Littering (2 nd offence)	N/A	N/A	£500	N/A
Fly-tipping (up to car boot size)	£400	£250	£1000	£500
Fly-tipping (small van)	Court	N/A	£1000	N/A
Fly-tipping (Larger than Small Van)	Court	N/A	Court	N/A
Household Duty of Care	£300	N/A	£400	£250
Household Duty of Care (2 nd Offence)	Court	N/A	£600	N/A
Graffiti	£100	N/A	£250	N/A
Graffiti (2 nd offence)	Court	N/A	£500	N/A
Fly-posting	£100	N/A	£250	N/A
Fly-posting (2 nd offence)	Court	N/A	£500	N/A

- (b) Support Immediate Justice through referrals for graffiti and flyposting offences.
- (c) Any additional income is ringfenced to support future MTFP's for Neighbourhood Wardens and educational campaigning around environmental crime.

Background

- 15 Littering and fly tipping represent significant environmental challenges in England, impacting both urban and rural areas. Despite ongoing efforts to address these issues, they continue to be major concerns, affecting the aesthetic appeal of public spaces and contributing to environmental degradation. The prevalence of litter and fly tipping across the country has prompted government initiatives and community-driven campaigns to combat these behaviours and promote a cleaner, more sustainable environment.
- 16 The Litter Strategy for England, published in 2017 focusses on the need for the country to be a great place to live, with clean water and air; beautiful countryside to enjoy and urban areas that are prosperous, vibrant, and welcoming. The strategy identified how littering is bad for our overall wellbeing, the environment and the economy and set out an ambition for us all to be the first generation to leave the natural environment of England in a better state than it currently is in.
- 17 The strategy focused on the areas of:
 - (a) Changing behaviour; through stronger enforcement and infrastructure
 - (b) Measuring litter; through better baselining of data and monitoring of progress
 - (c) Education and awareness; focusing on campaigns, anti-litter education, volunteering and community support.
- 18 Addressing the national challenge of littering and fly tipping requires a multi-faceted approach that includes active community engagement. Many local communities have initiated grassroots efforts, organising clean-up events, educational programs, and awareness campaigns. These endeavours aim not only to physically tackle the existing waste but also to instil a sense of pride and responsibility among residents. Recognising the role of communities in combating littering and fly tipping is crucial for fostering a collective commitment to maintaining a cleaner and more sustainable environment throughout England.
- 19 Durham County Council declared a climate emergency in 2019, acknowledging the global crisis that is a direct result of human activity, and committing the Council and the county to taking swift action to reduce greenhouse gas emissions and reduced emissions by 80% by 2030. Waste is one of the key themes and the way which people manage their waste is an important feature to reduce the impact on our planet.
- 20 Littering, fly-tipping and associated environmental offences, like side waste and abandoned vehicles, blight communities and impose avoidable costs on the public purse and can be harmful to the environment. They also undermine the actions of legitimate residents and businesses, where unscrupulous and irresponsible operators avoid paying legitimate waste disposal costs and so undercut those that operate within the law.

- 21 In Durham we have had the ‘civic pride’ approach that looks harness the education, engagement, operations, and enforcement. We have a track record of success at tackling these key community issues for example:
- (a) Reduced cleared fly tipping incidents by 40% since 2013/4 and the winning ‘Operation Stop It’ campaign.
 - (b) Innovative eLearning littering package to change behaviour, replicated for waste offences also.
 - (c) LAMS surveys show 93% of sites are at an acceptable standard.
- 22 Despite the great work our communities continue to report this as a key issue that impacts on their lives and impacts on our other corporate priorities.
- 23 Household Duty of Care requires occupiers of domestic property to take all reasonable measures available to them in the circumstances to ensure that they only transfer household waste produced on that property to an authorised person. This reduces the chance of waste ending up in the hands of those who would fly-tip it.
- 24 Graffiti is a low scale problem within the County, it suffers from small-scale tagging of street furniture and there have been no cases of enforcement officers having caught offenders ‘in the act’ within the city. Flyposting is also not a large-scale problem within the city, and it is exceedingly rare for enforcement officers to catch individuals ‘in the act.’
- 25 On 31st July 2023, the Regulations came into effect. This change in legislation gives local authorities the ability to raise fixed penalty notices (FPNs), from the current levels to new maximum levels (varies depending on the offence) for various offences. Fixed penalty notices revised under the Regulations are detailed below:

Offence	Previous maximum FPN level	New maximum FPN level
Graffiti	£150	£500
Flyposting	£150	£500
Littering	£150	£500
Household waste duty of care	£400	£600
Fly-tipping	£400	£1000

26 Nationally there have been some authorities that have adopted updated FPN levels although these vary significantly, Darlington and Chelmsford for example have increased the rates to the maximum, others have decided to increase to old maximum levels such as Hull City Council and Birmingham (littering) and finally Cambridge who have introduced a differential rate based on perceived harm.

27 **Option 1** – Introduce FPN rates at the maximum levels available.

28 This option provides a simple approach to setting the FPN's, it does though create an increased risk of individuals not paying and risking court which takes more time and resources with the fines then being collected by the judicial system.

	Current DCC		Proposed DCC	
	Full Rate	eLearning	Full Rate	eLearning
Littering	£150	£85	£500	£200
Fly-tipping (up to car boot size)	£400	£250	£1000	£250
Fly-tipping (Larger)	Court	N/A	Court	N/A
Household Duty of Care	£300	N/A	£400	£250
Graffiti (2 nd offence)	Court	N/A	£500	N/A
Fly-posting	£100	N/A	£500	N/A

29 **Option 2** – Introduce differential FPN rates which escalate with the harm including the maximum allowable levels.

30 This option is more complicated because of the differential, it does provide a greater level of proportionality which it is hoped will translate to good payment rates. This in turn is swifter justice with individuals being allowed the opportunity to discharge their liabilities whilst at the same time the proposal has a strong enforcement message for the more hardened offender with the top rates of FPN being used for second offences. The higher (top) rate for second offences would apply within 3 years of the original offence.

	Current DCC		Proposed DCC	
	Full Rate	eLearning	Full Rate	eLearning
Littering	£150	£85	£250	£125
Littering (2 nd offence)	N/A	N/A	£500	N/A
Fly-tipping (up to car boot size)	£400	£250	£1000	£500
Fly-tipping (small van)	Court	N/A	£1000	N/A
Fly-tipping (Larger than Small Van)	Court	N/A	Court	N/A
Household Duty of Care	£300	N/A	£400	£250
Household Duty of Care (2 nd Offence)	Court	N/A	£600	N/A
Graffiti	£100	N/A	£250	N/A
Graffiti (2 nd offence)	Court	N/A	£500	N/A

Fly-posting	£100	N/A	£250	N/A
Fly-posting (2 nd offence)	Court	N/A	£500	N/A

- 31 **Option 3** – Introduce new FPN levels with the use of immediate justice.
- 32 As part of the government's Anti-Social Behaviour (ASB) Action Plan in England, the implementation of immediate justice has emerged as a pivotal strategy. Recognising the urgency of addressing Anti-Social behaviour, this approach seeks to streamline the judicial process for swift responses to minor offenses, fostering a sense of accountability in the community. Immediate justice aims to expedite the resolution of cases related to Anti-Social behaviour, ensuring that consequences are promptly delivered. By reducing delays in the legal system, the government aspires to create a more responsive and efficient mechanism for addressing such issues, thereby enhancing community safety and cohesion.
- 33 Durham is a Trailblazer and has received significant funding (+£2million) for Hotspot Policing and Immediate Justice. This option would see those caught for waste related offences referred to probation for Immediate Justice, as an alternative to the FPN. This would support the existing Trailblazer, anyone that did not take the opportunity would be issued an FPN. The risk with this approach is that it reduces the level of income received.
- 34 **Use of FPN income** - in increasing the level for FPNs it may create the perception that they could be used to generate income for the council. The guidance is clear that FPNs should not be used in this way, and in accordance with legislation income received must be spent on specified functions. The Code of Practice on Litter and Refuse Section 1A (Section 11) clearly sets out what purposes that the income from fixed penalty notices may be spent on as per 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 flyposting. This may include spending on communications and education to abate littering, or on the provision of bins and other street litter disposal infrastructure.
Fly-tipping	Waste on land
Household waste duty of care	Waste on land

- 35 In determining the appropriate level of an FPN, the council needs to consider the deterrent effect of different levels, peoples' readiness to pay and the levels of fines currently imposed in the magistrates' courts. FPNs that are set too high for local conditions or are likely to be higher than a Court imposed fine in the event of non-payment, will lead to substantial non-payment rates and are counterproductive.
- 36 The intention is that the revised FPNs will function as a deterrent to offenders in line with the aims set out in the 2023 Anti-Social Behaviour Action Plan; and that local authorities using them will see a decrease in the number of environmental crime incidents and the number of prosecutions for these offences.
- 37 FPN's are an effective and visible way of dealing with low level environmental crime and will be supported by the public, provided they are used sensibly, enforced fairly, and are seen as a reasonable response to genuine problems.
- 38 Durham has looked at littering and delivered an integrated approach to resolve the issue through a range of interventions including:
- (a) Education in schools
 - (b) Community involvement through the Big Spring Clean (4260 hours of volunteering in the campaign period), It's your Neighbourhood, Northumbria/ Britain in Bloom
 - (c) Street cleansing operations
 - (d) Strong enforcement (1200 FPN's) and the innovation of eLearning
- 39 Environmental crime is a significant concern for our communities, affecting both the environment and the overall quality of life. To support this, any additional income would be ringfenced to support any future service MTFP's and environmental campaigns.

Background papers

- Review of Environmental FPN's – Feb 2023

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Appendix 1: Implications

Legal Implications

The Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023 make changes to the Environmental Offences (Fixed Penalties) (England) Regulations 2017 and the Environmental Protection Act 1990, to enable local authorities to amend the level of fine for prescribed offences, and they came into force on 31st July 2023.

Regulation 2 of the 2023 Regulations amends the Environmental Offences (Fixed Penalties) (England) Regulations 2017 so that it substitutes Regulation 5 of the 2017 Regulations, increasing the upper limit of FPNs for littering, graffiti, and fly-posting offences from £150 to £500.

The Environmental Protection Act 1990 is amended by the 2023 Regulations so that:

- Section 33ZA(9)(a); the upper limit of fixed penalty notices are increased from £400 to £1,000 (this relates to the offence of unauthorised or harmful deposit, treatment, or disposal of waste i.e., fly-tipping, or illegal dumping).
- Section 34ZA(8); the upper limit of fixed penalty notices are increased from £400 to £600 (this relates to duty of care etc. as respects to household waste).

Finance

The legislation for these offences states that the money obtained from FPNs must be used in carrying out the Council's functions under this legislation.

The amount of money obtained from FPNs cannot be guaranteed and therefore cannot be utilised to underpin the Service's baseline budget. Effective education will lead to behavioural change, which in turn, will reduce the number of FPNs issued and therefore the amount obtained.

It is proposed that any increase in income will be used to support future service MTFP's and environmental education campaigns.

Consultation

None

Equality and Diversity / Public Sector Equality Duty

None.

Climate Change

Compliance with how waste at all levels is managed have a positive impact on our climate.

Human Rights

None

Crime and Disorder

This decision should have a positive impact on crime and disorder as it will act as a deterrent to people to commit crimes and enables the Council to issue penalties to those who do commit environmental crimes.

Staffing

None

Accommodation

None

Risk

If the FPN levels are set too high, there is a risk that this will lead to an increased number of cases going to court putting pressure on our legal services and the fines also going to the courts with costs being returned when they are paid or recovered.

Procurement

None

Appendix 2: Court outcomes for existing levels of FPN

Offence	FPN level	eLearning payment	Maximum penalty on conviction	Average court fine	Average court costs	Total court (£)
Dropping litter	150	85	2,500	174	130	304
Flytipping	400	N/A	12 months imprisonment of £50,000	521	624	1145
Household duty of care	300	N/A		300	657	957