

Tuesday, 21 November 2023

Report of the Portfolio Holder for Environmental Health and Community Partnerships**Environmental Crime Policy Update 2023****Exempt Information**

N/A

Purpose

To consider proposals for amendments to environmental crime fixed penalty levels outlined in the Government ASB Action Plan

Recommendations

It is recommended that the Committee:

1. Consider the proposals for environmental crime outlined in the Government Plan
2. Endorse proposals for the unchanged fixed penalty levels for Tamworth in relation to littering, graffiti, flyposting pending further review
3. Endorse proposals for the fixed penalty level for fly-tipping to increase to the maximum level of £1000 (early payment £500) in line with the ASB Action Plan
4. Endorse the introduction of the default penalty charges for household waste duty of care offences in line with the ASB Action Plan
5. Endorse delegation to the Portfolio Holder Environmental Health and Community Partnerships to include environmental crime in the review of the Corporate ASB policy by March 2024 and report on wider implications

Executive Summary

In May 2023, the UK Government published its ASB Action Plan (attached as Appendix 1) to outlining proposals to tackle Anti Social behaviour to be progressed over the next few years.

One of the first proposals to tackle environmental crime was to raise the maximum fine threshold for fixed penalty notices for flytipping and littering.

The Tamworth Borough Council current Environmental Crime Policy has been reviewed and the current levels are set as follows:

| Offence | Env Policy Section | Current FPN level |
|-------------------------------------|---------------------------|---|
| Littering Graffiti Flyposting | 12.1 12.8 12.7 | £100 (DEFAULT FINE LEVEL) |
| Fly tipping | 12.9 | £400 (Reduced payment of £200 if paid within 7 days) (MAXIMUM FINE LEVEL 2019) |

| | | |
|------------------------------|-------------|---|
| Household Waste Duty of Care | 13.2 | Currently no fixed penalty levels indicated |
|------------------------------|-------------|---|

The Government ASB Action plan states that to strengthen councils in their fight against waste crime, the government increased the upper limits for various fixed penalty notices (FPNs) permitting local levels to be considered up to the maximum, on evidence and potentially increased from 31 July 2023. This means:

- The maximum amount those caught fly-tipping could be fined will increase from £400 to £1,000
- The **maximum** amount those who litter or graffiti could be fined will increase from £150 to £500
- The maximum amount those who breach their household waste duty of care could be fined will increase from £400 to £600

The minimum discounted penalty rates set out in legislation from 31st July 2023 are now:

| Offence | Default Penalty | Minimum Full Penalty | Maximum Discount Penalty | Minimum Discounted penalty |
|--------------------------------------|------------------------|-----------------------------|---------------------------------|-----------------------------------|
| Littering Graffiti Fly-posting | £100 | £65 | £500 | £50 |
| Fly-tipping | £200 | £150 | £1000 | £120 |
| Household Waste Duty of Care | £200 | £150 | £600 | £120 |

Options Considered

Any fixed penalty issued for an environmental crime negates the need for prosecution for an offence and issuance can be publicised anonymously as a deterrent. The recipient does not receive any criminal sanction if paid.

The action plan also sets out a Government commitment to increase transparency of the data on the use of on-the-spot fines, including publishing league tables on fly-tipping. These tables will be used by central and local government, and members of the public, to identify those councils who are taking a proactive approach to enforcement, in lieu of simply cleaning up fly-tipping.

This is intended to encourage both scrutiny and the sharing of best practice.

Littering/Graffiti/Fly-posting

In 2022/23 two fixed penalties (FPNs) were issued for littering. Any penalties require a witness statement from the public or must be witnessed by a delegated officer.

It is considered at this time that the £100 default penalty is proportionate for offences and will be reviewed as part of the work on the review of the ASB/Environmental Crime Policy.

Failure to pay a FPN results in a prosecution and imposition of court fines – in most cases these can be dealt with using the Single Justice Protocol enabling consideration by a magistrate through an on-line portal. Any prosecutions do attract additional costs for Tamworth Borough Council, however court fines are imposed.

Fly Tipping

The first set of [fly tip tables](#) was published on the 23rd August 2023, in line with the ASB Action Plan, alongside the Official fly-tipping statistics for England, recording 1,453 fly tipping Incidents and 1,120 Actions in Tamworth (actions include automatic clearance where there is no evidence, actions against businesses/tenants/landlords/general public to remove and investigation). One fixed £400 penalty was issued in 2022/23.

The use of fly-tipping fixed penalties is used to address immediate waste dumping issues where there is absolute evidence. Council data shows that eight out of 10 fly-tips in Tamworth are household items, with over six out of 10 of these being small van loads, so many could be from persons offering to take waste cheaply, or from those carrying out cheap garden or house maintenance jobs. It is not possible to issue FPNs without absolute evidence or witness statement.

A grant of £26,000 was recently awarded to Tamworth to increase education and support enforcement on fly-tipping. This has resulted in the purchase of re-deployable cameras for hotspots and a planned trial of 'Littercam' on Watling Street to deter littering from vehicles.

Details were issued on 17th October 2023 <https://www.tamworth.gov.uk/Action-to-tackle-fly-tipping>.

The first camera was installed on 1st November 2023 at a fly-tip hotspot on Masefield Drive to capture activities, including being able to identify vehicle registration numbers. The intention is to increase enforcement as necessary and to deter flytipping. (Pictures at Appendix 3). Appropriate overt signage is in place.

The impact of this project is still to be determined, and it is intended that a full review of the ASB policy, updated education campaigns (overseen by the Environmental Crime Working Group), introduction of the Neighbourhood Impact Team and encouragement to the public to report incidents will increase awareness, including increasing penalties.

The current level of fly-tip fine was set at the previous statutory maximum £400 (one penalty issued in 2023 was for dumping of a fridge). The current Policy states that the Council will always use the **maximum default** penalty, thereby permitting the raising of the fine to £1000 under the new ASB plan.

It should be noted that the Council still retains the option to consider automatic prosecution for this offence where a FPN is not considered proportionate, which could result in fines up to £50,000 and imprisonment. Each case is considered on its own merit and in accordance with the Corporate Enforcement Policy.

Duty of Care

There has not previously been a fine level set for duty of care household waste. The introduction of which will allow the council the option to also consider fixed penalties for householders who can be identified as permitting their waste to be collected by an unregistered waster carriers and then dumped. This will be included in the education campaigns to remind householders of the importance of checking waste carrier licences.

Proposed actions:

- That the default penalty level for littering, graffiti and fly-posting remains at £100. This will allow full review of impact and ensure that fixed penalties are likely to be paid by perpetrators.
- The Household Duty of Care default penalty of £200 is introduced (reduced to £150 if paid within 14 days) which is considered proportionate and will be reviewed during the fly-tip project

- The penalty for fly-tipping is increased, as per the current Environmental Crime policy to the maximum penalty of £1000 (reduced to £500 for early payment), The impact of this will be monitored as part of the flytipping camera enforcement project.

Resource Implications

The resource will be met within the existing Partnerships and Neighbourhood teams. At this time any income received from fine income is used to offset the costs of any enforcement activity and does not provide additional income to the Council.

Legal/Risk Implications Background

The fixed penalties have already been approved within the appropriate framework

| RISK | MITIGATION |
|---|---|
| Enforcing maximum fines could lead to more appeals at Court resulting in backlog as there are significant delays in obtaining Court dates | <p>Monitor current fine levels and review as part of current project</p> <p>The current fly-tip penalty notice charges remain higher than that of a skip hire to legitimately remove rubbish, thereby acting as a deterrent</p> <p>Cases will be considered on their own merit and risk assessed – this may include working with identified perpetrators to encourage clean up/purchase of skips and is in line with Corporate Enforcement Policy</p> |
| Court fees and legal fees could be considerably higher than the fine income where increased FPN amounts remain unpaid | <p>Each case to be determined on its own merit with risk assessment undertaken and considered in line with the corporate enforcement policy</p> <p>Use of Single Justice Protocol considered in first instance</p> |
| To increase fly tipping fines to £1000 in line with current policy to revert to maximum fines in the current cost of living crisis could create significant hardship and should only be considered for regular offenders. | <p>Each case to be determined on its own merit with risk assessment, including option to revert to automatic prosecution</p> <p>This will be reviewed in the next six months</p> |

Equalities Implications

Enforcement action remains proportionate and is in line with the MERIT (Making Equality Real in Tamworth) policy

Environment and Sustainability Implications (including climate change)

Reductions in fly tipping via education and proportionate enforcement will improve the environment.

Background Information

All relevant information included in this report.

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List of Background Papers

[Corporate Enforcement Policy](#)

Appendices

Appendix 1 – Government ASB Action Plan
Appendix 2 – Revised Environmental Crime Policy 2023
Appendix 3 – Camera locations

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