

Report to the Cabinet

Report reference: C-011-2012/13

Date of meeting: 23 July 2012



**Epping Forest
District Council**

Portfolio: Environment

Subject: Fixed penalty notices relating to waste receptacles

Responsible Officer: John Gilbert (01992 564062).

Democratic Services Officer: Gary Woodhall (01992 564470).

Recommendations/Decisions Required:

- (1) That the level of fixed penalty for offences relating to domestic waste receptacles be set at the statutory default level of £60.00;
- (2) That the discounted fixed penalty for early payment be set at the statutory minimum level of £40.00
- (3) That the level of fixed penalty for offences relating to trade/commercial waste receptacles be retained at the statutory default level of £100.00;
- (4) That all other policies and payment processes relating to fixed penalty notices be retained as agreed by Cabinet at its meeting on the 1st of February 2010 (Ref: 1 Feb 2010 – Minute 130); and
- (5) Changes to the fixed penalty notices for domestic waste receptacles be advertised locally and on the Council's website.

Executive Summary:

In February 2010 Cabinet resolved to introduce the use of fixed penalty notices covering a wide range of environmental offences. The offences included those relating to waste receptacles, such as waste placed in the wrong container or overfull. Government has recently completed a consultation exercise on waste related matters, the full outcome of which has not yet been published. However, they made an early decision on the offences relating to waste receptacles, with a reduction in penalties coming into effect on the 30th of May 2012. This report makes recommendations on the penalties to be applied for such penalty notices.

Reasons for Proposed Decision:

The Council has either to adopt the governments statutory Fixed Penalty levels or resolve to implement another within the range made available. If no decision is made, the Government defaults will automatically apply.

Other Options for Action:

To do nothing and allow Government default penalties to apply.

Report:

1. In February 2010 Cabinet resolved to introduce the use of fixed penalty notices covering a wide range of environmental offences. The offences included those relating to waste receptacles, such as waste placed in the wrong container or overfull. Government has recently undertaken a consultation exercise on waste related matters, the full outcome of which has not yet been published.

2. Government has recently completed a consultation exercise on waste related matters, the full outcome of which has not yet been published. However, they have made an early decision on the offences relating to waste receptacles, with a reduction in penalties coming into effect on the 30th of May 2012. This decision is intended to send a message to local authorities and residents alike, that Government see fixed penalty notices as a last resort and that they should not be set at unreasonably high levels for what are seen by Government as relatively minor offences.

3. At the February 2010 meeting, Cabinet resolved to apply the statutory default penalties to all the various environmental offences. It also resolved that the maximum period which should be allowed to elapse between receipt of a fixed penalty notice and being eligible for an early payment discount should be 10 days. The level of penalty set was:

- Fixed penalty £100 (range available £75 to £110); and
- Discounted penalty £60 (range available £110 to £60).

4. The Government has, with effect from the 30th of May 2012, reduced these for domestic waste receptacles to:

- Fixed penalty range available £80 to £60;
- Discounted penalty range available £80 to £40; and
- Government default penalty £60.00.

5. Whilst there is an option to apply a fixed penalty within the £80 to £40 range, in order to remain in line with all other fixed penalties, which are set at the Government default, it is suggested that this policy should be retained and the fixed penalty be set at £60.00. On the same basis it is suggested that the discounted rate should be set at the Government minimum of £40.00. **(Recommendations 1 & 2)**

6. It is further suggested that all other policies relating to the issue and processing of fixed penalty notices offences be retained as agreed in February 2010, including retention of the present penalty should the offence relate to a trade waste receptacle. **(Recommendations 3 & 4)**

7. It is worthy of note that, unlike some authorities, this Council has continued to approach problems on waste collection from a stance that advice, assistance and encouragement is preferable to enforcement and therefore although the fixed penalty notices have been available, only 10 have been issued in relation to such offences. This should be seen as compared to 48 issued for littering offences since February 2010. This recommended change is therefore seen as a procedural one required to ensure that the Council's enforcement policies are enforceable.

8. Although no guidance has been issued in this regard, the original fixed penalty regime was required to be advertised to ensure that anyone had the opportunity to be aware that the regime was in place. Although if the recommended changes are made this will result in a lowering of the fixed penalty, it is still suggested that the change be advertised locally and on the Council's website, again to ensure that any notices issued cannot be challenged on

the grounds of process. **(Recommendation 5)**

Resource Implications:

There are no significant resource implications. Fixed penalty notices are issued as part of the routine duties of existing Environment & Neighbourhood Officers, and whilst all fixed penalty income is retained, due to the very low numbers issued in respect of waste receptacles, the impact is minimal.

Legal and Governance Implications:

A range of legislation applies to these offences and the associated FPNs, including:

- Environmental Protection Act 1990
- Clean Neighbourhood and Environment Act 2005
- Control of Dogs (Non-application to Designated Land) Order 2006
- The Dog Control Orders (Prescribed Offences and Penalties, etc.) Regulations 2006
- The Anti Social Behaviour Act 2003
- The Noise Act 1996

Defra has also published guidance on the use of fixed penalty notices which the Council has considered as part of its adopted enforcement policy.

Safer, Cleaner and Greener Implications:

There are no implications since the existing agreed policies will continue to be applied.

Consultation Undertaken:

Whilst not strictly required it is suggested that the recommended changes, if agreed, be advertised locally and on the Council's website

Background Papers:

Report to Cabinet and published minutes for February 2010
Defra press release May 2012

Impact Assessments:

Risk Management

No additional risks to those set out in the original cabinet report in February 2010

Equality and Diversity

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications? Yes

Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken? Yes

What equality implications were identified through the Equality Impact Assessment process?
See Cabinet report February 2010

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?

See Cabinet report February 2010