

Report for: Cabinet

Date of Meeting:	12 December 2023
Subject:	Fly Tipping Policy Review
Cabinet Member:	Cllr Josh Wright, Cabinet member for Environment
Responsible Officer:	Luke Howard, Environment and Enforcement Manager Matthew Page, Corporate Manager for People, Governance and Waste
Exempt:	N/A
Wards Affected:	All (District)
Enclosures:	Appendix 1- Fly Tipping Policy

Section 1 – Summary and Recommendation(s)

This report looks to explore and make recommendations regarding recent increases to the Fixed Penalty Notice (FPN) fine amount for fly tipping and breach of care for household waste offences This relates to local authorities (LA) tackling anti-social behaviour in their communities.

Recommendation(s):

- 1. Delegate authority to the Environment and Enforcement Manager in respect of determining FPN value.**
- 2. To amend the fly tipping policy to allow**
 - for a sliding scale in respect of fly tipping Fixed Penalty Notice (FPN) amount, with the minimum being £400 and maximum amount £1000.**
 - For a sliding scale in respect of breach of duty of care for household waste fixed penalty with the minimum being £150 and the maximum amount £600**
- 3. To amend the fly tipping policy (see attached) for general updating purposes.**

Section 2 – Report

1.0 Introduction

- 1.1 On July 31st 2023, Central Government released new legislation in respect of Local Authorities and Police powers to tackle anti-social behaviour in communities. This was released under their Anti-Social Behaviour Action Plan. The plan provides local authorities with additional powers and increased fine amounts for offences that contribute to anti-social behaviour, of which fly tipping is one.
- 1.2 The current MDDC policy on fly tipping relates to previous legislation capping the maximum FPN amount to £400. The new legislation provides authorities with the ability to increase the maximum FPN amount to £1000.

2.0 FPN Sliding Scale

- 2.1 The increase of the FPN provides LA's the opportunity to introduce a sliding scale in respect of the fine amount. An Environmental Legal Specialist working with Keep Britain Tidy has ratified this.
- 2.2 Therefore, it is proposed that MDDC introduces a sliding scale for fly tipping FPN's, with the minimum fine being £400 and the maximum amount £1000. The introduction of a sliding scale will enable the authority to better sanction individuals for the offence committed.
- 2.3 The idea surrounding a sliding scale is that offenders who leave a couple of black bags could argue that a £1000 fine is not proportionate to the offence committed. It would also be problematic for LA's to meet prosecution criteria where the proportionate element is not met. Therefore, a sliding scale that allows the Environment and Enforcement Manager to determine the fine based on quantity and environmental impact of the offence would be a more proportionate way of enforcement.
- 2.4 Current court sentences reflect similar value to the maximum FPN fine amount, so the use of the FPN relieves pressure on the court process and enables offenders to discharge their liability through payment of a FPN.
- 2.5 Alongside proportionate fines for each offence, the sliding scale is likely to encourage offenders to make payment in a timely manner. This reduces the cost of staff time in preparing case files for prosecution and the associated court costs.
- 2.6 The waste 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 for disposal. This reduces the chance of waste ending up in the hands of those who would fly-tip it. It is an offence to fail to comply with the duty of care. The sliding scale for waste duty of care offences is now £150 to £600.

3.0 Impacts of Fly Tipping

- 3.1 During 2022/23, in MDDC there were 605 reported incidents of fly tipping. These varied in scale from singular black bags to van sized loads, with a higher percentage being that of the latter. This is equivalent to 96 tonnes of waste disposed of illegally.
- 3.2 While the Enforcement Team is proactive in taking action against offenders, it is hoped an increased fine amount would deter those who may consider fly tipping from a commercial standpoint. We have encountered acts of commercial fly tipping where due to the cost of disposal being similar to that of the FPN amount it is then deemed by some offenders worth risking committing the offence in the first place. A higher FPN would mitigate this as an option for offenders and provide a deterrent factor in those circumstances.

Financial Implications

Acts of fly tipping cost the authority significant sums of money in relation to the collection and disposal involved.

It is believed a reduction in staffing time required for prosecution cases will have a positive financial impact. Any income generated by payment of FPN's will be reinvested back into the service to offset costs.

Legal Implications

The authority has a statutory duty to remove and dispose of Fly Tipping within communities. We have powers under S33 of the Environmental Protection Act 1990 to prosecute offenders for the offence.

Risk Assessment

There are no associated risks with the recommendations.

Impact on Climate Change

Fly tipping has a significant impact on environment and climate. Taking positive action to deter and prevent acts of fly tipping is beneficial to communities and the overall environment in Mid Devon.

Equalities Impact Assessment

There are no equality issues with the recommendations.

Relationship to Corporate Plan

Creating a better standard of living for residents within Mid Devon is a key element for all service areas. It is believed the recommendations will further enhance this for communities and provide the enforcement service with the tools to effectively manage and prevent fly tipping incidents in the district.

Section 3 – Statutory Officer sign-off/mandatory checks

Statutory Officer: Andrew Jarrett

Agreed by or on behalf of the Section 151

Date: 30 October 2023

Statutory Officer: Maria De Leburne

Agreed on behalf of the Monitoring Officer

Date: 30 October 2023

Chief Officer: Stephen Walford

Agreed by or on behalf of the Chief Executive/Corporate Director

Date: 30 October 2023

Performance and risk: Steve Carr

Agreed on behalf of the Corporate Performance & Improvement Manager

Date: 23 October 2023

Cabinet member notified: Yes

Section 4 - Contact Details and Background Papers

Contact: Luke Howard, Environment and Enforcement Manager

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Background papers: