

## Policy Committee Decision Report

<b>Title of Report:</b>	Proposed Fixed Penalty Notices (FPN) levels for Environmental offences
<b>Date of Decision:</b>	September 13 <sup>th</sup> 2024
<b>Report To:</b>	Waste and Street Scene Policy Committee
<b>Report Of:</b>	Ajman Ali, Director of Neighbourhood Services
<b>Report Author:</b>	Tracy Rayworth Interim Environmental Enforcement Manager and Ian Ashmore Assistant Director of Environmental Regulation and Licensing
<b>Executive Summary:</b>	This report proposes new FPN levels for flytipping, littering and householder duty of care. New increased FPN levels are suggested although not all to maximum levels as there are important considerations regarding payment rates and officer time on court cases.



**Council Plan outcomes:**

[Great neighbourhoods that people are happy to call home](#)

**Policy Committee remit:**

“This report is to be considered by the Waste and Street Scene Policy Committee as its remit includes waste management and environmental regulation from [Part 3C - 3.3 Matters Delegated to Committees May 2024.pdf \(sheffield.gov.uk\)](#)”

**Does the report contain confidential or exempt information? No**

**Recommendations:**

The Waste and Street Scene Policy Committee is recommended to:

1. Consider the proposed options presented in this report and decide on the preferred approach.
2. Agree the proposed recommendations regarding new Fixed Penalty Notice (FPN) levels as follows: Litter £100 or £200 depending on the nature of the litter as specified in the report. Fly Tipping FPN's – A tiered approach of £400, £600, £1000. Household Duty of Care - £500 with an early payment concession to £300. However, this Household Duty of Care increase change to only come in following a renewed publicity campaign to raise awareness.
3. Delegate to the Director of Street Scene and Regulations the decision to raise the £100 FPN for littering to £160 with an early payment rate of £100 when the online payment system is upgraded to allow this.
4. Consider whether to align all the flytipping FPN levels to the maximum amount of £1000 provided the option of reduced rates of £400 and £600 for the first 2 levels for early payment as stated in the report is offered, noting that this does not apply to the £200 litter/flytipping level.

**Financial Implications:** Yes

- Approved by: Adrian Hart:

**Legal Implications:** Yes

Approved by: Nadine Wynter

**Equality and Inclusion Implications:** Yes

Approved by: Ed Sexton - Equalities Officer

Full Equalities Impact Assessment completed with EIA number: 2816

**Climate Change Implications:** Yes – positive reductions

Approved by: Climate change assessment completed by Tracy Rayworth and reviewed by Ian Ashmore Assistant Director Environmental Regulation and Licensing

**Background Papers:** None

## 1. Background: Fixed Penalties for Environmental Offences

- 1.1 Sheffield City Council (SCC) has long used the powers given it to issue FPNs for various environmental offences particularly for litter and fly tipping. We have good levels of payment and those come to SCC and help fund our enforcement.
- 1.2 The Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023 commenced on 31 July 2023 and amended both the Environmental Protection Act 1990 and the Environmental Offences (Fixed Penalties) (England) Regulations 2017, in respect of the maximum level of fixed penalties that Councils can issue for fly tipping and littering offences respectively.
- 1.3 This gave LA's the opportunity to raise the maximum fixed penalties notices (FPN's) for environmental offences as follows
  - The maximum amount for those caught fly-tipping could increase from £400 to £1,000
  - The maximum amount for those who drop litter could increase from £150 to £500
  - The maximum amount for those who breach their household waste duty of care could increase from £400 to £600
- 1.5 Revenue raised from FPN's is retained by SCC and is used to provide proactive litter enforcement. Litter enforcement is largely carried out by staff employed via an agency, there is no budget provision for these staff beyond the projected and actual income from FPNs to cover their costs.
- 1.6 Staff in several teams (i.e. the Sustainable Wardens and City Centre Ambassadors) can act as witnesses which may facilitate the issuing of an FPN or further investigation of a fly tipping offence, evidence permitting which would be processed by the Environmental Enforcement Team. However, in our experience unless people are recruited to specifically deal with issuing FPNs as a major part of their job and given time to patrol in areas likely to have high number of FPNs then there are unlikely to be a significant number of offences identified.
- 1.7 Whilst it may appear to be an attractive proposition to increase FPN's to the maximum allowed to increase the deterrent effect and revenue and to be seen to be taking a hard line, care must be taken that it does not adversely affect service provision.
- 1.8 A Fixed Penalty Notice is not a fine or invoice that can be recovered as a debt, it is an alternative to prosecution before the Magistrate's court and for a prescribed amount of time, delays criminal proceedings. Failure by offenders to take the opportunity to mitigate the offence by payment leaves the option to either drop the case or build a prosecution case and take this to court.

- 1.9 Should a case be sent to the Magistrates Court any fines imposed are not only subject to means testing which can result in them being significantly lower than the original FPN but whatever the level of the fine imposed, payments go to the court, not SCC. Any costs requested if paid go to Legal Services not the regulatory service (and legal costs awarded are often less than those requested).
- 1.10 If FPN rates are set too high, offenders may be unable or unwilling to pay and instead opt to appear before a magistrate who will have the opportunity to consider a person means and to issue a more affordable penalty or allow payment by instalments and over a longer period of time (than could be granted by SCC). The number of paid fixed penalties will fall, overall income will drop.
- 1.11 The unpaid FPN's will then have to be either discontinued or prepared as court cases which will put significant additional pressure on the Enforcement Team, Legal Services and the court system.
- Court action requires a complete case to be presented.
  - Officers have to prepare witness statements (their own and possibly obtain those of others), prepare exhibits and background papers.
  - The case needs to be approved by the manager, and Head of Service
  - Other than simple litter cases which we send direct (although there are limits to our capacity), the case then goes to Legal Services who also need to approve it.
- 1.12 Taking everything into consideration as FPN levels increase there is a potential financial net loss to the Council in increasing the number of prosecution cases and the additional work for the officers' preparing cases, all of which would have a knock-on effect on the resources available for investigating other offences. A worst-case scenario is if income drops significantly, we may no longer be able to fund specialist FPN officers to conduct proactive litter patrols and would have to rely on other SCC staff putting more focus on this work rather than other regulatory activity. Any decision must be sensitive to these points, and strike a balance which avoids the risk of committing to actions which would result in costs arising which are not budgeted for. The options set out in this report strike this balance, and are presented on the reasonable assumption that they will not have those impacts.
- 1.13 We know that fly tipping and litter does have major detrimental effects on communities. Research from the Keep Britain Tidy group found that 'our research and experience of working with communities has shown us time and time again that enviro-crime doesn't just affect places – it affects people, and it has a significant impact on our collective wellbeing'.
- 1.14 Colleagues in Business Sheffield confirm that fly tipping does impact on businesses where potential customers are put off by the look of neglect in an

area notwithstanding the environmental impact with any increase to rat populations in an area. There are instances across the city where fly tipping is consistently an issue where not much longer after an area has been cleaned the fly tipping happens again. This can affect investment and undermine regeneration efforts.

- 1.15 What we do not know is whether the potential deterrent effect of higher FPN's could reduce the level of offending. In theory higher FPN's should deter more people. Impact assessments for increasing penalties for offences such as speeding and use of mobile phones when driving does contain the assumption that *'an increase in the penalty is needed to act as a stronger deterrent to offending and make offenders clear of the risk'*.
- 1.16 The Keep Britain Tidy research into FPNs found that *'In short, although FPNs raise awareness of environmental crimes such as littering and dog fouling as punishable offences they frequently leave an individual's underlying values untouched. In fact, receiving an FPN can often make offenders 'better' at offending – bringing a level of self-consciousness to their behaviour that makes them more proficient at hiding it'*

*'A shift in an individual's underlying values is really the only thing that will bring about a lasting and sustainable change in their behaviours. But creating long-lasting change that really alters people's attitudes towards enviro-crime is much more challenging! (The Effectiveness of Enforcement on Behaviour Change: Fixed penalty notices from both sides of the line 2011Keep Britain Tidy)*

- 1.17 That said, they support the use of FPNS within the context of a wider approach on education, engagement and enforcement.

## 2. Actual proposals

### 2.1 Current level of all FPNs issued by SCC

- 2.1.1 The following table shows the type and number of FPN's issued by SCC from April 2023 to April 2024. The key to the action codes is shown below

**DPI = litter fpn** (issued by proactive litter enforcement officers)

**DQ4= fail to produce waste transfer notes** (trade waste)

**DQB= lower level fly tip 1 bag or less** (equivalent litter fpn) **£80**

**DQG= fly tipping fpn** (more than 1 bag) **£400**

**DQJ Householder doc** (failure to ensure transfer of waste to an authorised person)

All Environmental Enforcement Fpn's issued 2/4/2023-1/4/2024 = **1441**

**Minus litter fpn's = 143**

Row Labels	Count of detail
DPI	1298
DQ4	6

DQB	53
DQG	78
DQJ	6
<b>Grand Total</b>	<b>1441</b>

## **2.2 Litter FPNs (DPI code) issued by proactive litter Enforcement Officers**

- 2.2.1 Using these statistics as an example (after adjustment for discontinued cases), the payment rate for litter FPNs averaged approximately 70% with 770 of the issued FPN's being paid. The total revenue from the paid FPN's being £61,600 which contributed to funding future enforcement activity in the form of proactive litter patrols.
- 2.2.2 The potential effect on revenue should payment rates reduce as the FPN amount is increased is shown on the table below. The effect may show a modest increase in revenue or a reduction depending on how the payment rate is affected. However, the increase in unpaid FPN's would have a pronounced effect on the number of cases that would be processed by the courts. This would result in increased workload for the Enforcement Team, Business Support and Legal Services. This is explored in more detail in the finance section.

**Table showing result of potential drop in payment rate & effect on revenue in event of an increase to FPN rate**

pay rate	70.00%	40.00%	30.00%	60%
FPN	£80	£160	£160	£100
issue	1100	1100	1100	1100
total	£88,000	£176,000	£176,000	£110,000
Actual revenue	£61,600	£70,400	£52,800	£66,000

- 2.2.3 A proportion of the unpaid FPN's had to be discontinued due to people providing false details with the rest being processed using the single justice procedure (SJP). All unpaid FPN's must be pursued to maintain credibility of the system unless there are very strong reasons not to do so. The above figures do not account for the additional and increased cost and time pressure of large numbers of cases going through the legal system.

## **2.3 Unpaid litter cases**

- 2.3.1 Most unpaid litter cases are processed via our single justice process. It is a time-consuming exercise conducted by the Enforcement Team manager once a month and involves running a report to identify all the unpaid litter FPN's, filtering out those that cannot be pursued, and selecting approximately 30 casefiles to be processed for upcoming court sessions, If approved, a 10-page case pack is created for each case which is posted to the respondents and includes a court summons and a final offer to pay the FPN. The

respondents can take a final opportunity within 21 days of receipt of the pack, to pay the FPN or offer a plea to the court, initially by letter, provide information as to their means and many can be dealt with by the court without the need to appear although they can appear in person should they wish to. Some are dealt with in the respondent's absence.

- 2.3.2 Those who do not attend court and are found guilty by the court for a littering offence will generally be fined £220 with court costs of £168 and victim surcharge of £34 and they will also have a criminal record as a result. The penalty is significantly higher than the FPN for littering, but it must be noted that the fine is given to the court. Extended payment terms may be agreed for the fine and or costs.

#### **2.4 Typical litter offence, What, Where, When, Why, Who & reaction**

- 2.4.1 A litter offence is committed when a person deposits litter and walks away. A significant proportion of those apprehended committing a littering offence are smokers who deposit cigarette butts. They may throw the butts on the floor, drop them down a drain, leave them on a wall or the surface of a structure such as a bollard (prevalent in front of the train station).
- 2.4.2 Most proactive litter patrols are conducted in the city centre in areas of high footfall which includes Sheffield train station and outside places of work. Typical offenders are commuters who leave the station platform at the end of a journey or whilst waiting for a connecting train. People may be in a rush, fail to see the street litter bins and will extinguish their cigarettes on the bollards or drop them down a rainwater drain and walk away.
- 2.4.3 Workers and shoppers in the city centre will step outside their place of work or take a break from shopping, smoke a cigarette and drop the butt on the floor before walking away.

Those that try to challenge the resulting FPN will cite excuses such as

- “There was no street litter bin nearby”
- “The litter bin had no ashtray on it, and I didn’t want to set fire to the bin”
- “I thought the bollard was an ashtray”
- “I would never drop litter; I didn’t realise this was an offence”
- “I offered and did pick up the item up when approached by the officer”

- 2.4.4 None of the above are acceptable defences and under these circumstances the FPN’s have been justifiably issued. Visitors to Sheffield or those passing through regularly state that they have been left with a negative opinion of the city because of being issued an FPN. Many people will claim that they cannot afford to pay the FPN they have been given and will describe the amount as extortionate in proportion to the item they deposited. For those in minimum paid jobs, the £80 FPN may exceed a whole days' pay.
- 2.4.5 Having dealt with many such complaints it is a challenge but also an opportunity to deliver education regarding this specific type of litter issue and



we suspect that many of the recipients are genuinely remorseful and some may be unlikely to commit the offence again.

- 2.4.6 For the offence of dropping a small, single item of litter the current FPN amount of £80.00 has seemed proportionate to the offence, the minimum level for a litter FPN can be as low as £65.00 according to code of practice litter and refuse.gov publication. However, we would recommend that increasing this to £100 would allow for inflation. It may be ideal to have a higher initial amount such as £160 but then this drops to £100 however at the moment our online payment system does not allow that unlike some other standalone SCC payment systems like parking, although we are exploring that hence the additional recommendation to consider that.

## **2.5 Other offences that may be dealt with as a litter offence**

- 2.5.1 There is no clear definition of the difference between litter and fly tipping. Litter is generally considered to be waste associated with eating, drinking and smoking, which has been improperly discarded. Fly tipping is controlled waste (household, commercial, industrial or clinical waste) which has been dumped illegally. There is some consensus that anything up to a single bag of waste could be deemed (and dealt with) as litter, thereby a litter FPN can be issued to offenders, our current rate being £80.
- 2.5.2 A litter FPN may be used for offences detected at local recycling points, often located in supermarket car parks. The deposit of waste anywhere other than into the relevant containers is an offence and due to persistent misuse of these sites, overt SCC overt CCTV has been deployed to monitor activity. As people visit these sites in a vehicle it has been possible to identify and trace the registered keeper of vehicles to investigate offences.
- 2.5.3 Whilst the deposit of one bag may be captured on CCTV it isn't always possible to be able to identify the contents of a bag and offenders will often claim that the contents of the bag they deposited included recycling material that for whatever reason was not decanted into the relevant container (the containers have relatively small apertures which necessitates individually feeding items like tin cans/bottles into them) .
- 2.5.4 Service users will also deposit larger items of plastic/glass or metal that cannot be put into the recycling bins in the mistaken belief that the recycling points are an appropriate place of disposal. Some offenders claim lack of understanding due to language issues/failure to notice signage/confusion about UK recycling systems in comparison with systems in other parts of Europe where local general waste disposal sites do exist.
- 2.5.5 Signage is displayed at all the recycling points, often as stickers on the bins however improvements to make the signage more visible is ongoing. It could be argued that there is scope to raise the penalty for these type of offences from the standard litter offence (one small single item) and to have a two-tier litter FPN, where anything up to a bag full of waste/one single larger item could attract a FPN of £200 (the proposed increase).

## **2.6 Proposal re Litter FPN's Section 87 offences – Two levels**

- 2.6.1 Tier 1 £100.00 litter FPN** A small single item i.e. cigarette butt, confectionary wrapper, drinks can.
- 2.6.2 The current online payment system for these high-volume litter FPN's is not set up for payment rates with different early payment rates and neither is our IT system. If the systems can cost effectively be upgraded to allow this, we would propose an amended **Tier 1 of £160 headline FPN for litter, dropping to £100 for payment within a specified early payment period** and would request the committee delegate the implementation of this decision to the Director of Street Scene and Regulations.
- 2.6.3 **Tier 2 £200.00 single small item litter/flytipping FPN** – Larger single item; i.e. small plastic crate/child's ride on toy/ suitcase or up to 1 small bag of waste. These are often left beside existing street bins or at recycling sites.

## **2.7 Proposal for Fly tipping FPN rates Section 33 offences**

- 2.7.1 Identifying and apprehending a fly tipper is not easy, evidence referrals may range from
- an eyewitness who can identify a suspect and is willing to provide a formal statement (relatively rare occurrence)
  - to circumstantial evidence in the form of a name and address left amongst waste (insufficient in isolation to prove an offence beyond reasonable doubt)
  - and CCTV evidence linking a vehicle that is registered to an owner to an offence.
- 2.7.2 All referrals are investigated, and the latter is amongst the more reliable type of evidence, but it relies on deployment of a CCTV unit in a relevant location with an appropriate power source. The Enforcement Team have access to a small number of CCTV units which are periodically deployed around the city, chosen locations are dependent on intelligence, rural locations often have no suitable power source and fly tipping is generally not confined to specific locations. We have lost 4 units to vandalism in 2023/2024 and there is no current funding to replace lost units although we are discussing this with the Local Area Committees.
- 2.7.3 CCTV is often requested to deal with all forms of fly tipping however not all fly tipping involves the use of a vehicle and where the fly tipping is committed by individuals depositing waste on foot in an urban setting, identification of the perpetrators is unlikely, and CCTV is therefore not the most effective tool.
- 2.7.4 Most **detected fly tipping** offences are as a result of footage of vehicles captured on overt SCC, from CCTV units deployed at identified hot spots and the recycling bring sites. The offenders range from householders to unauthorised waste carriers and the volume and type of waste can range from several bags of household waste up to a transit van or tipper load (the latter

generally having a commercial element to the offending). It therefore makes sense to consider having varying levels of penalty dependant on what's been dumped, who committed the offence and the motivation for committing the offence with the most severe penalty being reserved for larger scale offences or those with a commercial element. For the very serious offences a Fixed Penalty Notice may not be appropriate, and the matter would be prosecuted in court.

## **2.8 Proposed Fly Tipping FPN's – Three levels £400, £600, £1000 plus household duty of care at £500 reduced to £300 on early payment**

### **2.8.1 Level 1 = £400 More than 1 bag to max 3 bags**

The current FPN rate is £400 however there is a discount rate of £300 (these payments are taken manually on the telephone). We would propose to remove the early discount rate. This would be applicable for many of the FPNs currently being issued for misuse of the recycling points. The offenders in this circumstance are generally members of the public residing locally, often the in economically deprived/less affluent areas of the city. Many of the offenders will endeavour to pay the FPN to avoid court but struggle to find £300 within 14 days to pay the current FPN at the discounted rate, they usually ask for extended payment period of 3 months, they are often on benefits or claim to be struggling with the cost-of-living crisis. Defra advice is:

*Enforcing authorities should run their enforcement operations efficiently, effectively and economically. Enforcing authorities must set fixed penalties, within the ranges specified in the Environmental Offences (Fixed Penalties) (England) Regulations 2023. They should select an appropriate level to reflect local circumstances, including local ability to pay.*

### **2.8.2 Level 2 = £600 In excess of 3 bags/bulk bag but less than van load.**

### **2.8.3 Level 3 = £1000 transit van sized load or evidence of commercial/business or unauthorised waste carrier.**

2.8.4 All would have an extended payment period of up to 4 months to encourage payment of the FPN. Increasing the fly tipping FPN to a £1000 and the littering one to £200 is likely to deprive a significant proportion of offenders the opportunity to mitigate the offence by payment of the FPN and will leave many with no option other than to have their day in court, reducing number of paid FPN's .

**2.8.5 Option to follow increase to maximum amount provided reduced rate early payment is offered.** There is an alternative approach to the above options if members wished to increase to the maximum amount. That would be to set all the

flytipping FPNs to the maximum amount of £1000 (eg level 1, 2 and 3), but if the waste is of the type indicated in level 1 and 2 above then we would accept the reduced rates of £400 and £600 for early payment to encourage people to pay rather than the case going to court. This is offered as a recommendation at the front of the report.

**2.9 Householders Duty of Care**

2.9.1 People have a duty to take care of their own waste and only hand it to people who are authorised to handle and dispose of it. Unfortunately, too many people pay unscrupulous traders to remove their waste, and this is then fly tipped. That said, sometimes the householder may be a victim on this, paying an unauthorised waste carrier to take away their waste unaware of the legal obligation to carry out the relevant checks. Awareness of the law is not as great as it could be. The current FPN is £200. The proposal is to increase this.

**2.9.2 Householders Duty of Care: £500 with an early payment concession to £300.** However, we recommend this change to only come in following a renewed local publicity campaign to raise awareness as residents may be victims themselves in some cases – such campaign to start in 2024.

2.9.3 The investigation and formal action in relation to fly tipping offences is done by the Enforcement Team but any revenue from FPN’s contributes to the overall budget which funds the proactive litter enforcement by agency staff. A reduction in paid FPN’s risks increasing workload for enforcement officers, Legal Services and clogging up the court system.

2.9.4 Information has been sought from other local authorities about their increases. Some local authorities have varying levels of FPN’s with early discount periods, one has a lower rate for littering if offenders complete an online course , a bit like a speed awareness course. But the authority in question confirmed it was difficult to set up and their internal IT dept did the first one but declined to do any more and they have had to outsource the work at significant cost. Unlike Sheffield some local authorities including local ones to us, have outsourced the litter function and consequently do not have to process the unpaid FPN’s, whether significant increases to the penalties will result in a drop in revenue for the private companies that could damage existing arrangements remains to be seen.

Council	Litter	Household Duty of Care	Fly tipping
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	Previous amount	New amount	Previous Amount	New Amount	Previous Amount	New Amount Tier 1	New Amount Tier 2	New Amount Tier 3	
North East Lincolnshire Council	150	150	400 (£300 if paid within 28 days)	600	400 (£300 if paid within 28 days)	400 reduced to £300 if paid within 28 days	£600	£1000	
North Lincolnshire Council	£150	£200	£400	£600	£400	£1000			
Hull City Council	£100	£150 (£120 early payment discount)	£400	£600	£400	£1000 (£800 Early payment discount)			

### 2.9.5 Rotherham Council introduced the following system

Litter – Maximum fine of £500 reduced to £150 if the fine is paid within 14 days

- Fly-Tipping – Maximum of £1,000 however different scales of fly tipping will be subject to differing fine levels:
- Tier 1 (1-5 bags) - A proposed fine of £800 reduced to £400 if paid within 14 days
- Tier 2 (over 5 bags/car boot) – A proposed fine of £800 reduced to £400 if paid within 14 days
- Tier 3 (Large fly tip /tipper load) – A proposed fine of £1000 Household

### 3 How does this decision contribute to the Council Plan?

### 3.1 Council Plan outcome

- 3.2 The benefits of the proposals are outlined above. These all help deliver key elements of the corporate plan:

Great neighbourhoods that people are happy to call home.

‘All Sheffield’s neighbourhoods ..... should be welcoming and healthy environments for people to spend time together, live healthily, move around and belong in their communities.... [where people can] make the most of everything all the city’s neighbourhoods have to offer.’

‘We want more people to live long, independent and fulfilling lives free from harm and poverty.’

- 3.3 As highlighted earlier in the report, poor environmental quality has an adverse impact on people. It can lead to a ‘broken windows’ sense of lack of care and reduce people and especially children spending time and reduce social contact. A better local environmental quality may help people to attain higher levels of emotional, environmental and educational attainment and reduce crime.

- 3.4 The teams promote high environmental standards and information to residents and businesses to enable them to make safe and healthy choices. There are further areas this plan contributes to:

‘We need to create the environment for more businesses to thrive, and for more investment so that more people are in good jobs.’

‘We need more business and people to be part of these dynamic opportunities, connecting supply chains and more companies into Sheffield’s new economy, driving up demand for new skills, jobs and ideas.’

- 3.5 Businesses can be adversely affected by poor environmental quality so reduced fly tipping and litter will be a help. Our teams understand the pressures on businesses and strive to educate and support their efforts to comply with legislation. We signpost assistance e.g. to Waste Management or Business Sheffield where appropriate.

### 3.6 People – Prosperity - Planet

- 3.6.1 The comments above and the plan itself along with our work with business Sheffield colleagues illustrate how we work with businesses on their behalf and on behalf of customers. Whilst we don’t offer specific carbon reduction advice we can and do signpost businesses to sources of help. We can also provide advice on the food safety and standards aspects of food business growth.

## **4. What community or partner engagement has been undertaken and how has it informed the proposal?**

- 4.1 This relates to legislative controls which have been through parliamentary procedures. No specific consultation has taken place however there was a budget amendment in 2024 which proposed increasing FPNs to the maximum and that was passed. Delegations for implementing this decision and confirming the fine detail rest with the WSS committee.
- 4.2 Members did request we consider fly tipping at 'bring it' sites and we have consulted with colleagues in Waste Management and reviewed cases associated with such sites. With better signage due this year, the proposed tiered approach to litter and fly tipping will be able to provide suitable enforcement and a fair approach to accidental or deliberate inappropriate or illegal waste deposits at 'recycling bring sites'.

### **5.What alternative options did we consider?**

- 5.1 The recommendations do already provide some options for members at their request as this is not an exact science. However other options included
- 5.2 **Alternative Option 1:** Maximum rates for all with no early payment
- 5.3 **Alternative Option 2:** Offer concession rates for people on low income.
- 5.4 These have been considered and it is felt option 1 was likely to lead to virtually no FPN's being paid locally which would carry significant budget risks through lack of FPN income. This would also increase work pressure on officers who would have more legal cases to prepare and on legal services and the Courts. Option 2 would be complicated to enforce and goes against the usual system whereby FPN's are not subject to concession however the court could consider personal means if a case goes to them.

### **6.How has equality, diversity and inclusion been actively considered?**

- 6.1 Via an EIA. This proposal to increase Fixed Penalty Notice levels for certain environmental offences, has a sliding scale of Fixed Penalty Notice for both littering and fly tipping. We do offer some extended payment periods for those who may struggle to pay. As part of this proposal, we will improve signage at the most locations where the majority of detected fly tipping offences occur (the recycling bring sites) to raise awareness.
- 6.2 Notwithstanding these proposals it must be remembered that a fixed penalty notice is an offer to discharge liability for an offence. Unpaid fixed penalty notices are normally referred to the court where offenders have the opportunity to attend to offer a plea and if found guilty the court is able to consider their means and to set a fine accordingly.

## **7. Financial and Commercial Implications**

- 7.2 The proposals in this report have been summarised on the following two tables. The first one relating to littering whilst the second refers to fly tipping.
- 7.3 The activity level is based on the level of paid fixed penalty notices during 2023/24 as this is the latest full year activity the Council has. The level of potential income is then adjusted to five scenarios with varying levels of price of elasticity, these scenarios try to show the impact on income when the level of paid Fixed Penalty Notices changes. The Price of Elasticity Demand is an economic concept that tries to replicate the impact on demand by either increasing or decreasing the price.
- 7.4 The scenarios are as follows:

Scenario	Explanation
90%	This assumes a reduction of 10%. This is considered to be an optimistic view. In the summary table this is considered high risk and therefore colour coded Red.
80%	This assumes a reduction of 20%. This is considered to be at the top of the acceptable range. In the summary table this is considered medium risk and therefore colour coded Amber.
70%	This assumes a reduction of 30%. This is considered to be the most likely outcome. In the summary tables this is considered low risk and is therefore colour coded Green.
60%	This assumes a reduction of 40%. Whilst this could be a reasonable outcome it does mean that income generated is less than the income generated in 2023/24. In the summary this is considered high risk and is therefore colour coded Red
50%	This assumes a reduction of 50%. Again, whilst this could be a reasonable outcome it does mean that the income generated is even more reduced than in the previous scenario. In the summary this is considered high risk and is therefore colour coded Red

**Please Note:** There is no National, Regional, Local or Organisational information / statistics that can provide any intelligence into the most likely Price of Elasticity of Demand scenario. Hence a range has been provided but until the scheme is implemented the effect is not known and cannot be anticipated with any level of certainty.

- 7.5 Finance would therefore suggest a review period, so that whatever option is selected, it can be reviewed after say 6-8 months to identify the level of



impact the change had. This would provide some intelligence to model any changes proposed after the review period.

## 7.6 Table relating to Littering Fixed Penalty Notices

<b>Littering</b>	<i>Current</i>	<i>Option 1</i>		<i>Option 2</i>	
Litter Fixed Penalty Notice	£80	£100	£200	£160	£200
Early Payment Level	n/a	n/a	n/a	£100	n/a
Other Comment		Depends on nature of offence		Depends on nature of offence	
2023/24 Activity Paid FPNs	933	840	93	840	93
Assumed % Split of Activity *	100%	90%	10%	90%	10%
Assumed % of Early Payment Fee *	n/a	n/a	n/a	80%	n/a
Total Income based on 2023/24 Activity	<b>£74,640</b>	£84,000	£18,600	£94,080	£18,600
		<b>£102,600</b>		<b>£112,680</b>	
Price Elasticity Rates (The effect on the level of activity / payment as a result of the price increase) *	90%	£92,340		£101,412	
	80%	£82,080		£90,144	
	70%	£71,820		£78,876	
	60%	£61,560		£67,608	
	50%	£51,300		£56,340	

## 7.7 Table relating to Flytipping Fixed Penalty Notices

<b>Fly Tipping</b>	<i>Current</i>	<i>Option 1</i>			<i>Option 2</i>	
Fly Tipping Fixed Penalty Notice	£400	£400	£600	£1,000	£1,000	£1,000
Early Payment Level	£300	n/a	n/a	n/a	£400	£600
Other Comment		Depends on nature of offence			Depends on nature of offence	
2023/24 Activity Paid FPNs	52	44	5	3	42	10
Assumed % Split of Activity *	100	85%	10%	5%	80%	20%
Assumed % of Early Payment Fee *	80%	n/a	n/a	n/a	80%	80%
Total Income based on 2023/24 Activity	<b>£16,640</b>	£17,600	£3,000	£3,000	£21,840	£6,800
		<b>£23,600</b>			<b>£28,640</b>	
Price Elasticity Rates (The effect on the level of activity / payment as a result of the price increase) *	90%	£21,240			£25,776	
	80%	£18,880			£22,912	
	70%	£16,520			£20,048	
	60%	£14,160			£17,184	
	50%	£11,800			£14,320	

\* These fields are an arbitrary %. There is no National, Regional, Local or Organisational information that can be used to provide or support a better basis.

## 7.8 Summary Table relating to Fixed Penalty Notices

Fixed Penalty Notice	Option	2023/24 Income	Price Elasticity of Demand based on 2023/24 Activity				
			90%	80%	70%	60%	50%
Littering	1	£74,640	£92,340	£82,080	£71,820	£61,560	£51,300
	2	£74,640	£101,412	£90,144	£78,876	£67,608	£56,340
Fly Tipping	1	£16,640	£21,240	£18,880	£16,520	£14,160	£11,800
	2	£16,640	£25,776	£22,912	£20,048	£17,184	£14,320

7.9 This table shows that the 80% and 70% scenarios are potentially where demand could be. Anything lower provides a lower level of income than generated in 2023/24.

7.10 It should be remembered that this income is used against the cost of providing the Fixed Penalty Notice scheme and the staff that operate it. There is no surplus income.

## 8. Legal Implications

8.1 This is a continuation of existing work re FPNs we are simply amending the levels. The relevant legal provisions are referred to within the main body of the report. The Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023 commenced on 31st July 2023 and amended both the Environmental Protection Act 1990 and the Environmental Offences (Fixed Penalties) (England) Regulations 2017

8.2 Section 2 of the Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023 amends Regulation 5 of the Environmental Offences (Fixed Penalties) (England) Regulations 2017, firstly in setting the amount of a fixed penalty for littering offences at a minimum of £65 and a maximum of £500: and secondly by setting the fixed penalty amount available to address offences related to distribution of printed information without consent from the Council, at the minimum level of £65 and the maximum level of £150.

- 8.3 Section 3 of the Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023 amends section 33ZA(9)(a) of the Environmental Protection Act 1990 by setting the maximum fixed penalty amount available for waste deposit [fly-tipping] offences to £1,000, with the minimum amount of Page 6 of 7 £150 retained. Section 3 also amends section 34ZA(8) of the Environmental Protection Act 1990 by setting the maximum fixed penalty amount available for the household duty of care waste offence to £600, with the minimum amount of £150 retained.
- 8.4 In the event a fixed penalty notice is issued and remains unpaid the matter will be referred to legal services for prosecution unless put through the SJP. The fixed penalty notice gives the individual an opportunity to discharge their liability for the offence. An increase in the fixed penalty amount may result in an increase in the number remaining unpaid and thus in the number of matters being referred for prosecution.

## **9. Climate and Environmental Implications**

- 9.1 Littering and fly tipping have an impact on greenhouse gas emissions through the Council's corporate fleet vehicles. Between April 2021 and March 2022, road sweepers and vehicles used for fly tip removals accounted for ca 120 tCO<sub>2</sub>e (tonnes carbon dioxide equivalent) or 5% of all emissions from 'red' and 'white' diesel- fuelled corporate fleet vehicles, over the same period. Increasing the level of fines for littering and fly tipping might help to avoid an increase in emissions from transport if fines were to become a more effective deterrent
- 9.2 Littering and fly tipping subvert waste regulations intended to ensure the proper treatment of waste and to manage resources sustainably. Any recycling material which can be recovered from littered and fly tipped waste is more likely to be contaminated, with less avoided greenhouse gas emissions from reduced demand for raw materials.
- 9.3 According to a December 2021 'strategic environmental assessment' of the Scottish Government's proposed National Litter and Flytipping Strategy, one tonne of Page 7 of 7 littered and fly tipped waste can lead to 600 kgCO<sub>2</sub>e emissions which could have been avoided, if the waste had been fully recycled.

## **10. Other implications**

- 10.1 The increase in the maximum level of fines if applied, is likely to render some people with limited incomes incapable of mitigating offences by payment of a Fixed Penalty Notice. This will not only lead to further expense being incurred by the Council in prosecuting those who fail to pay and pressure on legal services. But it could affect current or future job prospects for those who end up with a criminal conviction due to having insufficient income to buy themselves out of a prosecution as a more affluent person may have been able to do.

10.2 Ignorantia legis neminem excusat ("ignorance of law excuses no one"), is a legal principle holding that a person who is unaware of a law may not escape liability for violating that law merely by being unaware of its content. One of the most often cited excuses offered by those facing a sanction for the illegal deposit of waste is that they didn't realise they'd committed an offence

- because they didn't understand that they couldn't leave waste at x location
- because it was already piled high with rubbish, or they'd seen others dumping there.
- English not being their first language,
- people suffering from mental health issues or conditions like autism/ ADHD or simply crisis in their personal lives
- Failing to notice the signage

10.3 None of the above is justification for discontinuing action against those caught committing offences but some of these offenders do live under challenging circumstances and the increased rates may disproportionately affect them.

### **11. Reasons for decision**

11.1 There are new legal flexibilities in respect of the levels that FPNs for fly tipping and littering can be set at. Based on a thorough review of the options and balancing the deterrent effect with the practical issues of payment and officer/court time, the proposed levels of FPN and options for how they may be applied, feel like a sensible balance.

11.2 These options and decisions reference risks and benefits of each course of action. We do have considerable experience of issuing fines and collecting payment which we have drawn on here.