

BROMSGROVE DISTRICT COUNCIL

CABINET

1ST OCTOBER 2008

FIXED PENALTY NOTICES

Responsible Portfolio Holder	Cllr June Griffiths
Responsible Head of Service	John Godwin, Deputy Head of Service
Key Decision	

1. SUMMARY

- 1.1 This report summarises the legal framework within which Local Authorities have the power to issue fixed penalty notices and determines a process by which Bromsgrove District Council can introduce a policy for managing and enforcing environmental issues within this framework.

2. RECOMMENDATIONS

- 2.1 Members are asked to note the research undertaken to date in respect of fixed penalty notices and to approve in principle the process for introducing an interagency enforcement policy for tackling environmental crime within the District of Bromsgrove.

3. BACKGROUND

- 3.1 Members will be aware that there is a perception within our District, and indeed nationally that environmental offences go unchallenged. The issues of dog fouling, litter, graffiti and fly-tipping are matters that are raised frequently at PACT meetings throughout the District and through the Council's Focus Groups that couch public opinion with regard to Council services.
- 3.2 The Clean Neighbourhoods and Environment Act 2005 introduced a number of new provisions and enforcement powers for Local Council's and by amending several pieces of existing legislation, including the Environmental Protection Act 1990, The Act provides local Councils with new powers to clamp down on nationally-recognised issues of environmental crime.
- 3.3 Whilst Fixed Penalty Notices can provide Local Authorities with an effective and visible way of responding to low-level environmental crimes they should be a part of a wider enforcement policy which needs to be adopted by the Council to ensure that resources are focussed on the priority areas and that an appropriate balance is struck between resources devoted to fixed penalties and those spent on prosecutions.

- 3.4 It is therefore necessary for all agencies with the powers to undertake this method of enforcement to determine a policy that standardises fixed penalty notice procedures and provides clear guidance on the circumstances in which a fixed penalty notice will be issued. It will be necessary for the Council to consult the public on the contents of this policy, particularly as that Council has not exercised any fixed penalty notice powers historically.
- 3.5 It is essential that the Council develop strong interagency agreements with any other agency that deals with enforcement in Bromsgrove and that working protocols are established to enable the Council to deal with fixed penalty notices issued on their behalf by Police Community Support Officers and persons accredited under the Community Safety Accreditation Schemes, both under the Police Reform Act 2002.
- 3.6 Officers have had initial discussions with the Police Force in Bromsgrove and they have indicated their support to the introduction of such an interagency agreement in respect of dog fouling and litter.
- 3.7 The availability and level of fixed penalties for environmental crimes reflect the severity of the offence and it is important that the correct fixed penalty is used for the offence. In particular litter fixed penalties should not normally be used to deal with illegal waste or fly tipping offences; due to the severity and impact on the environment those responsible for these sorts of offences should normally be prosecuted through and upon conviction punished, through the courts.
- 3.8 Fixed penalty notices may be issued when an enforcing officer believes that an offence has been committed, the point being that the putative offender is given an opportunity to avoid a prosecution by the payment of the penalty.
- 3.9 It is therefore vital that the fixed penalty notice is only issued when there is adequate evidence to support a prosecution if the notice is not paid, and that unpaid notice is followed up. It is not deemed to be acceptable in the guidance that supports the process for administering fixed penalty notices for an authority to decide that it does not have the resources to prosecute if the notice is unpaid and is why it is necessary for the Council to determine the process in a well publicised policy detailing exactly what it will do and why.
- 3.10 Guidance advises that authorities who are considering issuing fixed penalty notices for the first time allow a well – publicised lead in period before notices are issued. This should help to ensure public support for fixed penalties. During this time, when an offence is committed, enforcement officers should not issue any fixed penalties; if the offence is serious (as indicated above) they should report the offender with the view to prosecution; in other cases they should issue a warning that in future similar offences may lead to a fixed penalty notice being issued and the

consequence of this. This helps to raise awareness within the community and should help to manage the public's perception.

- 3.11 The Council will need to develop a strategy for communicating this to the public. This will need to be designed to raise awareness and also to keep public expectation realistic. Such a strategy will need to make use of the local media and the Council's website and will need to clearly publish the legislative framework and the powers that the Council intend to use and explain why. It is important to do this not only to ensure that the community know what the Council are doing and support it, but also to ensure that the expectation in the community is a realistic one and that they are not expecting the Council to achieve things that are simply not achievable. It is important to note that in other parts of the County where fixed penalty notices have been introduced that the Council's have received very negative publicity because the community expected environmental crime to cease as a result and it did not.
- 3.12 Members are being asked to consider the introduction of fixed penalty notices to the extent that officers will be tasked with the responsibility of developing an interagency enforcement agreement and associated working protocol that would enable Bromsgrove District Council and the Bromsgrove Police force to work together to enforce against environmental crime within the District recognising that at this stage the commitment would be in respect of dog fouling and litter with the intention to revisit this after a trial period.
- 3.13 Officers are requesting members to approve the principle of introducing a fixed penalty notice policy at Bromsgrove District Council and to task officers with undertaking the necessary preparatory work with the Police and partners to achieve this. The policy will need to be extensive covering staff training, issuing fixed penalty notices, appeals, non payment, failure to provide a name and address, repeat offenders and juveniles.
- 3.14 Once written the fixed penalty notice policy and procedures, together with the associated cost implications would be brought to members for final determination.
- 3.15 The process of issuing and enforcing fixed penalty notices will involve co-ordinated working between officers from various different teams within the Council, and between those officers and the police. It is envisaged that the actual issuing of the notices would be carried out on behalf of the Council by officers who already have a visible presence to the public such as civil enforcement officers (car park attendants) or parks officers and on behalf of the police by Community Support Officers. Staff based at the Council House in the Community Safety team will take on the process of chasing payment of notices issued and administering an appeal system. Officers from the legal team will be responsible for advising on evidence and representing the Council on any prosecutions which result from non payment. To fully develop the fixed penalty notice policy and associated

procedures, officers intend to set up a working group to include representatives from the car parking team, the parks team, the legal team and Community Safety. The group will be tasked with the following two functions:-

- to develop the draft fixed penalty notice policy and procedures
- to engage in consultation with the police in order to agree a working protocol setting out how the police and the Council will work together.

It is anticipated that this will be a highly detailed piece of work the timescale for which is likely to be six months. The group is to be lead by the Community Safety Team.

3.16 At all stages throughout the process referred to above officers will work with Redditch Borough Council and other organisations within the District to benefit from shared learning and identify potential opportunities for shared service and joint working.

4. FINANCIAL IMPLICATIONS

4.1 There are none arising directly out of this report however any costs associated will need to be factored into the Medium Term Financial Plan.

5. LEGAL IMPLICATIONS

- 5.1 The power to issue fixed penalty notices derives from the Environmental Protection Act 1990, the Anti-social Behaviour Act 2003 and a number of enactments, as amended and extended by the Clean Neighbourhoods and Environment Act 2005;
- 5.2 Detailed implementing provisions are contained in the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2006 and the Environmental Offences (Use of Fixed Penalty Receipts) Regulations 2006.
- 5.3 Defra has published detailed guidance on the use of Fixed Penalty Notices in publications entitled:
- Guidance on the Fixed Penalty Notice Provisions of the Environmental Protection Act 1990, the Clean Neighbourhoods and Environment Act 2005 and other legislation; and
 - Local environmental enforcement – Guidance on the use of fixed penalty notices.

6. COUNCIL OBJECTIVES

6.1 The adoption of a Fixed Penalty Notice Scheme supports Bromsgrove District Councils Objectives and Values of:
Leadership:

Demonstrating the authority is prepared to take the initiative and commit funding and officer resource for the introduction of a Fixed Penalty Scheme to tackle the issues covered by the Penalties

By setting such an example the Authority will build trust within the community that it is determined to tackle the issues the affect residents in their day-to-day lives

Partnership:

The introduction of a fixed penalty notice scheme will be a policy that is administered by the Council and the Police in conjunction with the Community Safety Team and the CDRP.

Customer First:

Residents have requested that Bromsgrove District Council should take the lead on enforcement and the introduction of fixed penalty notices. It is important that this process is managed within a clear interagency agreement and it is important that the Council is seen to be responding to the needs of the community.

Sense of Community and Wellbeing

The issuing of fixed penalty notices would be a clear demonstration to residents that Bromsgrove District Council were taking the appropriate measures to ensure that environmental crime within the District of Bromsgrove was managed within a clear and robust policy and that offenders punished.

Environment

Fixed penalty notices would support the Council's desire to improve and maintain the environment and tackling the environmental issues by the use of fixed penalty notices would be a positive step in making the District a cleaner place to live in.

7. RISK MANAGEMENT

7.1 The main risks associated in this report are:

- Lone Working
- Non-Adoption of FPN Scheme
- Non-collection of Fines

7.2 These risks are being managed as follows:

Lone Working

Risk Register:	Culture & Community
Key Objective	12
Key Objective	Efficient and Effective Fixed Penalty Enforcement Scheme

Controls

Effective lone worker system in place
Appropriate Training for all Officers involved in FPNs

Non Adoption of FPN Scheme

Risk Register: Culture & Community
Key Objective 12
Key Objective Efficient and Effective Fixed Penalty Enforcement Scheme

Controls

A fully realised Business Case developed for members to approve.
GANNT Chart to monitor key dates/actions to ensure successful delivery of project

Non- collection of Fines

Risk Register: Culture & Community
Key Objective 12
Key Objective Efficient and Effective Fixed Penalty Enforcement Scheme

Controls

Development of robust collection & monitoring system to ensure all non payments are tracked and appropriate warning letters issued

Officers receive appropriate training to ensure all perpetrator details are correctly taken and procedures followed should case go to court

Legal Dept have agreed processes in place should perpetrator be taken to court.

8. CUSTOMER IMPLICATIONS

- 8.1 The Fixed Penalty Notice Scheme will need to be have a high visibility, plain English roll out within the media for residents, members, officers and partners. Payment timetables and methods need to be clearly understood.

Fixed Penalty Notices are a direct response to the feedback of views of residents via PACT and other public meetings and requests from Partners.

9. EQUALITIES AND DIVERSITY IMPLICATIONS

- 9.1 None

10. VALUE FOR MONEY IMPLICATIONS

- 10.1 None contained within the report except those identified within the Corporate Objectives section of this report. They revolve around the

improved customer perception of the Council and the potential improvement in satisfaction levels which is a key part of Value for Money

11. OTHER IMPLICATIONS

Procurement Issues:
Personnel Implications:
Governance/Performance Management: See 3.18
Community Safety including Section 17 of Crime and Disorder Act 1998:
Policy:
Environmental:

12. OTHERS CONSULTED ON THE REPORT

Portfolio Holder	Yes
Chief Executive	No
Corporate Director (Services)	No
Assistant Chief Executive	Yes
Head of Service	Yes
Head of Financial Services	Yes
Head of Legal, Equalities & Democratic Services	Yes
Head of Organisational Development & HR	Yes
Corporate Procurement Team	No

13. WARDS AFFECTED

13.1 All Wards

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