The Cabinet

Date: 10th January 2017

Environmental Enforcement Fixed Penalty Notice Policy 2017

Report of the Chief Fire Officer

Cabinet Members: Councillors Dave Ledger & Ian Swithenbank.

Purpose of Report

The purpose of this report is to present to the Cabinet, for its consideration, the Environmental Enforcement Fixed Penalty Notice Policy 2017.

Recommendations

It is recommended that the Cabinet:

1) receive and adopt the Environmental Enforcement Fixed Penalty Notice Policy 2017.

This report is relevant to the following corporate priorities: Improve our places and our environment, Enable communities and families to be strong, and Help people to be healthy and independent.

Key Issues

1. The purpose of the proposed policy is to set out how the Council will enforce through the use of Fixed Penalty Notices (FPNs) for environmental offences. It sets out the Council’s fine levels for the non-payment of fixed penalty notices issued by the Council. In the use of FPNs the Council will always seek to follow the enforcement principles described in its overarching Corporate Enforcement Policy.

2. The Council’s current fixed penalty policy was adopted in 2009 but because of subsequent legislative changes it is no longer fit for purpose. The proposed new policy (attached as appendix one to the report) was produced following a process of review carried out by the Council’s Environmental Enforcement Management Group. It takes into account new legislation and amendments that have been made since 2009 to other key legislation.
3. A FPN is a means to give a person who has committed a relevant offence the opportunity to pay a fine and in so doing discharge their liability to conviction. As such it is intended as a means by which Courts are prevented from being overloaded with minor offences by first time offenders.

4. The policy covers enforcement action for those offences that could be broadly described as environmental or related to cleaner or safer neighbourhoods. As such the areas it covers include: dog control/dog fouling, littering, fly tipping, abandoning a vehicle, consuming alcohol in public spaces, and graffiti.

5. Where legislation permits the use of fixed penalty notices, the Council will consider the use of them as an alternative to prosecution. Examples of where they may be appropriate are: to deal quickly and simply with less serious offences, to divert less serious cases away from the court process and to deter repeat offences.

6. Section six of the policy sets out proposed fine levels all of which are within the range allowed in the relevant legislation. The scheme of fines includes the provision for a reduced fine on early payment i.e. within 7 days of receipt of the FPN rather than the maximum allowable period of 14 days. If an FPN is not paid within the 14 days then normally the offender would be prosecuted.

7. The use of FPNs is an essential part of the Council's approach to environmental enforcement. In 2015/16 a total of 469 fixed penalty notices were issued mainly for littering and dog fouling offences. This is the highest number ever issued by the Council in one year.
BACKGROUND

1 Introduction

1.1 The Council's current fixed penalty policy was adopted in 2009 and is no longer fit for purpose because of legislative changes.

1.2 The new policy was produced following a process of review carried out by the Council's Environmental Enforcement Management Group led by the Public Health Protection Manager and including members from across service groups. The review took into account new legislation such as the Anti-Social Behaviour, Crime & Policing Act 2014, together with amendments that have been made since 2009 to other key legislation such as the Environmental Protection Act 1990 and the Clean Neighbourhoods and Environment Act 2005.

1.3 Some environmental legislation gives Council's the power to issue Fixed Penalty Notices (FPNs) as an alternative to prosecution for certain low level offences. A FPN is a legal disposal - that is a means to give a person who has committed a relevant offence the opportunity to pay a fine and in so doing discharge their liability to conviction. As such it is intended as a means by which Courts are prevented from being overloaded with minor offences by first time offenders.

1.4 The Council uses fixed penalty notices as part of an overall approach to protecting and improving the environment, safety & well-being of our communities. This policy is strongly linked to the following corporate priorities:

- Improve our places and our environment
- Enable communities and families to be strong
- Help people to be healthy and independent


2.1 The policy is a daughter policy of the Corporate Enforcement Policy that was adopted by the County Council on 12 May 2015. So the FPN policy has been developed in such a way as to be consistent with the principles of necessity and proportionality when making an enforcement decision. Therefore FPNs will normally be used:

- To deal quickly and simply with less serious offences
- To divert less serious cases away from the court process
- To deter repeat offences

2.2 The policy covers enforcement action for those offences that could be broadly described as environmental or related to cleaner or safer neighbourhoods:

- Dog control including dog fouling
• Littering
• Fly tipping
• Failure to produce a Waste Carriers Licence when required to do so
• Failure to furnish Waste duty of care documentation when required to do so
• Nuisance Parking
• Abandoning a vehicle
• Graffiti and Flyposting
• Offences in relation to waste receptacles
• consuming alcohol in public spaces.

2.3 Where legislation gives the local authority flexibility to set the level of a fixed penalty charge the level of the charge shall be set by the Council. The table in section 6 of the Policy (appendix one) sets out the level of fines that is deemed appropriate for each particular offence listed. In each case careful consideration has been given to ensure that fine levels are proportionate to the offence. It includes provision for a reduced fine level for early payment i.e. within 7 days.

2.4 Where a fixed penalty fine is not paid within the specified time limit (usually 14 days) then the case will be considered for prosecution. There is no appeals procedure for a person in receipt of an FPN because a person served with an FPN who believes they did not commit the offence has the right for their case to be heard in court. As such it is appropriate that the magistrates court should determine such matters.

2.5 Normally the Council would only issue FPNs to first time offenders for those offences shown in section 6 of the Policy. In cases where the offender has a history of committing the same or similar offence, and the payment of earlier fixed penalties or court fines has not deterred them from reoffending then prosecution will normally follow.

2.6 Any fines collected through the FPN procedure will only be spent on related functions of the Council as is required by Government guidance.

2.7 The new policy incorporates legislative changes introduced by the Anti-Social Behaviour, Crime and Policing Act 2014. Of particular note is the introduction of public spaces protection orders. The Council is presently in the process of replacing existing dog control orders with a public spaces protection order for dog control. This means that fine levels for dog control issues such as dog fouling will be those shown in the policy for failure to comply with a public spaces protection order.

3. Current use of FPNs for environmental offences.

3.1 FPNs are an essential part of the Council's approach to environmental enforcement. Since 2012 the Council's environmental enforcement function has been significantly
improved and as a result the number of FPNs issued by enforcement officers for enviro-crime offences has significantly increased.

3.2 In 2015 a total of 455 fixed penalty notices were issued for littering and dog control offences. This is the highest number ever issued by the council in one year and represents a 37% increase from 2014.

4. Comparison of proposed Northumberland fine levels with neighbouring authorities.

The table below compares the main proposed Northumberland fine levels with three neighbouring councils. The information has been taken from Council websites. The proposed levels are close to some of those of other Council’s within the region.

<table>
<thead>
<tr>
<th>Offence</th>
<th>Fixed penalty level</th>
<th>Reduced early payment level</th>
</tr>
</thead>
<tbody>
<tr>
<td>Failure to comply with a Public Spaces Protection Order (e.g. dog control &amp; dog fouling of land, consuming alcohol in public spaces)</td>
<td>Northumberland £100 Durham £100 Newcastle £75 South Tyneside £100</td>
<td>Northumberland £80 Durham £60 Newcastle no discount South Tyneside not known</td>
</tr>
<tr>
<td>Littering</td>
<td>Northumberland £80 Durham £80 Newcastle £75 South Tyneside £50</td>
<td>Northumberland £60 Durham £50 Newcastle no discount South Tyneside no discount</td>
</tr>
<tr>
<td>Failure to comply with a Community Protection Notice</td>
<td>Northumberland £100 Durham £100 Newcastle £80 South Tyneside £75</td>
<td>Northumberland £80 Durham £60 Newcastle no discount South Tyneside no discount</td>
</tr>
<tr>
<td>Fly tipping</td>
<td>Northumberland £400 Durham £400 Newcastle £200 South Tyneside £300</td>
<td>Northumberland £300 Durham £180 Newcastle no discount South Tyneside £150</td>
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</tbody>
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BACKGROUND PAPERS

The NCC Corporate Enforcement Policy.

IMPLICATIONS ARISING OUT OF THE REPORT

Give the implications

Policy: This policy is a daughter policy of the Corporate Enforcement Policy.

Finance and value for money: The policy states that any funds from payment of FPNs will only be spent on related functions of the Council.

Human Resources: None

Property: None

Equalities (Impact Assessment attached) The implementation of the policy does not present potentially significant equality issues. The policy includes consideration of children, young persons and vulnerable adults.

Yes □ No √ N/A □

Risk Assessment: Adopting the policy will assist in providing a framework to ensure appropriate enforcement action is taken.

Crime & Disorder: The adoption of the policy will assist in ensuring the enforcement of statutory regulations.

Customer Considerations: The policy would be delivered in such a way as to ensure that a consistent and proportionate approach is taken in all circumstances.

Carbon Reduction: None

Consultation: None

Wards: All

Report sign off.

Authors must ensure that relevant officers and members have agreed the content of the report:

<table>
<thead>
<tr>
<th>Role</th>
<th>Signatory</th>
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<tbody>
<tr>
<td>Finance Officer</td>
<td>AM</td>
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<td>Monitoring Officer/Legal</td>
<td>NM</td>
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<td>Procurement</td>
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<td>I.T.</td>
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<tr>
<td>Portfolio Holder(s)</td>
<td>DL/IS</td>
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Appendix 1

Environmental Enforcement Fixed Penalty Notice Policy 2017