

POLICY AND RESOURCES COMMITTEE – 5 NOVEMBER 2018

COUNCIL – 11 DECEMBER 2018

PART I – NOT DELEGATED

**5. ENVIRONMENTAL ENFORCEMENT
(DCES)**

1 Summary

- 1.1 To agree the Environmental Enforcement Policy for Three Rivers.
- 1.2 To increase the level of FPN for littering, graffiti and fly posting.
- 1.3 To agree the introduction of a civil Fixed Penalty Notice (FPN) for Littering from Vehicles.

2 Details

- 2.1 Environmental Protection has four Environmental Enforcement Officers (EEO) (three full time and one part time) who deal with a range of issues, including; fly tipping, abandoned vehicles, littering, contaminated recycling and trade waste enforcement. All of their enforcement duties are covered in the proposed Environmental Enforcement Policy (Appendix A). However their other responsibilities include supporting the Animal Control Enforcement Officer and promotion of the trade waste service.
- 2.2 **The Environmental Enforcement Policy** (Appendix A) has been written, for approval by Members, to bring together all the work of the EEOs. Included in this policy is all of the work already undertaken by the Department.
- 2.3 **Environmental Offences (Fixed Penalties) (England) Regulations 2017 came into force in April 2018.**
 - 2.3.1 These Regulations amend the amounts permitted to be demanded in FPNs issued by waste authorities under Section 88 of the Environmental Protection Act 1990 (for littering) and S43 of the Anti-Social Behaviour Act 2003 (for fly posting and graffiti). For litter, graffiti and fly posting the maximum FPN elevates to £150 (previously £75), with a minimum £50 and £100 default amount. It is proposed to increase the FPN in Three Rivers to the maximum £150, with a reduction to £100 if paid within 7 days.
 - 2.3.2 In 2017/18 four FPNs under Section 88 for littering were issued and eight have been issued to date in 2018/19. None has been issued for graffiti and fly posting.
- 2.4 **The Littering from Vehicles outside London (Keepers: Civil Penalties) Regulations 2018 (SI 2018/171)**
 - 2.4.1 This also came into force on 1st April 2018 and confers a power on English district councils (outside London) to require the keeper of a vehicle to pay a civil fixed penalty if there is reason to believe that a littering offence has been committed from the vehicle. This power is similar to that already conferred on London borough councils by s.24 of the London Local Authorities Act 2007 to impose a penalty charge on the owner of vehicles from which litter is thrown. This removes the need to identify precisely who threw the litter before the local authority can take enforcement action against this anti-social behaviour.

- 2.4.2 The range of penalty amount (£65 to £150) and the default penalty amount (£100) are aligned with those for the offence of leaving litter under section 88 of the Environmental Protection Act 1990. It is therefore proposed to introduce a Fixed Penalty Notice of £150 (discounted to £100 for payment within 14 days) for Littering from Vehicles and that the EEOs are given the authorisation to issue these. It should be noted that, if no representations are made to the local authority or subsequent appeal received and the FPN is not paid within 28 days, the amount automatically doubles.
- 2.4.3 Should Members decide that the FPN for littering, as set out in para 2.3, should not be set at £150 it should be noted that the Littering from Vehicles FPN should be set the same as whatever is agreed, as these two FPNs must be set at the same level.
- 2.4.4 Although the EEOs have in the past issued FPNs for an offences under section 88 (where litter was thrown from vehicles) any figures will be included in those for general littering and we know none (of the four referred to in para 2.3.2) was issued in 2017/18 for this.
- 2.4.5 These regulations only allow for a district or county council to issue FPNs to the registered keeper of a vehicle. Evidence can come from EEOs, members of the public, police officers and PCSOs. Officers will speak with the local police teams to determine if police officers or PCSOs will provide witness statements should they see any littering from vehicles, although it is unlikely this will be a priority.
- 2.4.6 A civil penalty is a civil fine which unlike a criminal penalty, does not carry the risk of a criminal prosecution. The 'keeper' of a vehicle is presumed to be the 'registered keeper', but evidence may be provided by showing that the vehicle was 'kept' by another person at the relevant time: the liability to pay the civil penalty rests with the keeper of the vehicle at the time of the offence.
- 2.4.7 The Regulations provide that a person to whom a penalty is given may make representations to the litter authority against the penalty on specified grounds. It is recommended that the Head of Community Services is designated to receive representations and consider whether the FPN should be cancelled or refunded. The local authority has 56 days to respond to representations. If the local authority does not accept those representations, the person has a right to appeal to independent adjudicators. The independent adjudicators and their support staff are collectively known as the Traffic Penalty Tribunal. The Traffic Penalty Tribunal operates a digital by default online appeal system. All local authorities outside London that operate civil parking enforcement use this system. The tribunal also operates an Assisted Digital Support programme for people who are not able to appeal online. Regulation 18 provides for this function to be exercised by PATROL (Parking and Traffic Regulation Outside London), of which Three Rivers is already a member, and that the expenses associated with the adjudication (including the expenses of the joint committee or joint committees and the remuneration of adjudicators) **must** be paid by the litter authorities. It will be up to the joint committee to decide and agree how to allocate these costs between the litter authorities. Debts arising from unpaid penalties can be registered with the Traffic Enforcement Centre (TEC) at Northampton County Court.
- 2.5 Officers from Environmental Protection are active members of the Hertfordshire Fly Tipping Group, which is a multi-agency taskforce including the Boroughs, Districts and County Council as well as the Police, Office of the Police and Crime Commissioner, Herts Fire & Rescue, the Environment Agency, the National

Farmers Union and Keep Britain Tidy which have come together to improve how Hertfordshire responds to fly tipping and waste generally.

2.6 Defra are currently consulting on an FPN for breach of Domestic Duty of Care. The duty of care requires householders to take all reasonable measures available to them in the circumstances to ensure that they only transfer household waste produced on their property to an authorised person. Currently, there is no provision for an FPN on a breach and prosecution or caution are the only alternatives. The Hertfordshire Fly Tipping Group is responding to this consultation on behalf of all stakeholders, and officers from Three Rivers have had the opportunity to feed into this. Should this come to fruition, a further report will be tabled for Council to give officers authorisation to issue these, to agree the level of FPN and update the Enforcement Policy. It will be recommended that the level set in Three Rivers will be the same as other councils across Hertfordshire, as was achieved in 2016 with the fly tipping FPN. This helps to build a consistent message across the county on tackling fly tipping.

2.7 The table below lists the number of successful FPNS, prosecutions and simple cautions by the Environmental Enforcement team in 2017/18 and Quarter One of 2018/19 for information.

Act	2017-18	2018-19 (Quarter 1)
FPNs;		
S33 EPA Fly tipping	2	5
S88 EPA Litter	4	8
S34 EPA Duty of Care	21	1
S5 Control Of Pollution Act Waste Carriers	3	0
S46 EPA Domestic bins (contamination)	0	1
S48 Anti-Social Behaviour Crime and Policing Act (CPN)	2	1
Simple Cautions	1	0
Prosecutions	4	3

2.8 If the FPN for Littering from Vehicles and new FPN levels are agreed, a small stock of new FPN pads will be ordered; this is to ensure that, should an FPN for Domestic Duty of Care be introduced, there is no waste of pads.

3 Options and Reasons for Recommendations

3.1 Now there is an option to increase the level of FPN, officers feel that by doing so this will act as a further deterrent against committing these offences.

4 Policy/Budget Reference and Implications

4.1 The recommendations in this report are within the Council's agreed policy and budgets.

4.2 The purpose of this proposed policy is to set new levels for Fixed Penalty Notices for littering, fly posting and graffiti and to authorise the EEOs to enforce under The

Littering from Vehicles outside London (Keepers: Civil Penalties) Regulations 2018 (SI 2018/171)

4.3 The proposed policy will impact on the following performance indicators:

CP01 – satisfaction with keeping public land clear of litter and refuse

CP47 – perception of ASB as a problem in the local area

CP05 – satisfaction with Three Rivers District Council

4.4 The impact of the recommendations on this/these performance indicator(s) is:

To increase satisfaction and reduce the perception of ASB

5 Financial Implications

5.1 Whilst it is recommended to increase the level of FPN for littering, fly posting and graffiti and introduce an FPN for littering from vehicles, the numbers of FPNs issued does not warrant a change in budget at this time as it is not considered to be a material change. By analogy, the increased income from future FPNs and the number of representations against FPNs which may be issued under the Littering from Vehicles outside London (Keepers: Civil Penalties) Regulations 2018 is expected to be very small.

6 Legal Implications

6.1 None specific as the new levels of FPN do not have legal implications and the new Littering from Vehicle Regulations do not lead to criminal prosecution but are enforced like parking tickets.

7 Equal Opportunities Implications

7.1 Relevance Test

Has a relevance test been completed for Equality Impact?	Yes
Did the relevance test conclude a full impact assessment was required? The enforcement policy will be applied in a way that takes consideration of the age of the offender, and the mental capacity of any disabled adult to understand legislation and enforcement actions.	No

8 Environmental Implications & Community Safety

8.1 By increasing the level of FPNs for littering, fly posting and graffiti, as well as introducing an FPN for littering from vehicles together with the associated communications, we are sending out a clear message to would-be offenders that this behaviour is not acceptable in Three Rivers.

9. Public Health implications / Customer Services Centre Implications / Staffing

9.1 None specific.

10. Communications and Website Implications

- 10.1 Minor adjustments to the Council website and Firmstep will be required and can be met within existing resources.

11 Risk Management and Health & Safety Implications

- 11.1 The Council has agreed its risk management strategy which can be found on the website at <http://www.threerivers.gov.uk>. In addition, the risks of the proposals in the report have also been assessed against the Council's duties under Health and Safety legislation relating to employees, visitors and persons affected by our operations. The risk management implications of this report are detailed below.
- 11.2 The subject of this report is covered by the Environmental Protection service plan(s). Any risks resulting from this report will be included in the risk register and, if necessary, managed within this/these plan(s).
- 11.3 The following table gives the risks if the recommendation(s) are agreed, together with a scored assessment of their impact and likelihood:

Description of Risk		Impact	Likelihood
1	The Council's enforcement resources are insufficient to address the level of littering from vehicles resulting in reduced satisfaction with the Council.	II	E
2	The Council receives images from the public of littering from vehicles with the expectation of enforcement – that cannot be processed due to lack of compliance with RIPA regulations and subsequent reduced satisfaction with the Council	II	E

- 11.4 The following table gives the risks that would exist if the recommendation is rejected, together with a scored assessment of their impact and likelihood:

Description of Risk		Impact	Likelihood
3	The Council is unable to enforce under 2.4 The Littering from Vehicles outside London (Keepers: Civil Penalties) Regulations 2018 (SI 2018/171)	II	A

- 11.5 Of the risks detailed above none is already managed within a service plan.
- 11.6 The above risks are plotted on the matrix below depending on the scored assessments of impact and likelihood, detailed definitions of which are included in the risk management strategy. The Council has determined its aversion to risk and is prepared to tolerate risks where the combination of impact and likelihood are plotted in the shaded area of the matrix. The remaining risks require a treatment plan.

Likelihood ↑	A		3				Impact	Likelihood
	B						V = Catastrophic	A = >98%
	C						IV = Critical	B = 75% - 97%
	D						III = Significant	C = 50% - 74%
	E		1,2				II = Marginal	D = 25% - 49%
	F						I = Negligible	E = 3% - 24%
		I	II	III	IV	V		F = <2%
Impact →								

11.7 In the officers' opinion none of the new risks above, were they to come about, would seriously prejudice the achievement of the Strategic Plan and are therefore operational risks. The effectiveness of treatment plans are reviewed by the Audit Committee annually.

12 Recommendation

- 12.1 That Policy and Resources Committee recommend the agreement of the Environmental Enforcement Policy (Appendix A) to Full Council, noting that this will be updated to include the decisions made in 12.2, 12.3 and 12.4.
- 12.2 That Policy and Resources Committee recommend to Full Council to increase the Littering FPN from £75 to £150 (reduced to £100 if paid within 7 days).
- 12.3 That Policy and Resources Committee recommend to Full Council the amendment to the Council's Constitution - Scheme of Delegation (para 11.18.6) to include authorisation of all Environmental Enforcement Officers to issue civil penalties for littering from vehicles under The Littering from Vehicles outside London (Keepers: Civil Penalties) Regulations 2018 (SI 2018/171) and that the Head of Community Services is designated to consider representations against FPNs.
- 12.4 That Policy and Resources Committee recommend to Full Council to introduce an FPN of £150 for Littering from Vehicles (reduced to £100 if paid within 14 days).

Report prepared by: Jennie Probert, Environmental Strategy Manager
 Andrew Blake, Environmental Enforcement Officer
 Andy Stovold, Head of Community Partnerships

Data Quality

Data checked by:

Malcolm Clarke, Waste and Environment Manager

Data rating:

1	Poor	
2	Sufficient	✓
3	High	

APPENDIX A – Environmental Protection Enforcement Policy