

Meeting Date	30 th May 2018
Report Title	Fixed Penalty Notice Fee for Littering and Graffiti
Cabinet Member	Councillor David Simmons, Cabinet Member for Environment and Rural Affairs
SMT Lead	Emma Wiggins
Head of Service	Charlotte Hudson
Lead Officer	Alister Andrews
Recommendations	1. To increase the Fixed Penalty Notice for litter, graffiti and fly posting to £120 from 1 st July 2018

1. Purpose of Report and Executive Summary

- 1.1 Recent legislation has allowed revised levels to be set for environmental Fixed Penalty Notices (FPN's). Since 2006 Swale Council has set such FPN's at the maximum level of £80. The Head of Service for Economy and Community Services in conjunction with the Cabinet Member for Safer Families and Communities and Chief Finance Officer have delegated powers to set the new limit at the revised maximum amount of £150. However, an amount of £120 is recommended in this report as this figure is predicted to offer the greatest value for the council and it considers the affordability factor for all residents within the borough.

2. Background

- 2.1 In April 2017 the Government launched a new Litter Strategy for England with an ambition to be "*the first generation to leave the natural environment of England in a better state than it found it*". Environmental issues such as littering are identified locally as a priority through local engagement sessions and local area perception survey results.
- 2.2 For litter, graffiti and fly posting offences Fixed Penalty Notices (FPN's) are an alternative option to criminal prosecution. Previous legislation from 2006 set an upper tier limit for such FPN's at £80. In 2006 Swale Members set the FPN amount at this maximum level of £80 and the fee has not changed since. In 2017/18 there were 1633 FPN's issued for littering. This was a decrease on the previous year mainly due to staff issues (in 2016/17 just over 3000 FPN's were issued). Around 70% of the FPN's issued last year were paid and over 100 non payers were successfully prosecuted. The council retains FPN income, whereas the government retains any court fines issued for non payment. The largest category of FPN recipients are aged between 20 - 29 with 55% of these being male. The vast majority of FPN's are issued for smoking related litter.

- 2.3 In April 2018 The Environmental Offences (Fixed Penalties)(England) Regulations 2017 came into force. This legislation allows Local Authorities to revise FPN amounts. The new litter, graffiti and fly posting FPN amount must be set between the limits shown in Table 1

Table 1

	Lower limit	Upper limit	Default rate
From April 2018 to March 2019	£50	£150	£100
From April 2019 onwards	£65	£150	£100

- 2.4 Guidance from DEFRA on setting the fees for FPN's has not yet been published and estimated dates for such guidance are unknown. National consultation shows that an increase to the upper limits are welcomed by local authorities. DEFRA has made reference to FPN's being 'proportionate' in their explanatory note that accompanies this legislation.
- 2.5 Within the Fees and Charges setting process delegated authority was provided to the Head of Economy and Community Services in conjunction with the Cabinet Member for Safer Families and Communities and Chief Finance Officer to set these fees at the new maximum limit of £150. An alternative amount is recommended in this report as £150 may not offer best value.
- 2.6 The Swale borough encompasses affluent areas with pockets of high deprivation. In the last financial year 454 representations were received from recipients of FPN's. It is estimated that approximately a quarter of these made contact to request an extension to the payment deadline as they were unable to afford the current FPN amount of £80. The council will work with such individuals and extend payment deadlines to resolve the matter. If the payment amount is increased to the maximum level of £150 then payment rates may fall and officer time will consequently increase. There will be a further detrimental effect as legal costs will increase due to a larger number of non payers needing to be prosecuted.
- 2.7 This legislation does not encompass FPN's for dog fouling offences as these are regulated by Public Space Protection Orders (PSPO's). These came into force in Swale on 20th October 2017.

3. Proposal

- 3.1 Increase the Fixed Penalty Notice to £120 for littering, graffiti and fly posting offences. This demonstrates that environmental offences are to be taken seriously but it also considers the issues of value and affordability within all areas of the borough.

4 Alternative Options

- 4.1 To leave the Fixed Penalty Notice charge at £80. This is generally considered as an outdated amount after considerations such as inflation, clean-up costs and other FPN levels are taken into consideration.
- 4.2 To set the amount at the default rate of £100. Swale Council has previously demonstrated when setting FPN levels that litter is not to be tolerated in the borough and deterrents need to be effective.
- 4.3 To set the FPN charge at the maximum level of £150. This may contradict any future guidance that gets published. By setting the charge at the maximum amount this leaves no room for increases in future fees and charges. It may also have a detrimental impact upon FPN payment rates which will result in additional council expenditure to take non payers to court. Any fines in court get paid to the government and not to the council, unlike the FPN's themselves. Estimated figures suggest that there may be a tipping point at around £120 where maximum value is reached. If estimates on payment rates are accurate then costs have a negative impact on value after this point.
- 4.4 To introduce a reduction for early payments. Swale BC has previously offered this service but the administration to support it proved problematic and expensive. This option was therefore withdrawn for all FPNs apart from a specific FPN for fly tipping where the amount is much higher.

5 Consultation Undertaken or Proposed

- 5.1 The Government carried out a public consultation into a number of the proposals within the Litter Strategy for England. This identified 85% of respondents supported an increase in the FPN value for littering. Swale Borough Council contributed to this consultation through a joint response by the Kent Resource Partnership as well as through an individual submission.
- 5.2 Maidstone BC has already set the FPN amount at £120 with a reduction to £90 if paid in full within 14 days. Medway Council have set the amount at £150 with a reduction to £90 if paid within 10 days. Other Local Authorities are planning to make changes in the near future.

6 Implications

Issue	Implications
Corporate Plan	A clean environment remains a priority for residents. In Local Area Perception Surveys residents made it clear that they support 'on the spot' fines for littering and other environmental offences. Such an initiative supports the corporate priorities of a borough to be proud of; a council to be proud of; and a community to be proud of.

<p>Financial, Resource and Property</p>	<p>The income from this initiative funds the scheme and the officers who undertake the work as well as many environmental campaigns, equipment and events. Any surplus funds are 'ring fenced' to tackling environmental matters such as littering. As an example, last year £10K from the initiative was spent on new litter bins for the borough.</p> <p>By increasing the FPN amount to £120 it is anticipated that the payment rate will only drop slightly from 70%. The proportion of this figure that Swale BC retains equates to a 100% increase based upon current arrangements. Any reduction in payment rates will reduce income amounts and result in an increase in costs. Any surplus is ring fenced for making further environmental improvements in the borough.</p> <p>If the amount is set at £150 this currently equates to a 175% increase to SBC. There is an increased risk that payment rates will drop further and costs will increase significantly as more prosecution case files and additional administration officer time will be needed. Please see section below for legal implications and associated increase in costs.</p> <p>The Local Authority retains FPN income, whereas the government retains any fines issued in court.</p> <p>Predictions on finance are extremely difficult as there are many variables in estimating FPN financial forecasts. Estimates based upon 2000 FPNs issued a year and payment rates falling to 60% at £120 and 50% at £150 suggest that there is a tipping point at around £120 where maximum value is reached as the additional officer costs and legal costs outweigh the income. At £150, if payment rates fall to 50% then the initiative is estimated to offer less value than the current arrangements due to increased external legal costs and officer time to undertake the non compliance process and produce the case files for court.</p>
<p>Legal and Statutory</p>	<p>Local authorities may issue Fixed Penalty Notices as an alternative to prosecution for certain environmental offences. This report specifically applies to litter, graffiti and fly posting FPN's.</p> <p>The Environmental Offences (Fixed Penalties)(England) Regulations 2017 has increased the upper limit for environmental FPN's. DEFRA has not issued guidance yet on setting limits, but it is anticipated that the guidance will suggest that local authorities consider the issue of affordability when setting levels.</p> <p>It is anticipated that an increase to £120 will not affect payment rates significantly. Therefore there should not be a need to take a much larger number of non payers to court. The increased amount along with a highly visible enforcement presence will serve as a serious deterrent to potential offenders. At present the litter court cases are outsourced to an external law firm at a cost (funded by the scheme). If the FPN amount is set at the £150 maximum then</p>

	council costs are likely to increase significantly to tackle non payers.
Crime and Disorder	Cleaner streets are a priority for residents. A cleaner environment reduces the 'broken window' effect. The general consensus from officers and from local engagement surgeries is that the litter enforcement initiative is having a positive impact on cleanliness levels. By increasing the fine this should deter other potential offenders. The recommendation should have a positive impact under section 17 of the Crime and Disorder Act 1998.
Environmental Sustainability	This initiative has obvious environmental benefits. The scheme is currently self funded and by increasing the FPN amount this will enhance the financial sustainability of the scheme and allow for more environmental improvements to be made locally.
Health and Wellbeing	Cleaner streets make Swale a better place to live and so improves the health and well-being of its residents.
Risk Management and Health and Safety	There is a small risk that this recommendation will be seen as an opportunity for the local authority to generate income. The council has undertaken a lot of work to educate residents on the implications of dropping litter. Significant sums of money are spent each year cleaning up such debris. Any surplus income from this initiative will be ring fenced for local environmental projects and improvements.
Equality and Diversity	A Community Impact Assessment was carried out at the start of this initiative, and it identified that FPNs will not be issued to anyone under the age of 18 without prior discussion with the youth offending team, and the police. Warnings or supervised reparation will continue to be the favoured option for youth offenders.
Privacy and Data Protection	The recommendations in this report will not result in any changes to privacy and data protection issues. Procedures and processes are already in place to guard against data breaches.

7 Appendices

None

8 Background Papers

'Tackling Litter' Cabinet Paper – 3rd February 2016

<https://services.swale.gov.uk/meetings/mgIssueHistoryHome.aspx?Ild=3327&Opt=0>