
REPORT TO:	ENVIRONMENTAL AND DEVELOPMENT SERVICES COMMITTEE	AGENDA ITEM: 10
DATE OF MEETING:	14th APRIL 2016	CATEGORY: RECOMMENDED
REPORT FROM:	MIKE HAYNES – DIRECTOR OF HOUSING AND ENVIRONMENTAL SERVICES	OPEN
MEMBERS' CONTACT POINT	MATT HOLFORD - ENVIRONMENTAL HEALTH MANAGER (EXT. 5856)	DOC:
SUBJECT:	FIXED PENALTY NOTICE SANCTIONS UNDER THE UNAUTHORISED DEPOSIT OF WASTE (FIXED PENALTIES) REGULATIONS 2016	REF:
WARD(S) AFFECTED:	ALL	TERMS OF REFERENCE: EDS14, HCS10

1. Recommendations

- 1.1 That Members approve the use of Fixed Penalty Notices, where appropriate, to take enforcement action against fly tipping offenders.
- 1.2 That Members approve that the Fixed Penalty Notice charge be set at £400, with an early payment reduced charge of £280.

2. Purpose of Report

- 2.1 To seek approval from Members on the use and level of fixed penalty to be imposed in the event of the issue of Fixed Penalty Notices for fly tipping offences.

3. Background

- 3.1 Councils have been given progressively increasing ability to deal with offences for relatively low levels of environmental crime (often described as 'enviro-crime') through the use of Fixed Penalty Notices (FPNs).
- 3.2 Currently when dealing with fly tipping offences if an authorised officer is satisfied that an offence has been committed, he/she has the option of taking a range of further regulatory actions. At the lowest severity of intervention this could involve issuing a verbal warning; through to a written warning; issuing of a simple caution or taking prosecution proceedings.
- 3.3 In many instances the issuing of the simple caution is felt to be a relatively weak form of regulatory action. On the other hand taking prosecution proceedings is expensive, relatively long-winded and dis-proportionate to the magnitude of the offence.

Therefore the government is introducing the ability for authorised Council Officers to issue FPNs in the following circumstances;

- Where the act constitutes an offence of depositing waste or knowingly causing or permitting waste to be deposited in or on any land without the necessary authorisation, and;
- Where the offender has admitted their guilt, and;
- Where the offender agrees to pay a fixed penalty fine on order to avoid being prosecuted.

3.4 The offences for which other FPNs can be served relate to issues such as littering, dog control, vehicle offences, failure to carry copies of waste documentation, etc. The maximum and minimum permitted fine for each offence is stated in law, but Councils are given discretion to set their own level of fine up to but not exceeding the legal maximum and also to offer reduced fines for early payment.

3.5 E&DS on 16th July 2006 and then on 20th August 2015 have approved various charges for Fixed Penalty Notices issued by South Derbyshire officers. These existing charges are summarised in Table 1 below.

Table 1 – Existing Fixed Penalty Notice Charges in South Derbyshire

Nature of Offence	Statute	Maximum Permitted Charge	SDDC Charge	Charge for early payment
Nuisance parking	Clean Neighbourhoods & Environment Act 2005 s.6(1)	£100	£100	£70
Abandoning a vehicle	Refuse Disposal (Amenity) Act 1978, s2A(1)	£200	£200	£140
Failure by waste carriers to produce a waste transfer note	Control of Pollution (Amendment) Act 1989, s.5B(2)	£300	£300	£210
Failure by a waste carrier to provide a waste carriers license	Environmental Protection Act 1990, s.34A(2)	£300	£300	£210
Littering	Environmental Protection Act 1990, s.88(1)	£80	£75	£50
Unauthorised distribution of literature	Environmental Protection Act 1990, Schedule 3A, para.7(2)	£80	£75	£50

Graffiti and flyposting	Anti-social Behaviour Act 2003, s.43(1)	£80	£75	£50
Offences relating to waste receptacles	Environmental Protection Act 1990, s.47ZA(2)	£110	£100	£70
Dog Control Order offences	Clean Neighbourhoods & Environment Act 2005 s.59(2)	£80	£75	£50
Failing to comply with a Community Protection Notice	Anti-Social Behaviour Crime and Policing Act 2014 s.52(1)	£100	£100	£70
Failure to comply with a Public Spaces Protection Order	Anti-Social Behaviour Crime and Policing Act 2014 s.68(1)	£100	£100	£70

3.6 The proposals contained in the Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 are to enable Councils to issue FPNs for not less than £150 and not more than £400. Where the Council sets no agreed fee then officers can still issue FPNs, but for a set charge of £200.

4. Local Circumstances

4.1 Between 2006 and 2016 fly tipping incidents in South Derbyshire have reduced year on year to an all time low in 2014/15 of 495 incidents. Figure 1 illustrates the trend in fly tipping in South Derbyshire over the last 10 years.

4.2 However, during 2015/16 incidents have significantly increased by 38%. This increase reflects a national trend of increasing fly tipping which started in 2013/14. Figure 2 illustrates the national fly tipping statistics over the previous 8 years (not including 2015/16 for which the national statistics have not yet been published).

Figure 1 – 10 Year Local Trend in Reported Fly tips

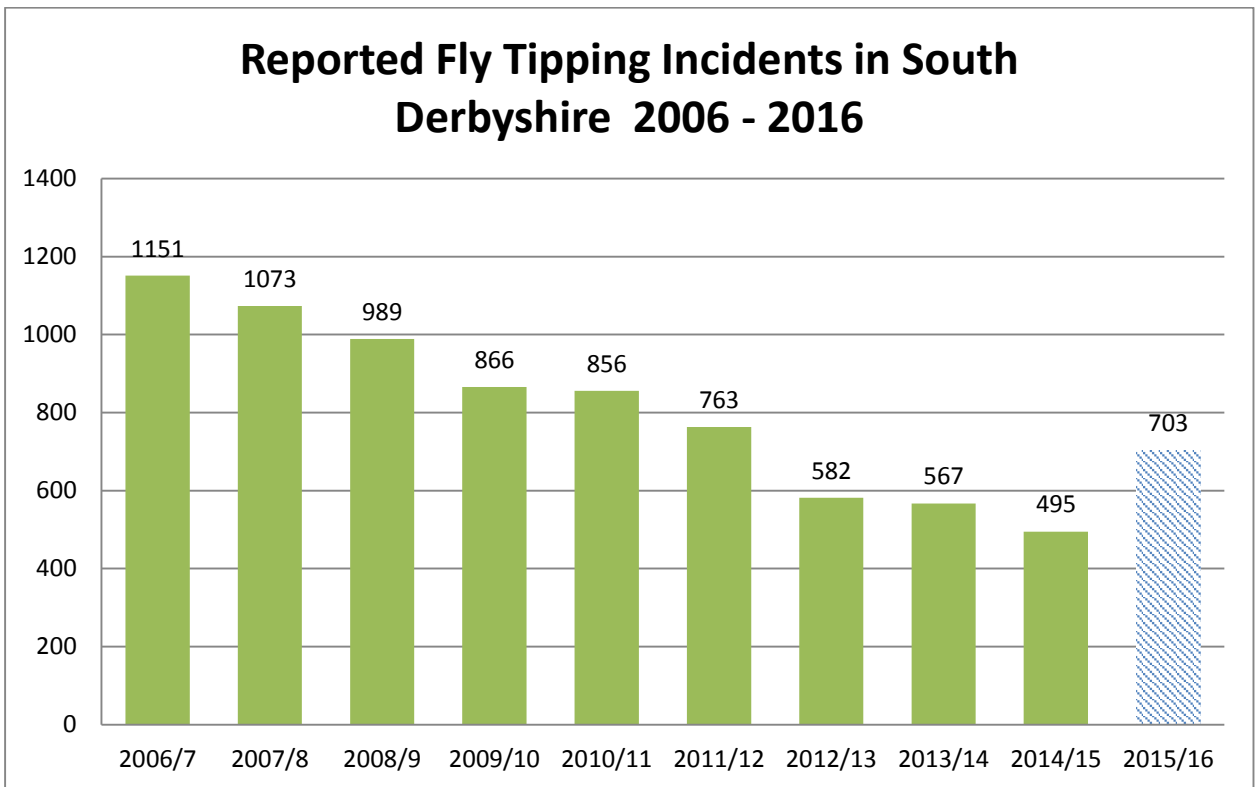
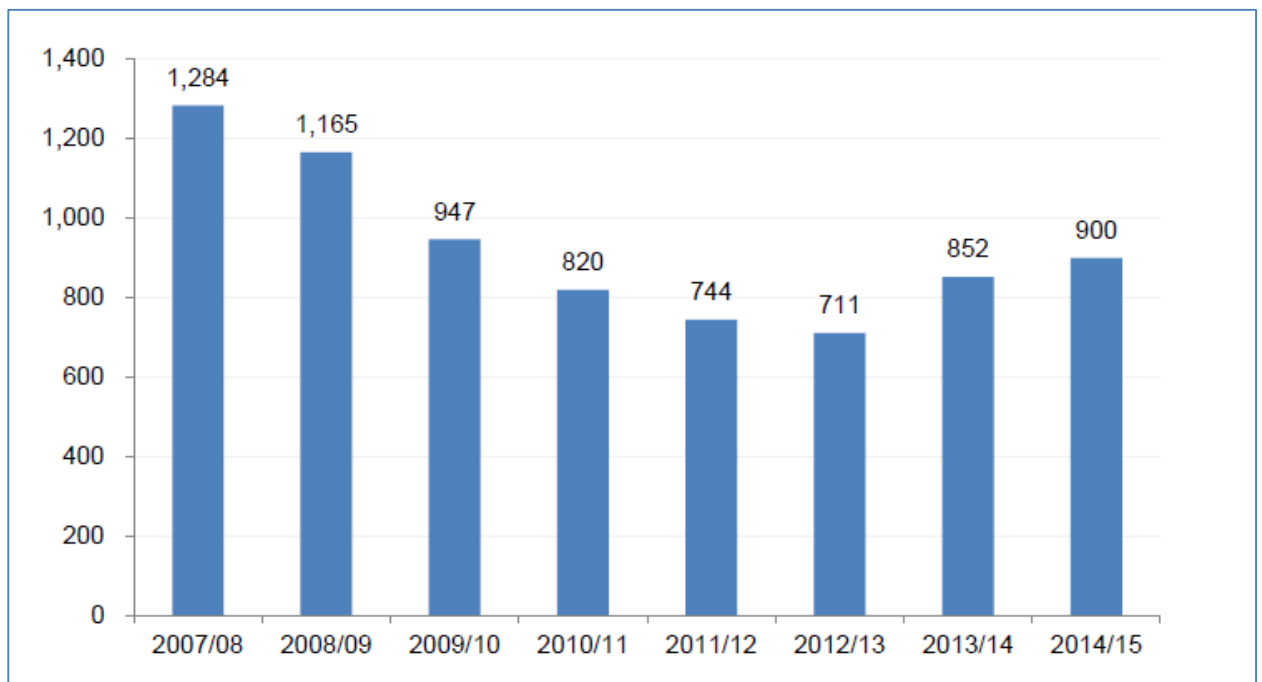


Figure 2 – Long Term National Trend in Reported Fly tips (in Thousands)



4.3 There are no clear reasons for either the national or local increases. The majority of fly tips in South Derbyshire consist of relatively small quantities (less than a 'van full') of domestic waste, although we are investigating a small number of very substantial incidents which are linked to the activities of major crime syndicates. We have good

intelligence to indicate that the majority of the small scale incidents are due to householders dumping material due to their perception of the inconvenience of visiting Household Waste Recycling Centres. We also suspect that there are a small number of 'man in van' operators working in the District who are removing household waste for cash in hand and disposing of the material illegally.

- 4.4 In response to the increase in fly-tipping, the Safer Neighbourhood Wardens team has directed their focus over the last 6 months on carrying out detailed investigations into each fly-tip where there are significant potential leads.
- 4.5 As a result they have secured four successful prosecutions since June 2015. They have also issued three simple cautions where they have also charged the offender for the total costs of the clean-up.
- 4.6 On average, across all of these cases the overall costs of clean-up plus investigation have been in the region of £300 where a caution is issued, and has been in the region of £1,500 where a case has been prosecuted.
- 4.7 The decision about whether to prosecute an offender or to issue them with a simple caution is based on guidance contained within the Councils' Enforcement Policy. This requires the officer to consider a multiple range of factors including how deliberate or negligent the act was; the degree of harm caused; the relative seriousness of the offence; the impact on the community; the public interest of a prosecution and the quality of the evidence.
- 4.8 The potential use of FPNs for fly-tipping is seen by officers as being a valuable additional tool. In the case of all three cautions recently issued the case officer has confirmed that they would have issued an FPN had the option been available.
- 4.9 SDDC proposes to adopt the use of FPNs for fly tipping offences and proposes to implement the costs outlined in Table 2.

Table 2 - Proposed Fixed Penalty Notice Charges for Fly-tipping Offences

Nature of Offence	Statute	Maximum Permitted Charge	SDDC Charge	Charge for early payment
Unauthorised deposit of waste	Environmental Protection Act 1990, s33ZA(1)	£400	£400	£280

5. Financial Implications

- 5.1 Minor beneficial. There will be a small printing cost in the production of new FPNs. There is also likely to be a small additional income (estimated to be up to £2000 per year) as a result of payments of the FPNs.

6. Corporate Implications

- 6.1 The proposals align with the "People – Keeping Residents Safe and Happy" theme of the 2016-21 draft Corporate Plan and in particular it aligns with the key aim to "Use existing tools and powers to take appropriate crime enforcement action".

7. Community Implications

7.1 Beneficial. Fly tipping is a blight on our communities and one of the most regular causes of concern to residents in our rural communities.

8. Conclusion

8.1 The proposal seeks Member agreement for the use of new powers to tackle fly tipping and seeks to use the highest available penalty fee. The use of the new powers will offer investigating officers a much wanted middle ground between issuing a caution or taking a prosecution.