

Council

Thursday, 14 July 2016

ADDITIONAL PAPERS PACK

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AGENDA ITEM 6(3) - URGENT ITEM

COUNCIL

THURSDAY 14TH JULY 2016

MINUTE FOR CONFIRMATION

CABINET

WEDNESDAY, 13 JULY 2016

27. Fixed Penalty Notice Enforcement Policy (Minute for Confirmation)

Councillor Oliver Donachie, the Cabinet Member for Housing and Homelessness, submitted a report seeking to formalise and confirm the Council's approach to issuing Fixed Penalty Notices (FPNs) for 'low level' offences covered by a range of legislation. It was noted that an adopted policy to enforce these offences through FPNs was an essential building block in implementing Public Space Protection Orders, (PSPO's) and that the policy would provide clarity over how FPNs will be used to deal with relevant public order offences.

Councillor Donachie emphasised to Cabinet that, if approved by Council, this policy would give relevant Council officers, police officers and police and community support officers better powers to carry out enforcement action.

Councillor Jim Grant, Leader of the Opposition, endorsed the approach put forward in the report and asked whether parishes would have powers to carry out similar enforcement. It was Councillor Donachie's view that parishes had no direct authority to take such action. However, the Director of Law and Democratic Services, stated that he would investigate this further, to establish whether the Borough might have the ability to commission parishes to act on its behalf.

Resolved – That the range and extent of offences that are appropriately dealt with through FPNs, be noted and that the FPN policy, attached to the report at Appendix 1, be commended to Full Council for approval.

The reasons for the decision and alternative options are as set out in the report to the meeting.

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Fixed Penalty Notice Enforcement Policy

Cabinet

Date: 13th July 2016

Author:	Cabinet Member for Housing and Homelessness
Wards:	All
Locality Affected:	All
Parishes Affected:	All

1. Purpose and Reasons

- 1.1. This report seeks to formalise and confirm the Council's approach to issuing Fixed Penalty Notices (FPNs) for 'low level' offences covered by a range of legislation.
- 1.2. An adopted policy to enforce these offences through FPNs is an essential building block in implementing Public Space Protection Orders, (PSPO's). This policy provides clarity over how FPNs will be used to deal with relevant public order offences.
- 1.3. The recommendations support the Council's Vision priority to "ensure clean and safe streets and improve our public spaces and local culture."

2. Recommendations

Cabinet is recommended to:

- 2.1 Note the range and extent of offences that are appropriately dealt with through FPNs, and
- 2.2 Commend the FPN policy, attached at Appendix 1, to Full Council for approval.

3. Detail

- 3.1 The Council undertakes a wide range of enforcement activities, ranging from formal action through Courts of Law to the issuing of FPNs for minor offences.
- 3.2 In recent years, FPNs have been applied elsewhere to give police and public authorities in England and Wales a realistic weapon against anti-social behaviour. FPNs are designed to reduce paperwork for police and council officers by allowing low-level anti-social behaviour to be dealt with on the spot. Newer types of notice exist for disorder, environmental crime, and noise. A fixed penalty notice does not necessarily result in a fine and does not constitute a criminal conviction, though the recipient can opt for the matter to be dealt with in court instead of through payment. However, if the recipient neither pays the penalty, nor opts for a court hearing in the time specified, the penalty may be increased and registered against the recipient as a fine. It may then be enforced by the normal methods used to recover unpaid fines, which could ultimately lead to imprisonment in the most severe of circumstances.

Further information on the subject of this report can be obtained from Kathryn Ashton, ext.6113 or kashton@swindon.gov.uk.

Fixed Penalty Notice Enforcement Policy

Cabinet

Date: 13th July 2016

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- 3.3 An FPN offers the recipient a chance of a reduced fine for early payment within 14 days. This is in accordance with national guidance and reflects best practice with other local authorities, to enable the lower level offences to be dealt with out of court. This avoids lengthy and costly hearings at court for offences that the perpetrator has accepted.
 - 3.4 Currently, the Council's Licensing Section issues FPNs for smoking in public places and public vehicles such as taxis under the relevant legislation. A locally adopted enforcement policy to support this would provide additional rigour to existing and future practices regarding the issuing of FPNs.
 - 3.5 FPNs are intended to be the main tool in enforcing PSPOs, under the Anti-Social Behaviour, Crime and Policing Act, 2014. An approved FPN Enforcement Policy is essential in backing our activities in implementing PSPOs and will ensure that our enforcement activities are undertaken within the rigour of an approved framework. It is anticipated that the Policy will assist in avoiding unnecessary subjectivity around the FPN process and provide clarity to action taken. As such it will provide a robust mechanism should we resort to court action for non-compliance.
 - 3.6 The FPN policy covers the serving of FPNs for littering, smoking in public places and vehicles, breach of PSPOs and small scale fly tipping. All Enforcement Officers within the Council will be able to serve these notices and this power will also be available to Police Support Community Officers and Wiltshire Police Officers.
 - 3.7 Bespoke training will be arranged for all Officers to undertake before being authorised to serve FPNs. Wiltshire Police have been engaged in the consultation and drafting of the policy and the Chief Constable will be notified of the adopted policy in order that police officers are equipped to enforce the policy.

4. Alternative Options

- 4.1 Cabinet could decide not to adopt a policy for issuing FPNs, though this would mean that a number of low level offences would not be covered by an adopted enforcement regime and would therefore either not be enforced, or would be enforced with a greater risk of successful challenge. Currently FPNs are issued through delegated authority but outwith a formal, agreed Council wide policy.

5. Implications, Diversity Impact Assessment and Risk Management

Financial and Procurement Implications

- 5.1 FPNs attract a fine as mentioned earlier. Legislation \ Guidance requires that any monies raised through FPNs are re-invested in the service that they are cover. There are small scale financial pressures associated with the administration of issuing FPNs though these will be covered by the monies raised through the issuing of the notices.

Further information on the subject of this report can be obtained from Kathryn Ashton, ext.6113 or kashton@swindon.gov.uk.

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Legal and Human Rights Implications

- 5.2 All legal and human rights considerations have been taken fully into account in compiling this report. It is considered that the recommendations of this report are compatible with Convention rights.

All Other Implications (including Staff, Sustainability, Health, Rural, Crime and Disorder)

- 5.3 The purpose of the policy is to reduce low level crime and disorder and to enable a modest re-investment in activities that deal with these offences. There are small scale staffing implications in that a range of staff will be expected to issue FPNs as part of their day to day duties and training will be provided for this purpose.

Diversity Impact Assessment

- 5.4 A DIA has been prepared to support this Policy and is available from the report author.

Risk Management

- 5.5 The FPN Policy seeks to reduce risks arising from enforcement activities. Any risks arising from the proposals contained within this report will be managed through their implementation.

6. Consultees

- 6.1 The Board Director, Resources (Section 151 Officer) and Director of Law and Democratic Services (Monitoring Officer) are consulted in respect of all reports.

7. Background Papers

- 7.1 None

8. Appendices

- 8.1 Appendix 1 – Operational Policy for issuing FPNs

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APPENDIX 1



Operational Policy for Issuing Fixed Penalty Notices

1st June 2016 - Draft

1. Introduction

- 1.1. Enforcement activity through fixed penalty notices provides a means by which local authorities can visibly, proportionately and effectively respond to low level crime. The Government has, and continues to, encourage their use.
- 1.2. This policy is supplementary to the Council's Generic Enforcement Policy. The aim of this policy is to set out the principles that apply when authorised officers of the Council issue Fixed Penalty Notices (FPNs) for particular offences as contained under the following acts:
 - Anti-social Behaviour, Crime and Policing Act 2014 - Breach of a Public Spaces Protection Order
 - Health Act 2006 – Smoke-Free Premises, Places and Vehicles
 - Environmental Protection Act 1990 – Littering
 - Environmental Protection Act 1990 – Fly-tipping

For a breakdown of offences, fines and how monies raised are able to be re-invested in service improvements and efficiency see Appendix A.

- 1.3. The purpose of the guidance is to establish standard fixed penalty procedures to be adhered to when issuing fixed penalties for breaches of the above legislation, with appropriate guidance on the circumstances in which a fixed penalty notice may be issued.
- 1.4. Payment of the penalty by the recipient discharges their liability to conviction for the offence for which the FPN was issued.

2. Authorised Officers

- 2.1. This policy is to be implemented by appropriately trained officers who have decided that the issuing of a FPN is the most appropriate course of action to address anti-social activities under the above legislation.
- 2.2. All officers, who issue FPNs shall be appropriately authorised in accordance with the provisions of the Council's Constitution and under appropriately delegated authority.

3. How FPNs are issued

- 3.1. FPNs are designed to deal with low-level offending. When considering a case, officers should carefully evaluate the nature and severity of the breach.

3.2. A FPN may only be issued where an officer has reason to believe a person has breached legislation by committing a penalty offence and the officer considers there to be admissible evidence to support a successful prosecution. Admissible evidence shall include that witnessed by an authorised officer, as well as that provided by a reliable witness testimony.

Normally breaches of legislation resulting in a FPN will be witnessed directly by the officer and issued at the time of the incident and suspected offenders may be interviewed under caution on scene or invited to attend a subsequent interview.

Although an officer may consider it appropriate to issue a FPN to a suspect if they have not directly witnessed the breach, they may only do so if supported with reliable witness testimony.

3.3. There is no fixed time in which FPNs must be served, however, to avoid allegations of abuse of process; FPNs will normally be served within 14 days of the date of the breach. This may be particularly relevant for young people

3.4. Electoral register lists, DVLA checks and Police support may be used as a means of verifying names and addresses provided by people suspected has having breached the law. Those issued with a FPN will have a period of 14 days to pay. Unpaid FPNs, which have been served appropriately, are likely to be pursued through the courts.

3.5. An officer withholds the right to issue advice and guidance to the person suspected of breaching the law in place of issuing a FPN.

4. The Offender

4.1. A FPN should be issued only where;

- There is a clear breach of the above legislation. A FPN is a proportionate response.
- There is sufficient evidence as to his/her identity and place of residence. It is an offence for a transgressor to refuse or fail to give correct personal details when being reported.
- The person in breach of law understands why the FPN is being issued and is compliant. FPNs must be issued to and received by the person in breach of law.

4.2. A FPN will not be appropriate where:

- It is inappropriate or disproportionate for the breach of law.
- Prosecution is more suitable.

- No satisfactory address exists for enforcement purposes. This may be where the officer has reason to believe that the person in breach is homeless or sleeping rough.
- A penalty offence is known to have been committed in association with another non-fixed penalty offence that is enforceable under a different regime.
- The person in question is exempt, e.g. a registered assistance dog is taken into a dog exclusion area.
- A person in breach of law is threatening, abusive or violent to the officer. Where this occurs, the officer should ensure their own safety and seek help from the police. The offender may then be dealt with by way of prosecution, either by the police or the Authority.

4.3. Where the person in breach of law has a record of repeat offending, consideration should be given to an alternative disposal (e.g. prosecution and/or police involvement).

A FPN may not be appropriate where it is known that the person in breach of law has a previous relevant conviction or caution, or has previously been issued with an FPN (for the offence), particularly if they have not paid. In these cases they should be informed that he/she will be reported with a view to prosecution.

5. Issuing the FPN

5.1. The officer will approach the person suspected of being in breach of law, identify him/herself and make the person aware that their actions have been seen, and constitute an offence in breach of the relevant legislation. The officer will then obtain the relevant personal information from the person. These details will be verified as far as practicable and the officer will make a decision whether to issue an FPN or provide the person with advice and guidance. These details are required for processing purposes. Documentary evidence of identity and place of residence will be requested, but not demanded, and will be preferable to non-physical checks such as the electoral register. Failure to identify a suspect could invalidate enforcement. Police assistance will be sought where necessary.

5.2. When the FPN is issued, the officer should explain that it provides an opportunity to avoid liability to prosecution, and will draw the person's attention to the relevant points about making payment and prosecution in the event of non-payment.

6. Appeals and withdrawals

6.1. There is no right of appeal against a FPN as this constitutes a summary offence which can only be defended via the Magistrate's court. Consideration for cancellation or withdrawal of a FPN will only be given on the following grounds:

6.2. Cancellation of an FPN:

- Where a person issued with a FPN falsely provides the identity details of another person, and that person successfully challenges the notice on that basis; and/or
- Where further information comes to light about the personal circumstances of the recipient of a fixed penalty notice, and which provides justification or mitigation for the breach of law.

6.3. Withdrawal of an FPN:

- Where the FPN has been served incorrectly; and/or
- Where it subsequently transpires that the evidence is insufficient to support a prosecution.

6.4. Full details of all decisions shall be recorded and appellants will be informed of the decision within 10 working days.

Where cancellation or withdrawal is refused the appellant shall be informed within 5 working days of the decision and the original payment terms, including the opportunity to pay the charge at the discounted rate, shall apply from the date of the letter notifying the person on whom it was served of the results of the decision.

7. Vulnerable Adults

7.1. If there is any doubt, or it is brought to the Authority's attention, that the person who has committed an offence is not capable of understanding that their actions constitute an offence; are mentally impaired in any way or are clearly unable to pay (e.g. homeless or rough sleeping), then a FPN will not be issued. An educative approach may be taken or the individual asked to rectify their actions under such circumstances.

8. Young People

8.1. FPNs will not be issued to children below the age of 10.

- 8.2. For young people between the ages of 10 and 17 a warning will be issued for a first breach and the matter reported to their parents or guardians. Only where an officer has evidence to confirm that the young person has been previously warned and the alleged offender has acknowledged wrong doing will consideration be given to the issuing of a FPN. In the event of any doubt, the officer will seek the advice of the Youth Offending Team
- 8.3. In situations where FPNs are issued to 15-17 year olds, the Youth Offending Team will be notified and the offender will be informed of this at the time of the incident.
- 8.4. In all cases, a FPN shall only be issued to young people in the presence of their parent or legal guardian.

9. Information sharing and storage

- 9.1. Information collected or recorded as part of the Council's enforcement activities which will also include decisions taken about the choice of enforcement options; and will be securely retained in a paper and/or electronic format; in line with the Councils Retention and Disposal Policy
- 9.2. The identity of a person providing the Council with information about other people committing crime will remain confidential unless prior agreement by the person is obtained. An exemption to this is where the Council work with other government organisations that have Regulatory or Enforcement functions and personal information may be shared with these organisations on a case-by-case basis.
- 9.3. Personal data held manually or as computer records will be handled in accordance with the Data Protection Act 1998 (DPA).

Appendix A

Description of Offence	Act and section	Fee	Reduced fee (paid in 10 days)
Depositing litter	Environmental Protection Act 1990, Section 77 and Section 78	£100	£75
Failure to comply with a Public Space Protection Order	Anti-social Behaviour, Crime and Policing Act 2014, Section 63 and Section 67.	£100	£75
Smoking in workplace	Health Act 2006 Section 7	£100	£75
Fly-tipping	Environmental Protection Act 1990, Section 77 and Section 78	Various £150 min. to £400 max.	Various

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AGENDA ITEM 9

COUNCIL

THURSDAY 14TH JULY 2016

MINUTE FOR CONFIRMATION

CABINET

WEDNESDAY, 13 JULY 2016

**23. Adoption of the Wroughton Neighbourhood Plan
(Minute for Confirmation)**

Councillor Toby Elliott, the Cabinet Member for Strategic Planning, submitted a report informing Cabinet of the process followed with regard to the successful examination of the Wroughton Neighbourhood Plan, resulting in a vast majority of participants in a referendum voting in favour of the Plan. The report also requested that, in compliance with the requirement of the Localism Act 2011 that local planning authorities 'make' (or adopt), a neighbourhood development plan as soon as was reasonably practicable following a successful referendum, Cabinet recommend to Council that the plan be adopted.

Councillor Elliott referred to the high turnout for the referendum (40% compared with the national average of 32%) and thanked officers, the Parish Council, and residents for their work in support of the Plan, which would become a material consideration in determining planning applications and aid the Borough and the Parish in managing new housing growth.

In response to a question put by Councillor Jim Grant, the Leader of the Opposition, regarding the application of Community Infrastructure Levy (CIL) in areas without a parish council, or where a plan was adopted that covered just part of a parish, Councillor Elliott advised that, in the first instance, the CIL would be allocated to the parish, otherwise it would be retained by the Borough to allocate on projects within the Plan area following consultation with the ward councillors.

Resolved – (1) That Council be recommended that the Wroughton Neighbourhood Plan is adopted formally as part of the statutory Development Plan for the Borough.

(2) That the Head of Planning, Regulatory Services and Heritage be authorised to undertake a Neighbourhood Planning review exercise in order that the Council might assist other communities in progressing their Neighbourhood Plans.

The reasons for the decision and alternative options are as set out in the report to the meeting.

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