

**North East Derbyshire District Council**

**Cabinet**

**3 March 2022**

**Review of Fly Tipping Enforcement and Environmental  
Fixed Penalty Notice Fees**

**Report of Councillor C Cupit, Deputy Leader and Portfolio Holder for  
Environmental Services**

**Classification:** This report is public

**Report By:** Matt Finn, Service Manager (Environmental Health)

**Contact Officer:** Matt Finn, Service Manager (Environmental Health)

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**PURPOSE / SUMMARY**

To update the Cabinet on the work of the Environmental Health Service in relation to fly tipping and to present options for revising fixed penalty fine levels for environmental offences.

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**RECOMMENDATIONS**

1. The Cabinet note the performance in relation to fly tipping enforcement.
2. The Cabinet set the fixed penalty fine levels as recommended in this report.
3. The Cabinet require the Joint Assistant Director – Environmental Health to carry out a further review after 12 months on the impact of the changes to the fixed penalty fine levels.

Approved by the Portfolio Holder – Cllr Cupit, Portfolio Holder for Environmental Services

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**IMPLICATIONS**

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**Finance and Risk:** Yes  No

**Details:**

Increasing fixed penalty levels will not have a significant impact on income budgets, with an increase of approximately £1,500 based on a 20% increase in income from previous years. There is the potential for fewer fines to be paid, but limiting an increase would mitigate this risk.

On Behalf of the Section 151 Officer

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**Legal (including Data Protection):**

Yes

No

**Details:**

No comments

On Behalf of the Solicitor to the Council

**Staffing:**

Yes

No

**Details:**

There are no impacts on staffing from this report.

On behalf of the Head of Paid Service

## DECISION INFORMATION

Decision Information	
<b>Is the decision a Key Decision?</b> A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds:  <b>BDC:</b> Revenue - £75,000 <input type="checkbox"/> Capital - £150,000 <input checked="" type="checkbox"/> <b>NEDDC:</b> Revenue - £100,000 <input type="checkbox"/> Capital - £250,000 <input type="checkbox"/> <input checked="" type="checkbox"/> Please indicate which threshold applies	Yes
<b>Is the decision subject to Call-In?</b> (Only Key Decisions are subject to Call-In)	Yes
<b>District Wards Significantly Affected</b>	None
<b>Consultation:</b> Leader / Deputy Leader <input checked="" type="checkbox"/> Cabinet / Executive <input type="checkbox"/> SAMT <input checked="" type="checkbox"/> Relevant Service Manager <input checked="" type="checkbox"/> Members <input type="checkbox"/> Public <input type="checkbox"/> Other <input type="checkbox"/>	Yes  Details:

### Links to Council Plan priorities

Protecting and promoting the character of our District - Ensure a clean, green environment.

## REPORT DETAILS

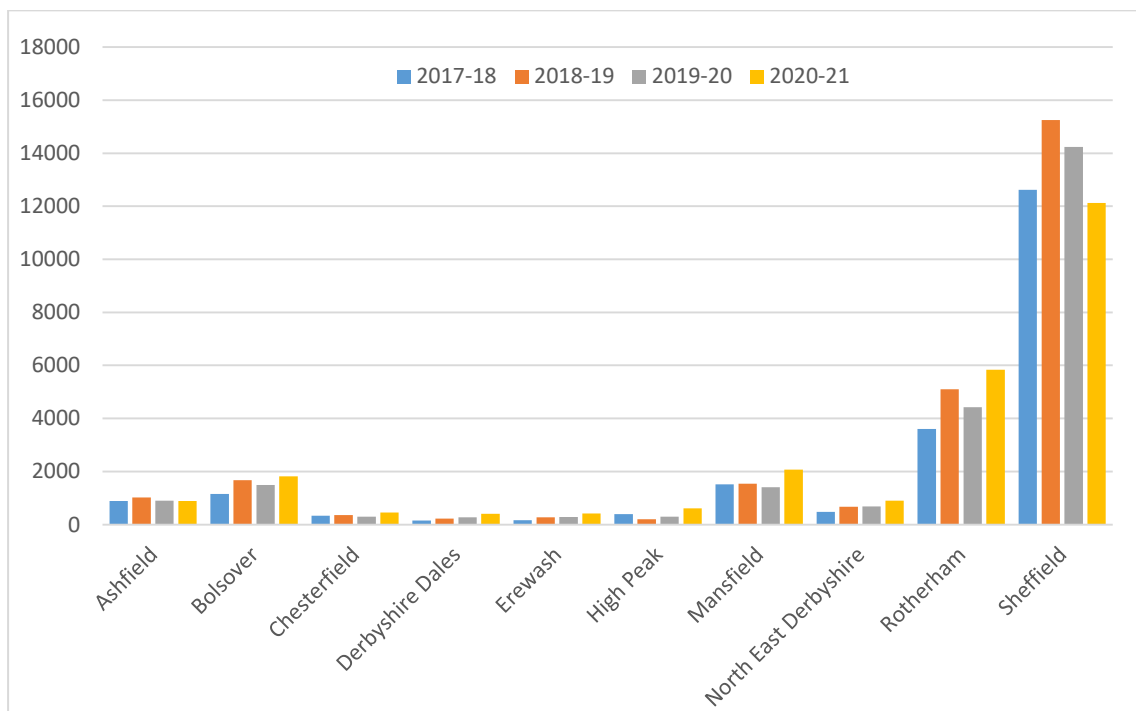
### 1 Background *(reasons for bringing the report)*

- 1.1 Fly tipping, litter and other waste crimes cost the Council and land owners significant sums to remove and properly dispose of and blight our countryside and neighbourhoods. In 2020/21 it cost the Council an estimated £7,000 to remove and dispose of fly tipped waste on highways and public land. The cost to land owners and businesses is not known, but approximately 30% of incidents in the district occur on privately owned land, and those owners would need to remove waste at commercial rates. The cost therefore to business is expected to be significantly higher than the cost to the Council.
- 1.2 The Joint Environmental Health Service enforces a variety of environmental offences, including litter, dog fouling, abandoned vehicles and other waste related crime, including fly tipping. Many of these offences are dealt with by way of a fixed penalty notice, which enables the offender to discharge their liability for prosecution by paying a fine to the Council. If they choose not to pay the fine they would be prosecuted in the Magistrates' or Crown Court for the criminal offence.
- 1.3 For small and relatively minor offences this is the most efficient method of dealing with these crimes, both from the perspective of the Council and the wider criminal justice system. More serious incidents and organised waste crimes would always be prosecuted through the Courts. The Council's Enforcement Policies are applied in every case to ensure our enforcement actions are appropriate and proportionate.
- 1.4 The service has a dedicated Environmental Enforcement Team who carry out neighbourhood patrols to deter littering and dog fouling as well as catching people committing those crimes. The service has CCTV cameras deployed to known fly tipping hotspots to gather evidence of people fly tipping with a view to taking formal action. The Commercial Team contribute to ensuring businesses dispose of their waste through licensed carriers by checking they have appropriate contracts in place during inspections.
- 1.5 Investigations
- 1.6 The Service performs comparatively well against neighbouring local authorities in respect of fly tipping enforcement. Incidents are difficult to catch and in most cases there is no evidence left in waste which would lead officers back to the culprits. While comparing local authorities against each other is not necessarily appropriate due to the variety of ways Councils record incidents or what they include in their own figures, outcome measures can be compared to a degree based on the total number of incidents.
- 1.7 Enforcement is only one aspect of successfully tackling fly tipping, as has been recognised by the campaign group Keep Britain Tidy, who recommend engagement and education with effective use of fixed penalty notices to simply

reinforce positive environmental behaviour.<sup>1</sup> The Council publishes articles in our newsletter, through social media and press releases to raise the impact environmental crime has on our communities, in addition to proactive patrolling of hot spot locations with uniformed officers and signage to deter fly tipping and dog fouling.

1.8 In 2021 the Council introduced a Public Spaces Protection Order to encourage more responsible dog ownership, increase the fixed penalty fine for fouling offences as well enable enforcement on a wider range of anti-social behaviours where needed.

1.9 Figure 1 below shows a comparison of the number of incidents over the last four financial years with our neighbouring local authorities. While there has been growth in the number of incidents, over those 4 years, we have a significantly lower volume of fly tipping incidents than many of our district Council comparator neighbours, and significantly less than Sheffield and Rotherham. These two are a difficult comparison to consider however, as much of the fly tipping is likely to be in more densely populated urban areas and may include side waste from household waste collections.



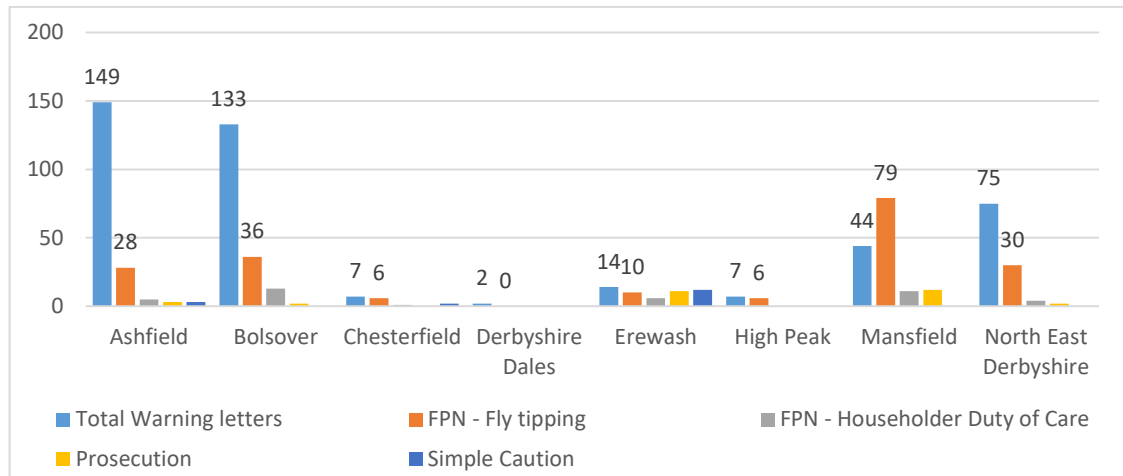
**Figure 1 - Fly tipping incidents by financial year against comparable and neighbouring authorities 2017-2021<sup>2</sup>**

1.10 In terms of enforcement actions (Figure 2), again the Council compares favourably with neighbouring authorities, with more formal actions than our

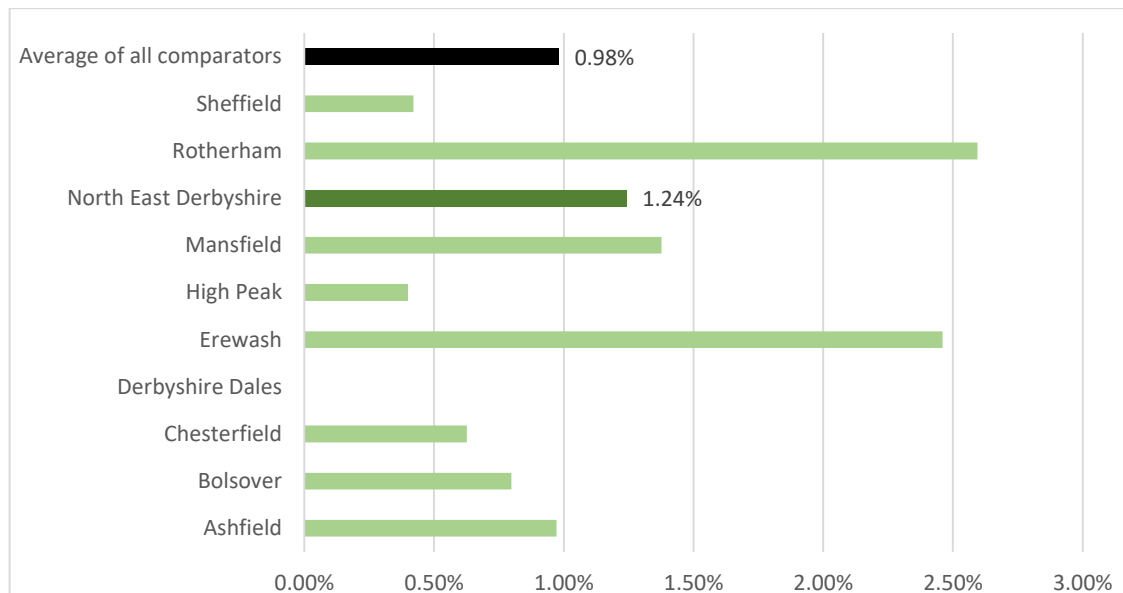
<sup>1</sup> The Effectiveness of Enforcement on Behaviour Change - Fixed penalty notices from both sides of the line, Keep Britain Tidy, 2011. [https://www.keepbritaintidy.org/sites/default/files/resources/KBT\\_The\\_Effectiveness\\_Of\\_Enforcement\\_2011.pdf](https://www.keepbritaintidy.org/sites/default/files/resources/KBT_The_Effectiveness_Of_Enforcement_2011.pdf)

<sup>2</sup> Raw data for figures 1, 2 and 3 published at <https://data.gov.uk/dataset/1388104c-3599-4cd2-abb5-ca8ddeeb4c9c/fly-tipping-in-england>

nearest neighbouring authorities in this period, with 30 Fixed Penalty Notices for fly tipping offences, 10 of which were issued in 2020/21. A further seven have been issued for offences this financial year to the end of December 2021.



**Figure 2 - Comparison of types of enforcement actions related to fly tipping 2017-2021**



**Figure 3 - Comparison of the percentage of fly tipping related fixed penalty notices or prosecution actions taken in relation to the number of incidents 2017-2021**

1.11 Figure 3 also shows that in relation to the percentage of formal enforcement actions, compared with incidents, the Council performs well. An equivalent of 1.24% of all incidents result in a fixed penalty notice or prosecution case, 30% higher than the average for the comparator group. The public may well expect that detection rates for these offences should be higher, however the vast majority of incidents are single items or have no details as to where the waste came from.

1.12 The majority of successful enforcement outcomes arise from finding evidence of the source of the waste. A small number are the result of CCTV placed at hot-spot locations where the fly tipper can be identified directly. Witnesses to incidents are rare, due to the times at which people fly-tip waste and the rural locations where they are deposited.

- 1.13 With the steady growth in incidents the service prioritises cases to identify sources of fly tipping or offenders, and take a more proactive approach. Investigation of incidents is focussed to incidents on public land where there is likely to be evidence in the waste, where evidence is provided by private land owners or there is photo or video evidence of the offender, including from our own CCTV deployment at hot-spot locations. Other cases are directed to the Street Scene service to remove with referrals if further evidence comes to light from the removal process.
- 1.14 To ensure that as much evidence or information can be provided, the Council's website has been updated to enable images and map locations to be provided when people report online.
- 1.15 Additional and more capable CCTV solutions have also been procured this financial year, to increase the service's potential to monitor hot spot locations, with the intention to use as evidence in criminal cases and to promote the problems and the work the Council is doing to tackle the issue.
- 1.16 Seizure of Vehicles
- 1.17 The Council has for the first time used new powers to seize a vehicle used in waste crime offences. For some time the Council has used vehicle details obtained through investigations to take enforcement action against suspected offenders.
- 1.18 However, in 2017 the law changed to enable Councils to seize vehicles suspected of being used in waste crime offences, and destroy or sell them if the owners did not claim the vehicle or a court ordered the destruction. If an owner could be located or came forward to claim the vehicle, the Council could then deal with that person in relation to the offences.
- 1.19 In 2021, an investigation by North East Derbyshire District Council officers into fly tipping across Derbyshire, Sheffield and Rotherham led to the identification of a vehicle in the Killamarsh area, which was subsequently seized by the Joint Environmental Health Service and destroyed after the registered keeper failed to claim it.
- 1.20 Householders duty of care
- 1.21 Householders have an important part to play in preventing fly tipping, by making sure they take reasonable steps to ensure they only use legitimate, registered waste carriers and that they know their waste is going to be disposed of properly. All waste collectors, other than those working for the Council, must have a waste carrier's registration and be able to show that registration. They should also give a receipt showing what they have taken and who they are. It should also say where they will be taking the waste.
- 1.22 While people can be the victims of criminal waste collection businesses, they should be able to check their waste collector is registered. If they don't they

could receive a fixed penalty notice of £200. Over the last 4 years we have issued 7 FPN's to householders for these offences, and only in cases where there was a clear failure to take steps to prevent waste from being fly tipped.

### 1.23 Fixed Penalty Notice fine levels

1.24 The fixed penalty fines for various environmental offences have remained the same for a number of years. New offences such as fly tipping and householder duty of care have been added, along with a Public Space Protection Order which added new dog related offences to the pre-existing dog fouling offence. This has resulted in some inconsistencies with the fixed penalty fine levels, both in the significance of offences and in comparison with neighbouring authorities.

1.25 Table 1 below shows benchmarking of fixed penalty fine levels for the matters the Joint Environmental Health Service enforces. It also shows the range within which the Council can set the fixed penalty fine. It should be noted that the fixed penalty for littering was changed by the Government in 2017 to raise the maximum fixed penalty from £100 to £150.

1.26 The fixed penalty amounts for many of these are at their default amounts in the legislation, and are not set based on local considerations or in comparison with similar offences. For example, the fly tipping penalty is currently £200 when an unregistered waste carrier would pay £300.

Offence	North East Derbyshire	Bolsover	Chesterfield	Rotherham	Min	Max	Recommended
Littering	80	65	150 (reduced to 60 if paid early)	150 (reduced to 100 if paid early)	50	150	<b>150</b> (reduced to 100 if paid early)
Public Space Protection Order (incl. dog fouling)	100	100	80	100	n/a	100	<b>100</b>
Fly tipping	200	200	300	400 (reduced to 300 if paid early)	150	400	<b>400</b> (reduced to 300 if paid early)
Abandoning a vehicle	200	200	200	200	120	200	<b>200</b>
Transporting waste without authority	300	300		300	180	300	<b>300</b>
Failure to comply with duty of care (business)	300	300		300	180	300	<b>300</b>
Failure to comply with a domestic waste receptacle (sec 46) notice	60	60		80	60	100	<b>100</b>
Failure to comply with a business waste	100	100		100	60	110	<b>100</b>

receptacles (sec 47) notice							
Failure to comply with duty of care (householder)	200	200	250		150	400	<b>200</b>
Breach of a community protection notice	100	100	100	100	n/a	100	<b>100</b>

**Table 1 - Fixed Penalty Notice levels from neighbouring authorities - published data January 2022**

## **2. Details of Proposal or Information**

- 2.1 It is recommended that the fixed penalty fine levels for environmental offences in Table 1 of this report be adopted. Setting fixed penalty amounts at the maximum level can reduce the number which are successfully paid, and those cases would then proceed to Court, however despite the risk of lower payment rates it reflects a desire for stronger enforcement deterrent. Setting the fine too low would result in the fine not being appropriate to the offence or being out of step with other similar offences or with other areas.
- 2.2 The recommended changes would bring parity between fly tipping and business waste duty of care offences, which are closely linked, while keeping fines for householders and smaller, less serious offences, more affordable. It also brings the litter fixed penalty in line with neighbouring authorities and to the middle of the potential range. These levels are considered appropriate to the area, however will be reviewed in 12 months to understand what effect the changes may have had on offending and payment rates and whether there is a need to increase the levels further.
- 2.3 More serious and repeat offences, along with cases where the fixed penalty is not paid, would always be forwarded to Court for a prosecution or a civil recovery process, in line with the Council's enforcement policies.

## **3 Reasons for Recommendation**

- 3.1 Adjusting the fixed penalty amounts ensures the Council is keeping pace with national legislative changes and ensures fixed penalty amounts act as a suitable punishment for the offence, as well as ensuring they are affordable for smaller, less serious offences.
- 3.2 The increases to some of these fixed penalty amounts also demonstrates the Council's commitment to tackling environmental crime.

## **4 Alternative Options and Reasons for Rejection**

- 4.1 In the financial year 2020/21, 90% of environmental fixed penalty notices were paid, with only two cases proceeding to court. It would be possible to increase penalty amounts to the maximum levels, however this would be likely to result in lower payment rates and more cases being progressed to a criminal court.



This places additional resource burdens on the authority without receiving the resulting fines handed down at court.

- 4.2 It would be feasible to place the fines at their maximum value and offer a reduced fee for early payment for those offences where this is allowable. However, administering those reduced fees increases the administrative burdens on the Council, with little benefit and the Council already receives a high payment rate for most offences. More serious offences which presumably such a high fine level would aim to redress, would normally be placed in front of a court as a criminal prosecution. This option is not recommended.
- 4.3 It is also possible to keep the fixed penalty amounts at their current levels. That however would mean that fixed penalties for some offences are lower than those for similar issues, simply because the penalty amount was not set when the legislation came into effect.

## DOCUMENT INFORMATION

Appendix No	Title
	N/A
<b>Background Papers</b> (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)	
Guidance on Fixed Penalty Notices for Local Authorities	
<a href="https://www.gov.uk/guidance/fixed-penalty-notices-issuing-and-enforcement-by-councils">https://www.gov.uk/guidance/fixed-penalty-notices-issuing-and-enforcement-by-councils</a>	
The Effectiveness of Enforcement on Behaviour Change - Fixed penalty notices from both sides of the line, Keep Britain Tidy, 2011.	
<a href="https://www.keepbritaintidy.org/sites/default/files/resources/KBT_The_Effectiveness_Of_Enforcement_2011.pdf">https://www.keepbritaintidy.org/sites/default/files/resources/KBT_The_Effectiveness_Of_Enforcement_2011.pdf</a>	
The Environmental Offences (Fixed Penalties) (England) Regulations 2017	