

**Bolsover District Council**

**Meeting of the Executive on Monday 8<sup>th</sup> August 2022**

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

**Report of the Portfolio Holder for Environmental Health & Licensing**

<b>Classification</b>	This report is Public
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**PURPOSE/SUMMARY OF REPORT**

To update the Executive 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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**REPORT DETAILS**

**1. Background**

- 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 there were 22.4 incidents of fly tipping per 1,000 people in Bolsover with more incidents in Bolsover than Chesterfield and North East Derbyshire combined. It cost the Council an estimated £6,000 to remove and dispose of fly tipped waste on highways and public land, however these figures are from national estimates on costs based on incident types, as the cost of waste disposal of fly tipped waste to the authority is not separately recorded to other waste collection data.
- 1.2 The cost to land owners and businesses is also 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.
- 1.3 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.

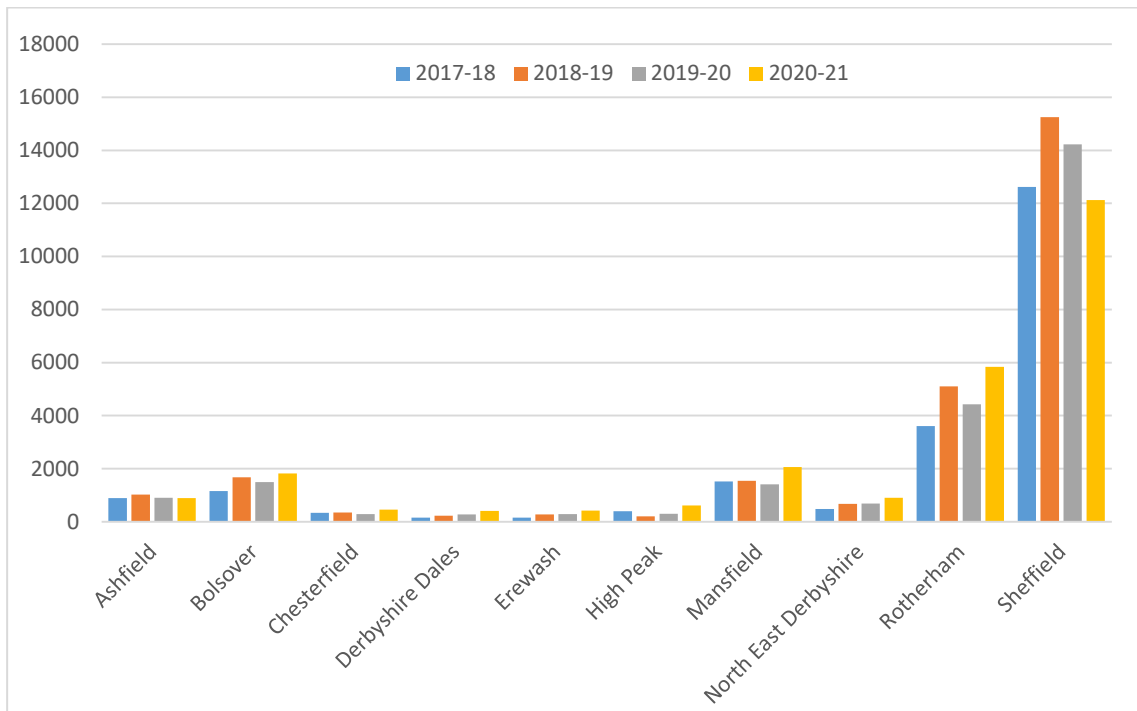
- 1.4 For small and relatively minor offences this is the most efficient method of dealing with these crimes both from the perspective of the Council and the wider criminal justice system. More serious incidents and organised waste crimes would always be prosecuted through the Courts. The Council's Enforcement Policies are applied in every case to ensure our enforcement actions are appropriate and proportionate.
- 1.5 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.
- 1.6 Investigations
- 1.7 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.
- 1.8 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 as on our communities in addition to proactive patrolling of hot spot locations with uniformed officers and signage to deter fly tipping and dog fouling.
- 1.9 In 2021 the Council introduced a Public Spaces Protection Order to encourage more responsible dog ownership, increase the fixed penalty fine for fouling offences and enable enforcement on a wider range of anti-social behaviours where needed. The Council also deploys CCTV systems to fly tipping hot spot locations to help apprehend offenders.
- 1.10 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 higher volume of fly tipping incidents to 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

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<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.keeppbritaintidy.org/sites/default/files/resources/KBT\\_The\\_Effectiveness\\_Of\\_Enforcement\\_2011.pdf](https://www.keeppbritaintidy.org/sites/default/files/resources/KBT_The_Effectiveness_Of_Enforcement_2011.pdf)

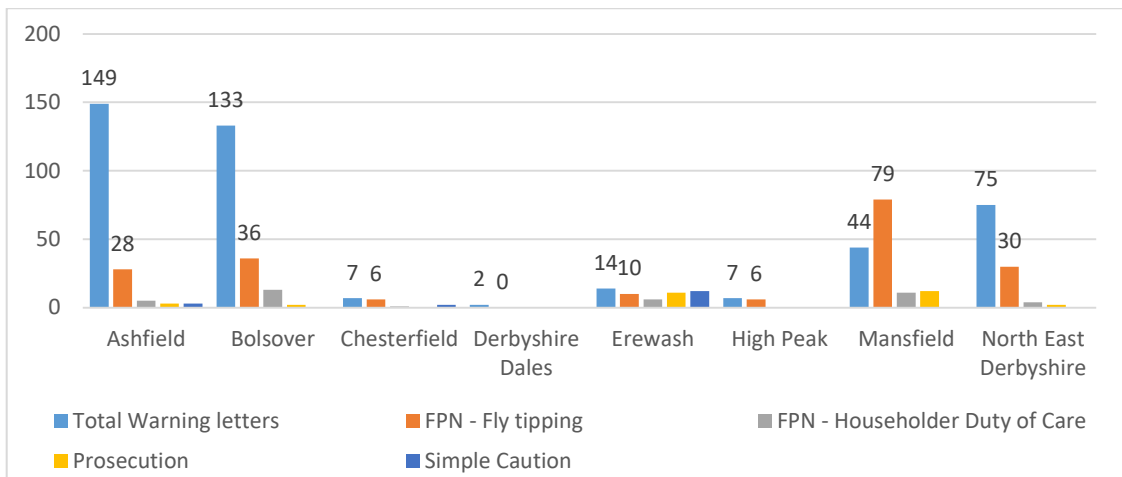
densely populated urban areas and may include side waste from household waste collections. As these figures are self-reported, the method of recording and reporting can vary between authorities.



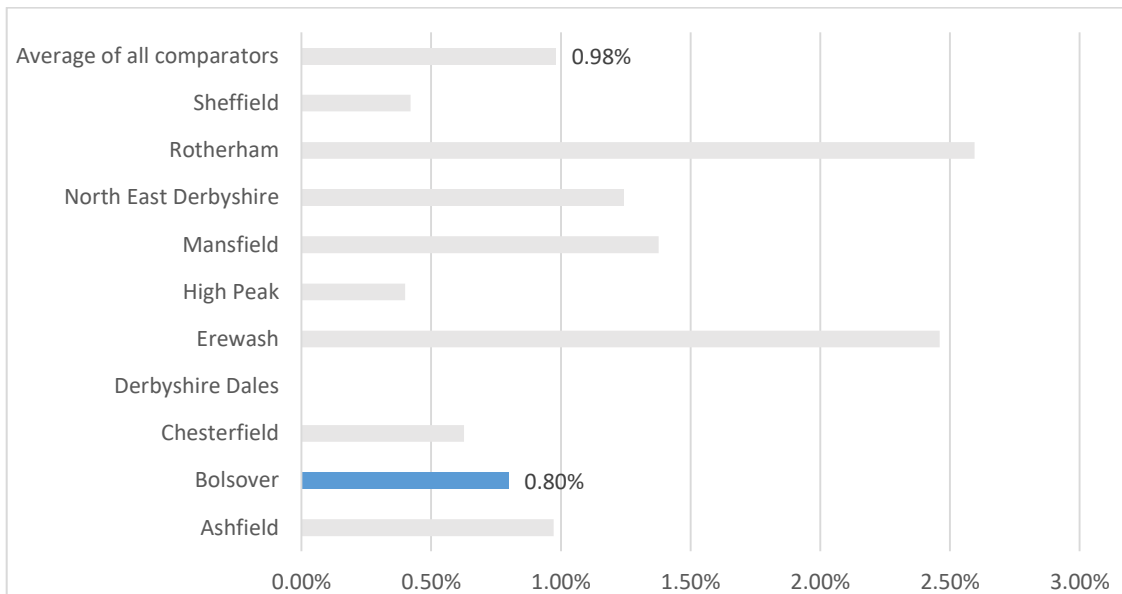
**Figure 1 - Fly tipping incidents by financial year against comparable and neighbouring authorities 2017-2021<sup>2</sup>**

1.11 In terms of enforcement actions (Figure 2), the Council compares favourably with neighbouring authorities in this period, with more formal actions than our nearest neighbouring authorities in this period with 36 Fixed Penalty Notices for fly tipping offences in this period, eight of which were issued in 2020/21. A further six fixed penalty notices have been issued for fly tipping or householder duty of care offences related to fly tipping in 2021-22 to the end of February and four prosecution cases pending for more serious offences.

<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>



**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**

- 1.12 Figure 3 also shows that in relation to the percentage of formal enforcement actions, compared with incidents the Council performs better than a number of neighbouring authorities. An equivalent of 0.8% of all incidents result in a fixed penalty notice or prosecution case, 40% more than in High Peak, 38% higher than in Sheffield and 17% higher than in Chesterfield. 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.
- 1.13 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.

- 1.14 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.
- 1.15 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.
- 1.16 Additional and more capable CCTV solutions have also been procured this financial year to increase the services 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.
- 1.17 Seizure of Vehicles
- 1.18 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 The Joint Environmental Health Service has developed systems and procedures to enable the Council to use these new powers where suitable cases arise, and this can send a powerful message about the intention of the Council to deal with these offences in the most serious way.
- 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 if registered. If they don't they could receive a fixed penalty notice of £200. In the last two years we have issued 15 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 in Bolsover for a number of years. New offences such as fly tipping and householder duty of care have been added as the legislation has been updated,

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 in accordance with the legislation. It should be noted that the fixed penalty for littering was changed in 2017 to raise the maximum fixed penalty from £100 to £150<sup>3</sup> when the fines for a range of offences were updated.

1.26 The fixed penalty amounts set locally 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	Value of Fixed Penalty £						
	Bolsover	North East Derbyshire	Chesterfield	Rotherham	Min	Max	Recommended
Littering	65	150 (reduced to 100 if paid early)	150 (reduced to 60 if paid early)	150 (reduced to 100 if paid early)	50	150	<b>150</b> (reduced to 100 if paid within 10 days)
Public Space Protection Order (incl. dog fouling)	100	100	80	100	n/a	100	<b>100</b>
Fly tipping	200	400 (reduced to 300 if paid early)	300	400 (reduced to 300 if paid early)	150	400	<b>400</b> (reduced to 300 if paid within 10 days)
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	100		80	60	100	<b>100</b>
Failure to comply with a business waste receptacle (sec 47) notice	100	100		100	75	110	<b>100</b>
Failure to comply with	200	200	250		150	400	<b>200</b>

<sup>3</sup> [The Environmental Offences \(Fixed Penalties\) \(England\) Regulations 2017](#)

duty of care (householder)							
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 and fly tipping fixed penalty in line with neighbouring authorities and to the middle of the potential range, where it is paid early. 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 To mitigate against fines not being paid, an early payment reduction is proposed for littering and fly tipping as these fines would be at their maximum without this, and while this sends a clear message about how serious the Council views these offences, they remain high and potentially unaffordable. This would then push more cases to the Courts resulting in higher costs to the Council for relatively minor offences.
- 2.4 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.
- 3.3 Allowing early payment reductions to £100 and £300 for littering and fly tipping offences respectively enables a higher penalty than currently but enables a

discount for early admission of offences, encourages earlier payment and the reduced burden on the Council for follow up enforcement.

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

- 4.1 In the financial year 2020/21, 70% of environmental fixed penalty notices were paid. It would be possible to increase penalty amounts to the maximum levels without any discount, 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 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.

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#### **RECOMMENDATION(S)**

1. The Executive note the performance in relation to fly tipping enforcement.
2. The Executive set the fixed penalty fine levels as recommended in this report.
3. The Executive 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 Councillor Deborah Watson,  
Portfolio Holder for Environmental Health and Licensing

#### **IMPLICATIONS:**

**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

**Legal (including Data Protection):**            Yes             No

**Details:**

There are various statutes and regulations that create and regulate environmental offences. The legislation sets out the fixed penalty notice provisions for the specified offences. The proposed fixed penalties come within the current prescribed amounts. When implementing the fixed penalty scheme, the council must comply with the requirements of all relevant legislation.

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

<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>Revenue - £75,000</b> <input checked="" type="checkbox"/> <b>Capital - £150,000</b> <input type="checkbox"/> <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i>	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>	All wards
<b>Consultation:</b> <b>Leader / Deputy Leader</b> <input type="checkbox"/> <b>Executive</b> <input type="checkbox"/> <b>SLT</b> <input checked="" type="checkbox"/> <b>Relevant Service Manager</b> <input checked="" type="checkbox"/> <b>Members</b> <input type="checkbox"/> <b>Public</b> <input type="checkbox"/> <b>Other</b> <input type="checkbox"/>	<b>Details:</b>  Executive Director Resources (Head of Paid Service), Portfolio Holder for Environmental Health and Licensing

### Links to Council Ambition: Customers, Economy and Environment.

**Environment:**

- Ensuring a high standard of environmental cleanliness, undertaking appropriate enforcement activity where required.
- Working with partners to reduce crime and anti-social behaviour.

## DOCUMENT INFORMATION

Appendix No	Title

**Background Papers**

*(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 Executive you must provide copies of the background papers).*

Guidance on Fixed Penalty Notices for Local Authorities

<https://www.gov.uk/guidance/fixed-penalty-notice-issuing-and-enforcement-by-councils>

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)

The Environmental Offences (Fixed Penalties) (England) Regulations 2017