

## Decision under Delegated Powers

### Officer Requesting Decision

Enviro Crime and Dog Control Manager

### Officer Making the Decision

Head of Regulatory and Community Safety

### Recommendation

1. That the fixed penalty amount for unauthorised disposal of waste (fly tipping) for Charnwood is increased from £400 to £1000 for the full rate and increased from £280 to £750 for the early payment discounted rate, with effect from July 1st 2024.
2. That the fixed penalty amount for Breaching Householders duty of care (Duty of Care) for Charnwood is increased from £400 to £600 for the full rate and increased from £280 to £450 for the early payment discounted rate, with effect from July 1st 2024.
3. That the fixed penalty amount for Littering (dropping litter – caught in the act) for Charnwood is increased from £150 to £500 for the full rate and increased from £75 to £375 for the early payment discounted rate, with effect from July 1st 2024.
4. That the fixed penalty amount for Graffiti and Fly Posting (Graffiti and Fly Posting– caught in the act) for Charnwood is increased from £150 to £500 for the full rate and increased from £75 to £375 for the early payment discounted rate, with effect from July 1st 2024.
5. That the fixed penalty amount for Breaching a Community Protection Order (Not complying with a Community Protection Notice) for Charnwood is increased from £100 to £500 for the full rate and increased from £50 to £375 for the early payment discounted rate, with effect from July 1st 2024.

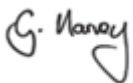
### Reason

To increase the level of deterrent to prevent people committing environmental crimes and to be in line with other Councils across Leicestershire.

### Authority for Decision

Section 8.2 (Item 1) of the Constitution allows the Head of Regulatory and Community Safety to exercise powers generally under Environmental Protection.

### Decision and Date



27<sup>th</sup> June 2024

## **Background**

### **Fly Tipping**

Fly tipping is an offence under Section 33 of the Environmental Protection Act 1990 (the Act). A person who is caught fly tipping can be prosecuted for the offence and can incur an unlimited fine and/or up to 5 years imprisonment. In May 2016 the Government introduced the ability to issue a fixed penalty notice under Section 33ZA of the Act, for the offence of fly tipping.

The range of the penalty was originally set up to the maximum amount of £400. Charnwood Borough Council opted to issue fixed penalty notices for fly tipping set at the default amount of £400 in May 2016.

The government's Anti-Social Behaviour Action Plan, published May 2023, committed to increase on the spot fines for certain offences, and on July 31 2023 these regulations came into force in England. The new maximum fine is now £1000.

### **Breaching a Community Protection Order**

Breaching a Community Protection Order is an offence under Section 48 of the Anti-social Behaviour Crime and Policing Act 2014.

A person who does not comply with a Community Protection Notice within the prescribed timescales can be prosecuted for the offence or receive a fixed penalty notice. The range of the penalty was originally set up to the maximum of £100. Charnwood Borough Council opted to issue fixed penalty notices for Breaching a Community Order at the maximum amount of £100 in 2019.

The government's Anti-Social Behaviour Action Plan, published May 2023, committed to increase on the spot fines for this offence, and on July 31 2023 these regulations came into force in England. The new maximum fine is now £500.

### **Breaching Householders Duty of Care**

Breaching Householders Duty of Care is an offence under Section 34 of the Environmental Protection Act 1990 (the Act). A person who gives their waste to an unregistered waste carrier which is later found to be fly tipped can be prosecuted for the offence. In 2019 the Government introduced the ability to issue a fixed penalty notice under Section 34 (2A) of the Act, for the offence of Breaching Householders Duty of Care.

The range of the penalty was originally set up to a maximum of £400. Charnwood Borough Council opted to issue fixed penalty notices for Breaching Householders Duty of Care at the maximum amount of £400 in 2019.

The government's Anti-Social Behaviour Action Plan, published May 2023, committed to increase on the spot fines for this offence, and on July 31 2023 these regulations came into force in England. The new maximum fine is now £600.

## **Littering**

Littering (to throw, drop or otherwise deposit litter – caught in the act) is an offence under Section 87 of the Environmental Protection Act 1990 (the Act). A person who throws, drops or otherwise deposits litter and intentionally leaves it there can be prosecuted for the offence. The Environmental Protection Act 1990 allows the council to issue fixed penalty notices, for the offence of littering if caught in the act.

The range of the penalty was originally set up to a maximum of £150. Charnwood Borough Council opted to issue fixed penalty notices for littering at the maximum amount of £150 in 2019 following the Government's Code of Practice for Litter and Refuse. The fine was set at £80 prior to this.

The government's Anti-Social Behaviour Action Plan, published May 2023, committed to increase on the spot fines for this offence, and on July 31 2023 these regulations came into force in England. The new maximum fine is now £500.

## **Graffiti and Fly Posting**

Graffiti or Fly Posting (caught in the act) is an offence under the Anti-social Behaviour Act 2003 Part 6. A person who daubs graffiti or puts up posters can be prosecuted for the offence. The Anti-social Behaviour Act 2003 allows the council to issue fixed penalty notices, for the offence of graffiti or fly posting if caught in the act.

The range of the penalty was originally set up to a maximum of £150. Charnwood Borough Council opted to issue fixed penalty notices for graffiti and fly posting at the maximum amount of £150 in 2019 following the Government's Code of Practice for Litter and Refuse. The fine was set at £80 prior to this.

## **Consultation and Review**

The district and borough councils in Leicestershire and Leicester City Council have been consulted as part of a benchmarking exercise with an aim to have a consistent approach across Leicestershire. The other councils which have set their new FPN rates are in close proximity to the maximum fine levels.

Legal advice was sought and the direction was to increase fines to maximum in line with Leicestershire and across the UK being mindful that if the fine is set too low and the neighbouring councils have set their FPNs at higher rates it may disperse the issue into the Charnwood area, increasing costs and resource needs.

They also advised that court costs are often based on the FPN amount, if an FPN is unpaid, the Council can decide to prosecute for the original offence. The court often sets the fine at the same level as the FPN rate so it is likely to be seen as more of a sanction if the fine rate is higher.

There was also discussion with officers who would issue the FPNs, the consensus was that a stronger deterrent would be an effective tool.

A meeting was held with the Senior Leadership Team (SLT) to set direction and then a meeting with Cabinet Members with recommendations from SLT and officers.

Following this process, it is proposed to increase the amount of the fixed penalty notices as shown in the table below:

<b>Offence</b>	<b>Revised maximum fine</b>	<b>Discounted rate for early payment within 10 days*</b>
Littering (dropping litter – caught in the act)	£500	£375
Graffiti and fly posting	£500	£375
Fly Tipping	£1000	£750
Breaching Householders duty of care	£600	£450
Breaching a community Protection order	£500	£375

### **Financial Implications**

Most fixed penalty notices are paid in the discount period so removing the discount rate could mean less people pay the FPN but balanced with a higher rate of income from paid FPNs this should mitigate this.

The potential additional income generated will support the financial targets within the Street Management budget and contribute towards the increased costs of the service

### **Risk Management**

No specific risks have been identified with this report.

Key Decision: No

Background Papers: No