

# **Fixed Penalty Notice Policy Tewkesbury Borough Council**

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# **1 Introduction**

1.1 The use of fixed penalty notices is an enforcement option which is available to the council in connection with a range of environmental offences. A fixed penalty notice can be issued by an authorised officer of the Council and can provide a quick and effective way of dealing with low level environmental crimes by offering the offender an opportunity to pay a penalty fine as an alternative to prosecution.

1.2 Payment of a fixed penalty notice discharges an offender's liability for the offence and does not create a criminal record. The use of fixed penalty notices provides the Council with a means of dealing with low level offences in a proportionate and cost effective manner.

# **2 Policy aim**

2.1 The aim of this policy is to outline the Council's approach to the use of fixed penalty notices and ensure that use of the notices is proportionate, transparent and consistent with both the Council's Corporate Enforcement Policy and guidance issued by central government. The policy also aims to establish the specific offences for which the Council may issue a fixed penalty notice together with the associated fine level. Furthermore this policy will assist the Council with the targeting of enforcement activity and support the Council's wider corporate commitment to tackle environmental crime within Tewkesbury Borough.

# **3 Policy objectives**

3.1 The objectives of this policy are as follows.

- To establish the specific offences for which the Council may serve fixed penalty notices.
- To establish the fixed penalty fine level which will be imposed by the Council in respect of each offence.
- To outline the circumstances in which use of a fixed penalty notice is considered to be appropriate.

## **4 Fixed penalty notice offences and fine levels**

- 4.1 The power to issue fixed penalty notices is conferred on the Council by the legislation which governs each specific offence. The Council will issue fixed penalty notices for all environmental offences where it has a statutory option to do so. This includes offences relating to dog fouling, dog control, littering, fly tipping and abandoned vehicles.
- 4.2 The fixed penalty fine level is specified by the specific legislation governing the offence. This may include a specified discount penalty for early payment.
- 4.3 A full schedule of the offences for which the Council may serve a fixed penalty notice, together with the fixed penalty fine level, is provided in the appendix to this policy.

## **5 Appropriate use of fixed penalty notices**

- 5.1 A fixed penalty notice may only be issued by a Council Officer who has been provided with delegated authority to issue notices for the specific offence in question.
- 5.2 The decision to serve a fixed penalty notice will be taken on a case by case basis and a notice shall only be served in circumstances where sufficient evidence exists to provide a realistic prospect of conviction. The evidence to support the service of a fixed penalty notice may come from direct observation of the offence by the officer or from reliable witness testimony.
- 5.3 The Council will only issue fixed penalty notices for offences which are considered suitable to be discharged by way of a fixed penalty fine. This will generally be one off incidents of relatively low level environmental crime. The Council will not consider fixed penalty notices to be appropriate in cases where serious criminal activity, organisation and intent are indicated.

- 5.4 The Council will use fixed penalty notices in cases where it is considered to be in the public interest to pursue offenders in the courts for non-payment. The Council will not serve fixed penalty notices for offences which are deemed to be so minor or trivial that they could be effectively be dealt with by other means. For example verbal advice or a written warning.
- 5.3 Fixed penalty notices will not be used for repeat offenders or for individuals who have previously received a fixed penalty notice for a similar matter. In these circumstances an alternative enforcement option will be considered such as direct prosecution.
- 5.4 Fixed penalty notices may not be served in cases where individuals are uncooperative, hostile or aggressive. In these circumstances assistance from the Police may be sought and direct prosecution considered.
- 5.5 Fixed penalty notices will only be served in cases where the officer is satisfied that the offender has provided accurate identity and address details. Failure to provide accurate name and address details to an authorised officer represents an offence. In circumstances where an offender fails to provide accurate identity details then advice will be sought from the police and alternative enforcement options considered.
- 5.6 Fixed penalty notices will not be served on individuals under the age of 18.
- 5.7 The Council will take all reasonable steps to avoid serving fixed penalty notices on persons who are considered to be vulnerable. In this context vulnerable is defined as someone perceived to have a chaotic lifestyle, such as homelessness, or those that suffer from a mental impediment.
- 5.8 Fixed penalty notices served by the Council will include the following information.
- Details of the alleged offence.
  - Where and when the offence took place.

- How the fixed penalty is issued (in person or by post)
- Details of the fine imposed and any discount available for paying early.
- When the fine must be paid by (this must be at least 14 days) and the time limit for the discount period.
- How the fine can be paid.

## **6.0 Service of fixed penalty notices**

6.1 The Council may serve fixed penalty notices on offenders either by mail or on the spot using carbon copy fixed penalty notices.

## **7.0 Payment of fixed penalty notices.**

7.1 Full payment of the fixed penalty notice must be paid within 21 days from the date the notice was issued. In circumstances where a discount is available then this must be paid within 10 days from the date of issue.

7.2 The Council only accepts fixed penalty notice payments in full and does not accept either deferred payments or payment by instalments.

7.3 The fixed penalty notice will quote a unique reference number and will provide details of the payment methods accepted by the Council.

## **8 Non-payment of fixed penalty notices**

8.1 The Council is committed to prosecute offenders for non-payment or partial payment of a fixed penalty notice.

8.2 Should payment not be received within the timeframe stated on the notice then a warning letter will be sent stating a further time period in which payment is expected. Should payment still not be received following the warning letter then the matter will be referred to the Council's Legal Department for consideration.

## **9 Challenging a fixed penalty notice**

- 9.1 A statutory appeal process does not exist for fixed penalty notices and the Council does not offer a non-statutory appeals process. Should an alleged offender wish to challenge a fixed penalty notice then the prosecution proceedings at the magistrate's court, in connection with non-payment, would be the appropriate forum for this challenge.

## **10 Relevant legislation**

- 10.1 Clean Neighbourhoods and Environment Act 2005 (CNEA), Section 3,4 & 6 (Nuisance Parking); Section 10 (Abandoned Vehicles); Section 19,22 & 24 (Litter & Refuse); Section 28 – 30 (Graffiti & fly Posting); Sections 38,45,48 & 52 (Transport of Waste) Sections 46 & 47 (Receptacles for Household and Commercial Waste); Section 73 -76 (Audible Intruder Alarms); Sections 82 – 85 (Noise from Premises); Sections 96 to 98 (Use of Fixed Penalty Receipts)
- 10.2 Environmental Protection Act 1990: Sections 34(A)(2), 46A-D, 47Z A and B, 88(1), 94(A), and Schedule 3A Paragraph 7.
- 10.3 Refuse Disposal Amenity Act 1978, Section 2(A).
- 10.4 Control of Pollution Amendment Act 1989, Section 5B
- 10.5 Noise Act 1996, Section 8
- 10.6 Health Act 2006, Section 9
- 10.7 The Environmental Offences (Fixed Penalties (Miscellaneous Provisions) Regulations 2006 & 2007
- 10.8 The Environmental Offences (Use of Fixed Penalty Receipts) Regulations 2006 & 2007
- 10.9 The Environmental Offences (Fixed Penalties)(Miscellaneous Provisions) (Amendment) Regulations 2012
- 10.10 Deregulation Act 2015, Section 58 and schedule 12

## **11 Relevant Guidance**

- 11.1 Fixed penalty notices: issuing and enforcement by councils
- 11.2 Corporate Enforcement Policy: Tewkesbury Borough Council

# Appendix

## Fixed Penalty Offences and Fine Levels



## Tewkesbury Borough Council

### Fixed Penalty Offences and Fine Levels

Offence	Penalty if paid within 10 days	Full Penalty
Depositing litter	£50	£75
Dog fouling	£50	£50
Unauthorised deposit of waste (fly tipping)	£200	£400
Failure to furnish waste transfer notes	£180	£300
Failure to produce waste carriers licence	£180	£300
Fly-posting	£50	£75
Graffiti	£50	£75
Abandoning a vehicle	£120	£200
Nuisance parking	£60	£100
Non-compliance with notice requiring receptacles for household waste.	£40	£60
Non-compliance with notice requiring receptacles for commercial waste.	£60	£100
Alarm noise: Failure to nominate key holder or notify local authority of key holder's details.	£50	£75
Smoking in a public place	£30	£50
Failure to display no smoking signs	£150	£200
Noise exceeding permitted level – domestic premises	£60	£100
Noise exceeding permitted levels – licensed premises	£500	£500
Failure to comply with a Community Protection Notice	£60	£100
Breach of a Public Space Protection Order	£60	£100