

# BRIDGEND COUNTY BOROUGH COUNCIL

## REPORT TO CABINET

14 DECEMBER 2021

### REPORT OF THE CORPORATE DIRECTOR COMMUNITIES

#### ENFORCEMENT POLICY FOR THE ISSUING OF FIXED PENALTY NOTICES FOR ENVIRONMENTAL OFFENCES CHANGES

#### 1. Purpose of report

- 1.1 The purpose of this report is to seek Cabinet approval of proposed amendments to the council's Enforcement Policy for the issuing of Fixed Penalty Notices.

#### 2. Connection to corporate well-being objectives / other corporate priorities

- 2.1 This report assists in the achievement of the following corporate well-being objectives under the **Well-being of Future Generations (Wales) Act 2015**:-
- **Supporting a successful sustainable economy** – taking steps to make the county borough a great place to do business, for people to live, work, study and visit, and to ensure that our schools are focussed on raising the skills, qualifications and ambitions for all people in the county borough.
  - **Smarter use of resources** – ensure that all resources (financial, physical, ecological, human and technological) are used as effectively and efficiently as possible and support the creation of resources throughout the community that can help to deliver the Council's well-being objectives.

#### 3. Background

- 3.1 On 19 November 2019, Cabinet approved an Enforcement Policy for the issuing of Fixed Penalty Notices.
- 3.2 Welsh Government guidance specifies that 'Fixed Penalties can provide an effective and visible way of responding to low-level environmental crimes such as littering, dog fouling, fly-tipping and some waste issues. They can provide a more proportionate and cost-efficient alternative to prosecuting offenders in Court'.
- 3.3 Enforcement procedures differ between Local Authorities and this Council has previously taken an approach of educating residents and warning offenders, prior to issuing formal Fixed Penalty Notices. This has proved effective and most incidents have a positive outcome when dealt with in this manner.

#### 4. Current situation/proposal

- 4.1 The council's Enforcement Policy for the issuing of Fixed Penalty Notices for environmental offences needs to be amended to incorporate offences in accordance with the Clean Neighbourhoods and Environment Act 2005, Environmental Protection Act 1990 and the Refuse and Disposal Amenity Act 1978, which will increase enforcement responsibility. A copy of the policy with proposed amendments is attached at **Appendix A**.
- 4.2 In accordance with the Environmental Protection Act 1990, Section 33ZB, where there is reason to believe that a person has committed a waste deposit offence eg. Fly-tipping, a Fixed Penalty Notice can be offered to discharge liability to conviction of the offence, by payment of a fixed penalty ranging between £150 and £400. It was originally agreed that Fixed Penalty Notices issued relating to these offences would offer a fixed penalty of £200 (with £120 being accepted as an early payment penalty). However, surrounding local authorities have now commenced administering the fixed penalty at £400 (with £200 being accepted as an early payment penalty). To deter any offender from distinguishing between borough boundaries when committing such an offence, it is recommended that this council incorporates a similar level of penalty.
- 4.3 The addition of legislation regarding commercial waste offences has been included. In order to deal with waste issues in town centre areas in particular, it is recommended that this is included in the policy to allow Officers to deal with businesses who are not complying with their waste responsibilities and to enable the issuing of Fixed Penalty Notices where appropriate.
- 4.4 Vehicle offences have been incorporated into this policy to complete the full range of offences available to Enforcement Officers. These include the ability to issue Fixed Penalty Notices for abandonment of a vehicle, and for where vehicles are parked on the road merely in order to be sold, causing a nuisance to residents in an area. This is aimed at situations where traders are selling more than two vehicles from their properties in residential areas causing issues for residents. Alongside this, the ability to issue Fixed Penalty Notices for traders who repair vehicles on the roadside is also included. It is not intended that this will be utilised for situations where someone has broken down for example but where a business is not carrying out works at a commercial property.
- 4.5 There is no formal appeals process relating to the issuing of Fixed Penalty Notices, however a process has been clarified within the amended policy to ensure that offenders are aware of their options should they contest/dispute the issuing of a Fixed Penalty Notice, which is in line with legal recommendations.
- 4.6 It is important to recognise that issuing each Fixed Penalty Notice will be considered on its individual merits, matters of proportionality, objectivity, fairness and reasonableness, whilst also meeting the criminal standard of proof. A system is in place to offer an appeal or contest to the notice and to preserve the integrity of the process, no undue external pressure should be brought, by either members of the council, Assembly Members, Members of Parliament or senior officers which could be misconstrued to unduly influence the decisions by virtue of their position alone. This is a similar process adopted by the Car Parking Marshals when issuing fines for parking offences.

## **5. Effect upon policy framework and procedure rules**

5.1 There is no direct impact on the Council's policy framework and procedural rules.

## **6. Equality Act 2010 implications**

6.1 An initial Equality Impact Assessment (EIA) screening has identified that there would be no negative impact on those with one or more of the protected characteristics, on socio-economic disadvantage or the use of the Welsh Language. It is therefore not necessary to carry out a full EIA on this policy or proposal.

### **Appendix B**

## **7. Well-being of Future Generations (Wales) Act 2015 implications**

7.1 The Well-being of Future Generations (Wales) Act 2015 Assessment Template has been completed and a summary of the implications from the assessment relating to the five ways of working is below. **Appendix C:**

- Long-term: An earlier consultation sought opinions on changes to the enforcement policies and the level of fines for environmental offences. There was general agreement to the Enforcement Policies and discounts applied. The changes to the Enforcement Policy allows for a greater range of provision in dealing with offenders which will lead to improved local environment.
- Prevention: No additional resources are allocated but this strategy offers greater powers for officers to act to resolve issues.
- Integration: Clarity on enforcement powers allows a greater means of dealing with offenders and ultimately leads to improved environment.
- Collaboration: The service already collaborates with Keep Wales Tidy, Sea Quest and voluntary organisations to reduce littering and fly tipping.
- Involvement: The revisions to the prior document allows a greater capacity to engage with business and commercial enterprises

## **8. Financial implications**

8.1 Whilst the implementation of this policy could increase the number of Fixed Penalty Notices issued, the strategy would still require education and collaboration of offenders and it is not intended to create additional income.

## **9. Recommendation(s)**

- 9.1 Cabinet is recommended to approve the revised Enforcement Policy for the Issuing of Fixed Penalty Notices for Environmental Offences.

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### **Background documents:**

WLGA Review of legislation to identify powers to promote the diversion of recyclable materials (including food waste) from residual waste containers at domestic properties (2019)

Welsh Government Guidance for Welsh Local Authorities on Household Waste Duty of Care Fixed Penalty Notices (2019)

Welsh Government Guidance on the use of Fixed Penalty Notices for Environmental Offences (2019)