

### Operational Guidance Littering, EPA 1990, Section 87

In cases of littering, the normal course of action will be to offer a FPN, providing the person is cooperative and is not a habitual litter offender.

The offence under section 87 of the Environmental Protection Act 1990, as amended in 2005, applies to all places that are open to the air, including private open land, and land covered by water. It also applies to any covered place with a significant permanent opening on at least one side (such as a bus shelter, railway station or garage forecourt that remains open to the air at all times) providing the public has access to it, with or without payment.

Due to the scale of the issue within the borough it is Thurrock Council policy to issue fixed penalty notices for first time offenders in respect of littering.

A person does not commit a littering offence if they leave litter on their own land or if they have the permission of the landowner to leave litter.

Litter is not defined, but includes cans, bottles, confectionary wrappers, food and drink containers, chewing gum, plastic bags, till receipts, left over food, cigarette and cigar ends and flyers.

Issuing FPNs for food litter can be contentious and the following examples should assist officers:

- excessively feeding birds, warn in first instance;
- fruit peelings or apple core dropped on pavement. This requires cleaning, may lead to staining and is a slipping hazard, so issue FPN;
- apple core thrown into rural hedge, no action;
- crumbs accidentally dropped, no action.

The authorised officer must be satisfied that the two elements of the offence have been committed, namely that a person has been witnessed throwing down, dropping or otherwise depositing any litter, and leaving it. The offence is made out when a person intentionally discards something (e.g. puts an empty bottle on a wall, screws up a bus ticket and drops it, spits out gum, removes a sandwich from a bag and drops the bag, or throws a can into a side street) and walks away or otherwise leaves it.

The offence may be made out by reason of the person's behaviour (i.e. ripping or screwing something up and dropping it while in a queue of people and not making any attempt to retrieve it within a notable period of time), or because of where the item was thrown (i.e. into a river or fenced area or from a car or bridge). To help establish the second element of the offence, the officer should note how long someone has left something before being approached or how far they have walked before being stopped.

The offence does not rely on any requirement to ask a person who has deposited litter, to pick it up.

However, where it appears that someone has dropped something inadvertently, or the officer cannot reasonably conclude that the litter has been left, (s)he should consider asking the person to pick it up. If the person then refuses, it would constitute leaving, and there would be grounds to issue an FPN.

If a person chooses to return to the litter and pick it up following the intervention of an officer, it will not be sufficient for an FPN not to be issued. Such action would be recorded by the officer and noted in the event of a subsequent prosecution.

Where litter is thrown/deposited from a vehicle and the offender is not dealt with at the time (i.e. because the vehicle is moving), the identity of the registered keeper will be obtained from the DVLA. An interview letter will be sent to the registered keeper. A FPN will then be issued by mail where the individual who left the litter can be identified, e.g. by CCTV image, visual recognition, statement by the keeper (remembering that a person's spouse may not be compelled to give evidence).

Aggravated littering such as smashing glass bottles may be more appropriately dealt with by summons.

FPNs will not be used to deal with offences of fly-tipping, but may be appropriate for loose domestic waste, or single small items/bags and first-time offenders.

#### **Officers issuing fixed penalty notices for littering will:**

- Where possible, take photographic evidence of the litter
- Seize the litter as evidence if appropriate
- Make full comprehensive pocket book notes on scene or at the earliest opportunity and include a detailed description of the item littered
- Note the description of the offender in detail
- Carry out DVLA checks to ascertain the registered keeper of the vehicle(s) (if applicable)
- Ensure that the offender is given details of the representations / appeals procedure where the fixed penalty notice has been issued for littering from a vehicle.