

Fixed Penalty Notice Representations Policy

Although no statutory requirement exists to provide a formal appeals process, it is necessary to implement a system which allows recipients of a fixed penalty to register a complaint by making a representation in writing to the issuing Department on matters relating to the issued fixed penalty in regard to:

Legality

Whether the fixed penalty was issued to the correct person.

Whether the fixed penalty contain the correct information gathered by the authorised officer.

Whether the correct fixed penalty was used in this circumstance?

Evidence

Can the Council proceed to the Court based on the evidence gathered?

Is there evidence that supports the possibility we have incorrectly identified the defendant?

Are we sure we have exhausted all avenues of investigation which may have influenced our decision NOT to have issued the fixed penalty?

Mitigating Circumstances

Is the defendant infirm, incapacitated or vulnerable to an extent to which the fixed penalty would be seen to be “not in the public interest” to proceed to court?

Was an offence committed due to the act or default of another person or company?

This informal appeals process allows recipient to make representations to Environmental Enforcement Services within 14 days of receiving the fixed penalty. The appeal will only be considered on the grounds given above or similar scenarios. The following examples would not be considered grounds for appeal:

“I didn’t know it was against the law”

“You didn’t warn me before you issued the fixed penalty”

“I can’t afford to pay the fine”

“The officer who issued the ticket was very rude and insulting”

This final example would not be considered grounds for appeal but would be recorded a stage one complaint under the Council’s corporate complaints procedure and therefore be considered under those guidelines.

On receipt of the appeal in writing, the reviewing officer (Designated Service Manager within Environment) will make a decision to uphold or reject the appeal

based on the above criteria alone. The decision will be given to the defendant in writing via post or email at the earliest opportunity and no later than 10 working days from receipt.

If the appeal is received by the department on the 14th day from issue, the defendant will be allowed a further period of time to pay the fine if the appeal is rejected. The written confirmation of rejection will state when the defendant is required to pay.

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.

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.

Operational Guidance Dog Fouling,

Previous legislation dealing specifically with dog fouling has been repealed. The Local Authority may now make a Public Spaces Protection Order dealing with issues relating to dog walking activities which negatively affect the community. Additionally, the Local Authority can also enforce dog fouling through the existing littering legislation contained within s.87 of the Environmental Protection Act 1990.

A person is guilty of an offence if they throw down, drop, or “otherwise deposits” litter in any place in the open air and leaves it.

By Section 86, the Secretary of State may by order apply the provisions of Part IV of the EPA 1990 (which contains the section 87 littering provisions) to animal droppings. Such regulations exist within the Litter (Animal Droppings) Order 1991 SI 1991/961. Within those regulations, Part IV shall also apply to dog faeces in the following areas:

- any public walk or pleasure ground;
- any land, whether enclosed or not, on which there are no buildings or of which no more than one-twentieth part is covered with buildings, and the whole or the remainder of which is laid out as a garden or is used for the purposes of recreation;
- any part of the seashore (that is to say every cliff, bank, barrier, dune, beach, flat or other land adjacent to and above the place to which the tide flows at mean high water springs) which is— frequently used by large numbers of people, and managed by the person having direct control of it as a tourist resort or recreational facility;
- any esplanade or promenade which is above the place to which the tide flows at mean high water springs;
- any land not forming part of the highway, or, in Scotland, a public road, which is open to the air, which the public are permitted to use on foot only, and which provides access to retail premises;
- a trunk road picnic area provided by the Minister under section 112 of the Highways Act 1980 or, in Scotland, by the Secretary of State under section 55 of the Roads (Scotland) Act 1984;
- a picnic site provided by a local planning authority under section 10(2) of the Countryside Act 1968 or, in Scotland, a picnic place provided by an islands or district council or a general or district planning authority under section 2(2)(a)(i) of the Local Government (Development and Finance) (Scotland) Act 1964;
- land (whether above or below ground and whether or not consisting of or including buildings) forming or used in connection with off-street parking

places provided in accordance with section 32 of the Road Traffic Regulation Act 1984.

- Fixed penalty notices can be issued to person(s) in charge of a dog or dog(s) where dog faeces are deposited and left. These notices may be issued in the same way as any other littering offence.
- For persons who fail to clear up after a dog in their charge, the normal course of action will be to offer a FPN, providing the person is cooperative and is not someone who has failed to be deterred by previous FPNs.
- The offence does not apply to persons who are registered blind or to a person who has a registered disability which affects his/her mobility, manual dexterity, physical co-ordination or ability to lift, carry or otherwise move everyday objects.

For the purposes of this operational guidance:

- a person who habitually has a dog in his possession shall be taken to be in charge of the dog at any time unless at that time some other person is in charge of the dog;
- placing the faeces in a receptacle on the land which is provided for the purpose, or for the disposal of waste, shall be a sufficient removal from the land; and
- being unaware of the defecation (whether by reason of not being in the vicinity or otherwise), or not having a device for or other suitable means of removing the faeces, shall not be a reasonable excuse for failing to remove the faeces.
- It applies to all land which is in the open air and to which the public has access.
- Designated land is set out in SI 1991/961, and does not apply to land which is heath or woodland, or which is used for the grazing of animals.

Defences that are not acceptable:

- Allowing a dog to roam the streets – the owner is still legally in charge of it.
- Looking the other way and not seeing the dog foul.
- Not having a device such as a poop-scoop or other suitable means of removing the faeces.

Officers issuing fixed penalty notices for dog fouling will:

- Ensure Officer safety at all times – Officers are to ensure that they comply with and read the risk assessment for dealing with dogs - owners with dogs which appear to be 'dangerous dogs' are not to be approached – Dog warden assistance is to be requested

- Take photographic evidence where possible
- Make full comprehensive pocket book notes on scene or at the earliest opportunity
- Take note of the description of the person who has committed the offence and the dog

Officers will not issue fixed penalty notices for dog fouling offences when;

- The person is exempt from the law, such as blind or disabled people (not including the deaf) in respect of a dog on which they rely on for assistance
- The dog is on official duties on behalf of HM services (e.g. police dogs)