

Notice of Meeting

Delegated Officer Decision

Monday 13 March 2017

For further information about this Agenda, or to inspect any background documents referred to in Part I reports, please contact Stephen Chard on 01635 519462
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Further information and Minutes are also available on the Council's website at www.westberks.gov.uk



To: All Councillors

Agenda

Part I

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Andy Day
Head of Strategic Support

West Berkshire Council is committed to equality of opportunity. We will treat everyone with respect, regardless of race, disability, gender, age, religion or sexual orientation.

If you require this information in a different format or translation, please contact Moira Fraser on telephone (01635) 519045.



Delegated Officer's Decision

Reference	Service Grouping
	Environment
Subject:	Fixed Penalty Fees - Breach of various Environmental Related Provisions - Appeals Procedure
Decision taken:	That the appeals procedure set out in the attached Schedule is approved. This will apply to all fixed penalty notices issued by officers of the Public Protection Partnership and Waste Management Service
Reason for decision taken:	There is no statutory requirement to have an appeals procedure as every notice can be appealed to the Magistrates Court by way of complaint. However an appeals procedure is seen as desirable in order that disputed matters can be considered thus possibly alleviating the the need for the matter to go to Court.
Other options considered:	Not having an appeals procedure
Decision taken by:	Steve Broughton
Scheme of Delegation Ref:	Article 3.15 of the Constitution of West Berkshire District Council (Scheme of Delegation)
Job Title:	Head of Culture and Environmental Protection
Those consulted:	Mary Kigonya (Case Officer/Solicitor); relevant team managers and CEP Enforcement Management Group
Background papers:	None

I confirm that I have fully advised and have taken account of all the relevant facts in making this decision.

Date Decision Made	Date Decision will be Implemented (5 clear days)
13 March 2017	18 th March 2017

Officer:	Steve Broughton 
Witnessed by:	Sean Murphy 
Date:	13 March 2017

This decision is eligible to be 'called-in'. However, if the decision has not been 'called-in' by 5.00pm on 18th March 2017, then it will be implemented.

If you have any queries regarding this decision, please contact:

Name: Steve Broughton

Job Title: Head of Culture and Environmental Protection

Tel: 2837

Email: slbroughton@westberks.gov.uk

Schedule – Individual Decision

Fixed Penalty Notices - How to make an appeal or complaint

Fixed Penalty Notices are designed to give an offender the opportunity to discharge any liability for conviction of an offence - which means that by admitting the offence and paying the fine, an offender can avoid being prosecuted for that offence.

There is no formal appeal process for Fixed Penalty Notices – if you disagree that you have committed an offence, you can decide not to pay the Fixed Penalty Fine, and the matter will then be decided by a Court. However, this can be expensive and time-consuming for both parties, and West Berkshire District Council therefore has an internal appeals process that can help to resolve disputes before they get to Court.

When can you appeal a Fixed Penalty Notice?

Cases where an appeal might be considered favourably include, but are not limited to, instances where you can demonstrate that:

- No offence was committed, or the fixed penalty notice has been wrongly issued, for example where it is disputed that litter was deposited or the person had an exemption under the law;
- The offence was committed by someone else;
- The offence wasn't the fault of the person against whom the Notice was served, and there was nothing they could do to prevent the offence;
- We shouldn't have served the Notice because the offender is under 18, or is physically or mentally incapacitated or has some other incapacity that prevents them from understanding that they committed an offence;
- There are significant extenuating circumstances that temporarily affected the ability of the person to comply with the law;
- Serving the Notice is not considered to be in the public interest – but don't forget, we have a duty to enforce the law – and Fixed Penalty Notices are designed to be a quick and easy way to deal with minor offences.

In order to serve a Fixed Penalty Notice, we will have evidence that an offence was committed by the person against whom we issued the Notice. Any appeal must therefore clearly show the reasons why the Fixed Penalty Notice should be cancelled. You will need to give us evidence you have, such as photos, witnesses etc., so that we can fully consider your appeal.

There are a range of reasons where an appeal will not be considered, and these include

- Ignorance of the law – the test would be whether a reasonable person would be aware that an offence had been committed – most people know that dropping litter and allowing their dogs to foul is wrong! There are some requirements to display notices warning people about the law, but these don't apply everywhere and to all legislation, and warning notices don't have to be where you happen to be when the offence was committed
- You didn't know an offence had been committed – the test would be whether a reasonable person would have known what had happened – for example, this includes

knowing where your dog is and what it is doing so that you can clear up any mess it leaves

- You couldn't prevent the offence - the test would be whether a reasonable person could have taken steps to prevent the offence occurring – for example by failing to produce waste documents where waste has been transported.
- The offence was only minor – that's why a Fixed Penalty Notice has been issued, as this gives the opportunity to avoid going to Court. More serious offences could be prosecuted straight away
- It's not in the public interest to pursue the offence – although these are minor offences, the levels of litter, dog mess etc are something that concern local residents, and the Council needs to respond to these concerns by making sure the law is enforced. The Authority also spends a lot of money cleaning the streets, and anything we can do to stop litter, dog mess etc helps us to do this more effectively.

How do we deal with Appeals

If you are served a Fixed Penalty Notice by West Berkshire District Council or anyone acting on our behalf, but you disagree that you have committed an offence or feel that it was unreasonable for us to serve the Notice, you can appeal (in writing) to **(Head of Service), West Berkshire District Council, Council Offices, Market Street, Newbury, RG14 5LD.**

Every appeal will:

- Be considered on its merits, on the basis of the information and evidence provided by the appellant and by the person who issued the Notice
- Receive a full written response, normally within **10 working days**. Where a more detailed investigation is required, appeals will be acknowledged within **5 working days**.

If your appeal is upheld no further action will be taken and you are no longer obliged to pay the fixed penalty notice.

If your appeal is not upheld, the reasons for this will be explained, and a further 14 day period for payment will be given. If payment in full is not received within this time you risk being prosecuted for the offence described on your fixed penalty notice.