

Fly-Tipping Fixed Penalty Notices – How to make an appeal or complaint

Fly-Tipping Fixed Penalty Notices are designed to give an offender the opportunity to discharge any liability to conviction for 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 Hart District Council therefore has an internal appeals process that can help to resolve disputes before they get to Court.

When can you appeal a Fly-Tipping 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 or the person had exception 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 prevent 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 keeping your dog under control so that it doesn't enter a banned area
- 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 Hart District 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 fly tipping, 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 Hart 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 at online portal www.hart.gov.uk/FPN-appeal or in writing to Fly-Tipping FPN Section, Environmental Health, Hart District Council, Harlington Way, Fleet, GU51 4AE

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.
- Where appeals are not upheld, the reasons for this will be explained, a further 14 day period given for payment (10 days for discount) will be given and details of the Councils Complaint procedure will be provided.

Making a Complaint

Sometimes, those who are served with a Fixed Penalty Notice agree that they committed an offence, but are concerned with the way that they were treated. Hart District Council has a complaints procedure in place to deal with these matters.

The first step of the complaint process is to complain (in writing) to Fly-Tipping FPN Section, Environmental Health, Hart District Council, Harlington Way, Fleet, GU51 4AE or at our online portal www.hart.gov.uk/FPN-appeal

Every complaint will:

- Be investigated on the basis of the information and evidence provided by the appellant and by interviewing the person who issued the Notice
- Receive a full written response, normally within 10 working days, with details of the Corporate Complaints Procedure. Where a more detailed investigation is required, appeals will be acknowledged within 5 working days