

Brighton & Hove City Council

City Environment, South Downs & The Sea Committee

Agenda Item 8

Subject: Environmental Enforcement Framework Update

Date of meeting: 20 June 2023

Report of: Executive Director: Economy, Environment & Culture

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Ward(s) affected: All

For general release

1. Purpose of the report and policy context

- 1.1 Fly-tipping, littering, graffiti, fly-posting, uncontrolled distribution of leaflets, inappropriate containment of business waste and the illegal disposal of business waste are all examples of environmental offences. These activities can have a significant and detrimental impact on the city, increasing the waste produced and reducing recycling. They also have a cost implication in terms of cleansing, collection and disposal.
- 1.2 To tackle this anti-social and illegal behaviour, the Environment Transport & Sustainability Committee approved the Environmental Enforcement Framework on 27 November 2018. Further updates have been approved as detailed in the Background Document section at the end of this report. This report is seeking further approval to update the Environmental Enforcement Framework and related activities.

2. Recommendations

- 2.1 That the City Environment, South Downs & The Sea Committee approves the updated Environmental Enforcement Framework as detailed in Appendix 1 (which highlights the tracked changes).
- 2.2 That the City Environment, South Downs & The Sea Committee agrees that the use of CPWs and CPNs to take enforcement action against small and independent (locally headquartered) businesses is paused with immediate effect and a new process adopted as set out in paragraphs 3.9 to 3.12.
- 2.3 That the City Environment, South Downs & The Sea Committee delegates authority to the Executive Director: Economy, Environment & Culture to take enforcement action as detailed in paragraphs 3.9 to 3.25.
- 2.4 That the City Environment, South Downs & The Sea Committee delegates authority to the Executive Director: Economy, Environment & Culture to determine the timing of the implementation of the offences.

3. Context and background information

- 3.1 The purpose of the Environmental Enforcement Service is to:
- enforce certain environmental legislation
 - improve the cleanliness of the city
 - issue Fixed Penalty Notices (FPNs), Community Protection Warnings (CPWs) and Community Protection Notices (CPNs) in the city for the offences detailed in section 5 of the Framework in Appendix 1
 - enable the council to be more responsive to commercial waste offences and to incidents of fly-tipping
 - encourage behavioural change to reduce environmental crimes
 - minimise waste clean-up and disposal
- 3.2 The Environmental Enforcement Framework is reviewed on a regular basis to consider additional offences to include to address anti-social and illegal behaviour and to minimise waste clean-up and disposal costs. This update includes additional offences for inclusion following the cessation of the Field Officer Team and feedback from stakeholders.
- 3.3 As per the legislation, the income from fines paid are used to cover the costs of the Environmental Enforcement Service. Any surplus income is ring-fenced to spend on environmental improvement projects in line with legal requirements.

Service delivery

- 3.4 During 2022/23, the following were issued by the Environmental Enforcement Team, generating £0.382m income:

Offence	Number issued
Industrial and commercial waste offences	1654
Littering	728
Commercial fly-tip	396
Non-compliance with Duty of Care	354
Graffiti (CPW)	230
Failure to produce Duty of Care	199
Residential fly-tip	193
Graffiti (CPN)	128
Graffiti (FPN for non-compliance of CPN)	68
Spitting, urinating and defecating	57
Unauthorised Flyering	47
Dog exclusion	42
Using a single use barbecue	37
Graffiti (FPN)	16
Littering from a vehicle	15
Fly-posting (FPN)	6
Fly-posting (CPW)	5
Dog fouling	4
Fly-posting (CPN)	3

- 3.5 On 5 June 2023, seven members of the Environmental Enforcement Team teamed up with the Environment Agency, Sussex Police and the Commercial Vehicle Unit to check commercial vehicles entering and exiting the city on Preston Drive, Brighton. Over 100 vehicles were stopped to check they had the appropriate documentation and licenses to operate in their stated commercial capacity and that the vehicles were safe.
- 3.6 As a result of the checks:
- Nine drivers were issued with a FPN by the Environmental Enforcement Team for not having a waste carrier licenses
 - Ten drivers were issued with a FPN by Sussex Police for driver or vehicle defects
 - Five drivers were issued with a FPN by the Commercial Vehicle Unit; two for dangerous tyres, two for insecure loads and one for defective brakes. In addition, Sussex Police seized a van and trailer for committing an insecure load offence
- 3.7 It was a positive day, with illegal and dangerous vehicles dealt with. Those walking by welcomed the presence of the organisations involved and the action being taken. Another day is being planned.

Changes to graffiti tagging enforcement

- 3.8 In May 2023, officers were asked to urgently review the current approach to graffiti tagging removal from private property via the use of CPWs and CPNs.
- 3.9 It is recommended that the use of CPWs and CPNs to take enforcement action against small and independent (locally headquartered) businesses is paused with immediate effect for a review of the enforcement measures to take place. Feedback received indicates small, independent businesses are struggling with the cost-of-living crisis and this pause is a supportive measure to help protect the city's vibrant, small, independent business sector. Instead, small, independent businesses that are tagged will receive a letter from the Environmental Enforcement Team requesting the removal of the graffiti at their earliest convenience. It is hoped that in using this approach, small, independent businesses will continue to support the council's efforts in keeping Brighton & Hove clean and tidy.
- 3.10 Enforcement action will continue to be used for a failure to remove graffiti tagging against large and non-independent businesses and Statutory Undertakers as per current policy.
- 3.11 Over the next few months, officers will review the options for graffiti tagging removal from all types of business property across the city. This will form part of a refresh of the Graffiti Reduction Strategy which will be brought to Committee in the autumn.
- 3.12 Learning from the approach detailed in 3.9 will be used to inform the options available. There is a risk that without the option of enforcement action, the

incidence of graffiti tagging on small, independent businesses will increase and action will not be taken to remove it. This will be monitored to inform future options as part of the refresh of the Strategy.

Fly-tipping on private land

- 3.13 Fly-tipping on public land is already an offence within the Environmental Enforcement Framework. At present, the council cannot take any action regarding fly-tipping on private land. Previously, the Field Officers would refer reports, but not carry out enforcement action. Now the Field Officer Team has ceased, it is proposed that the offence of fly-tipping on private land is added to the Environmental Enforcement Framework.
- 3.14 Upon receiving a report of a flytip on private land, or if one is discovered whilst an Environmental Enforcement Officer is completing their daily patrols, an investigation will commence to identify the landowner. With the landowner's permission, Officers will seek to identify the perpetrator. Where there is sufficient evidence, the perpetrator will be issued with a FPN. The FPN amount will be £400 to align with the FPN issued for fly-tipping on public land. The landowner will be responsible for legally and safely disposing of the flytip.
- 3.15 Introducing this offence will support the council's efforts in tidying up the city and make it clear that flytipping is not tolerated.

Engine idling

- 3.16 The Road Traffic Regulations 2002 and the Road Traffic Act (1988) allows for a FPN to be issued to the driver of a vehicle that is stationary on the road, committing an idling offence. It is proposed that the offence of idling on the city's streets is added to the Environmental Enforcement Framework. The FPN amount will be £20. This is the highest it can be within the legislation, which is in line with the way fine levels have been set for other offences within the Environmental Enforcement Framework.
- 3.17 Upon witnessing an idling car, an Environmental Enforcement Officer will speak with the driver and notify them that they are committing an offence. The Officer will obtain their details, including the registration number of the car and normally issue the driver with a FPN. Should the vehicle drive off without details being obtained, an Operation Crackdown will be submitted via Sussex Police for keeper details and the FPN will be issued through the post. FPNs will not be issued to cars queuing in traffic but those waiting in parking bays, taxi ranks or other parts of the highway.
- 3.18 Introducing this enforcement measure will support the council's efforts to become a Carbon Neutral City by 2023. It will improve urban air quality, to aid public health initiatives such as asthma prevention and coping with Covid. Cleaner air and quieter streets create an environment more conducive to active travel and the enjoyment of communal space, homes and gardens.

- 3.19 Signage is already displayed across the city (level crossings, taxi ranks, city centre, Portslade and Rottingdean) to discourage engine idling. Additional signage, in key locations that align with the Air Quality Management Areas Order 2020, will be installed in advance of this offence becoming live. The new approach will enable the council to take enhanced action against those who are allowing their vehicles to idle.

Estate agent, letting agent and managing agent boards

- 3.20 The Town and Country Planning Regulations (2007) allows for a FPN to be issued to an estate agent, letting agent, or managing agent if a miscellaneous temporary advertisement breaches the conditions and limitations of Schedule 3, Part 1, Class 3A. One breach is that the temporary advertisement i.e. the “sold” or “let” board is not removed within 14 days after the completion of a sale or the grant of a tenancy. Enforcement in relation to this was previously a function of the Field Officers. Now the Field Officer Team has ceased, it is proposed that the offence of “sold” or “let” boards remaining in situ after 14 days is added to the Environmental Enforcement Framework.
- 3.21 Upon obtaining evidence that a board has remained in situ for longer than 14 days, an Environmental Enforcement Officer will make contact with the relevant estate agent, letting agent or managing agent to notify them that a FPN will normally be issued under the Town and Country Planning Regulations (2007). The FPN will be issued directly to the estate agent, letting agent or managing agent.
- 3.22 Introducing this enforcement measure will support the council's efforts in tidying up the city. These boards are regularly fly-tipped across the city, either on pavements or by communal bins. By introducing measures to ensure they are removed in a timely way will help keep the city's streets clean. FPNs will continue to be issued to estate agents, letting agents or managing agents when a board is fly-tipped on the pavement, highway or by a communal bin.

Unlicensed mobile street trading

- 3.23 Mobile street trading is only permitted in some areas of the city and requires approval from the council to do so. Enforcement in relation to unlicensed mobile street trading on Madeira Drive, the seafront and promenade was previously a function of the Field Officers. Now the Field Officer Team has ceased, it is proposed that the offence of unlicensed mobile street trading on Madeira Drive, the seafront and the promenade is added to the Environmental Enforcement Framework. The enforcement of unlicensed trading in parks and open spaces was not a function of the Field Officer Team and is proposed as a new offence within the Framework.
- 3.24 Upon being notified of an unlicensed mobile street trader, or if one is discovered whilst an Environmental Enforcement Officer is completing their daily patrols, the Officer will issue a CPW to the trader. This will provide an instruction for the trader to leave the area immediately and to not repeat

illegally trading in any area of the city. If the trader repeats the offence, the trader will be issued with a CPN with a further instruction to not illegally trade. If the trader is found for a third time, a FPN of £100 will be issued to the trader. Prosecution is also an option.

- 3.25 Introducing this enforcement measure will ensure trading only takes place in designated areas, having received approval from the council. Traders that set up on council land without permission have a detrimental impact on licensed mobile traders and/or the amenity of the public space.

Implementation

- 3.26 If Committee approves the introduction of these offences, a phased approach to implementation will be taken, with go-live dates determined by the Executive Director: Economy, Environment & Culture. This is because time is required to: complete relevant communication activities on the new offences in advance of go-live, make changes to the environmental enforcement system and train Officers. Communication on the new offences will include a news story and social media posts. Councillors will be briefed, and the council website will be updated to inform members of the public about the offences.

4. Analysis and consideration of alternative options

- 4.1 Not updating the Environmental Enforcement Framework will mean offences will be carried out, but no enforcement measures in place.

5. Community engagement and consultation

- 5.1 The Framework will continue to be regularly reviewed to consider stakeholder feedback and any changes will be brought back to Committee for approval.

6. Conclusion

- 6.1 The Environmental Enforcement Service delivers the objectives as detailed in paragraph 3.1. To enhance this, additional offences have been identified for inclusion on the Framework to further improve the cleanliness of the city. It is proposed a new offence relation to engine idling is added to the Framework to support efforts to improve air quality within Brighton & Hove. It is proposed a new offence relating to unlicensed mobile street trading is added to the Framework to protect the city's seafront and open spaces.

7. Financial implications

- 7.1 There are no direct financial implications from the updated Environmental Enforcement Framework. Any surplus income from Fixed Penalty Notices, as set in paragraph 3.3 of this report, are legally ring fenced to support specific environmental purposes. Additional spend is expected to be funded from additional income and any significant variation to budget will be reported as part of the council's monthly budget monitoring process.

Name of finance officer consulted: John Lack Date consulted: 24/05/2023

8. Legal implications

- 8.1 The legal position is governed by statute and regulation. There will be a review process if those issued with a FPN wish to object. Whilst there is no statutory requirement for this it is good practice. The right of appeal to the Magistrates Court will still be available. Officers will have some discretion under the policy and will take into the account the circumstances in each case. With regards to community protection warnings and the subsequent notices, there is a defined process under statute and guidance on how to use the powers. There is no requirement for an internal review process as there is the right of appeal to a Magistrates Court. On a practical level it is prudent to consider an internal review where a CPN is challenged, but not required.

Name of lawyer consulted: Simon Court Date consulted: 22/05/2023

9. Equalities implications

- 9.1 An Equalities Impact Assessment (EIA) for the new offences is in Appendix 2. It has been identified that there may be some disproportionate impacts on some protected groups in relation to the engine idling offence. Actions to address this are within the EIA.
- 9.2 All those that live in, work in, or visit the city, including those in protected groups, may be subject to environmental enforcement action if they are witnessed committing an environmental crime, or if evidence is obtained to that effect.
- 9.3 Equalities considerations are also addressed within the Environmental Enforcement Framework.

10. Sustainability implications

- 10.1 Environmental enforcement activity improves the environment by reducing littering, dog fouling, fly-tipping, graffiti, fly-posting and littering associated with flyers. Enhancing the Environmental Enforcement Framework allows the council to further protect the environment from these detrimental activities.
- 10.2 The new enforcement measure relating to engine idling will help improve air quality within the Brighton & Hove.
- 10.3 The new enforcement measure relating to unlicensed mobile street trading will help protect the city's seafront and open spaces.

11. Other Implications

Crime & disorder implications

- 11.1 Environmental enforcement addresses illegal and anti-social behaviour and has a beneficial impact on crime and disorder.

Supporting Documentation

Appendices

1. Updated Environmental Enforcement Framework (tracked changes)
2. Equality Impact Assessment – new environmental enforcement measures

Background documents

1. [Environmental Enforcement Report](#) presented to Environment, Transport & Sustainability Committee on 27 November 2018 (item 46)
2. [Environmental Enforcement Framework Update](#) presented to Environment, Transport & Sustainability Committee on 25 June 2019 (item 11)
3. [Environmental Enforcement Framework](#) presented to Environment, Transport & Sustainability Committee on 29 September 2020 (item 31)
4. [Commercial Bins on the Highway: Outcome of Public Consultation](#) presented to Environment, Transport & Sustainability Committee on 22 June 2021 (item 10)
5. [Environmental Enforcement Framework Update](#) presented to Environment, Transport & Sustainability Committee on 22 June 2021 (item 11)
6. [Public Space Protection Orders - barbecues, lanterns and balloons: Outcome of Public Consultation](#) presented to Environment, Transport & Sustainability Committee on 15 March 2022 (item 95)
7. [Outcomes of environmental enforcement consultations](#) presented to Environment, Transport & Sustainability Committee on 15 November 2022 (item 45)
8. Air Quality Management Areas Order 2020: <https://www.brighton-hove.gov.uk/sites/default/files/2020-12/AQMA%20Order%20November%202020%20%28colour%29%5B2267%5D.pdf>
9. Street trading options in Brighton & Hove: <https://www.brighton-hove.gov.uk/business-and-trade/licensing-and-gambling/street-trading-options-brighton-hove>