

Brighton & Hove City Council

City Environment, South Downs & The Sea Committee

Agenda Item 30

Subject: Environmental Enforcement Framework Update

Date of meeting: 14 November 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 (ET&S) 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.
- 1.3 This report is seeking further approval to update the Environmental Enforcement Framework and related activities.

2. Recommendations

- 2.1 That Committee notes the results of the public consultation on extending time-banding zones across the city in Appendix 1.
- 2.2 That Committee approves the expansion of time-banding zones to the roads detailed in Appendix 2 (a map is available in Appendix 3).
- 2.3 That Committee notes the objections received to the extension of the flyering licence area as detailed in Appendix 4.
- 2.4 That Committee agrees to extend the flyering licence area to the roads detailed in Appendix 5.
- 2.5 That Committee agrees to increase the Fixed Penalty Notice amount for some environmental offences as detailed in paragraph 3.21.

- 2.6 That Committee approves the updated Environmental Enforcement Framework (tracked changes version) as detailed in Appendix 6.
- 2.7 That Committee notes the implementation of other offences following previous committee approvals as described in paragraphs 3.24 and 3.25.

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 6
 - 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 proposes expanding time-banding zones for managing commercial bins on the highway, increasing the flyering licence area and increasing the FPN amount for some environmental offences.
- 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 ringfenced to spend on environmental improvement projects in line with legal requirements.

Expanding time-banding zones

- 3.4 At its meeting on 22 June 2021, the ET&S Committee agreed to introduce time-banding zones (T-Zones) for managing commercial bins on the highway. These measures were adjusted at ET&S Committee on 15 March 2022 following requests from businesses and waste management providers.
- 3.5 Businesses in T-Zones can only place their waste bins and bags out for collection on their agreed collection day, between 6pm and 9am. At all other times, waste bins and bags must be stored off the public highway. Business that do not adhere to this, may be issued with a FPN.
- 3.6 On 14 March 2023, ET&S Committee agreed for a public consultation to take place on extending T-Zones. The consultation launched on 29 August 2023 and closed on 15 October 2023. The consultation lasted six weeks to encourage as many responses as possible. Having reflected on the lessons learned from the previous consultation, rather than being sent correspondence by post, a letter was handed to each business in the affected roads to ensure they were aware of the consultation and had an opportunity to provide their feedback. Emails, with a link to the consultation,

were sent to waste management companies on 31 August 2023. Social media posts promoting the consultation and inviting feedback were shared through the period. Officers also met with representatives from the Chamber of Commerce and the Business Improvement District.

- 3.7 The proposed roads for inclusion are in Appendix 2 and a map showing the area is in Appendix 3. Blue roads show the current T-zones and red indicates the proposed expansion.
- 3.8 96 responses were received. The results have been analysed and are provided in more detail in Appendix 1. The high-level results show that 68.8% of respondents strongly agreed or tended to agree that T-Zones should be extended to include the roads proposed.
- 3.9 Of businesses that responded:
 - 22.2% agreed that T-Zones should be extended to include the roads proposed.
 - 77.8% disagreed.
- 3.10 Of residents that responded:
 - 92.1% agreed that T-Zones should be extended to include the roads proposed.
 - 6.3% disagreed.
- 3.11 Some respondents suggested that some of the roads should not be included, and some suggested some additional roads for inclusion. These are also detailed in Appendix 1, along with feedback from City Environment.
- 3.12 Based on the results of the consultation, it is recommended that Committee approves the expansion of time-banding zones to the roads detailed in Appendix 2, having noted the results from the public consultation.
- 3.13 If Committee approves the extension of T-zones, the implementation date will be 15 January 2024. This is to provide sufficient time to businesses in the affected areas to organise their waste collections.

Increasing the flyering licence area

- 3.14 Flyering is giving out free flyers to the public, which includes printed materials to advertise things like events, businesses or political messages. It also includes the giving out of free food and drink in branded packaging. Flyering can lead to litter and therefore, in some parts of the city, a licence is required to do so.
- 3.15 At ET&S Committee on 16 March 2021, Members agreed to delegate authority to the Executive Director: Economy, Environment & Culture to make an Order, including all necessary steps therewith, to enable the flyering licence area to be expanded to the roads listed in Appendix 5. In the event of any objections to the proposed Order being received, it was agreed a further report would be brought to Committee to enable the objections to be considered and for a decision as to whether the Order should be made.

- 3.16 The Notice of the Order was advertised from 22 May 2023, stating any objections needed to be received by 5 June 2023. The Notice was placed on lampposts on the “designated” land i.e. the roads proposed for inclusion. The Notice was also published in The Argus on 22 May 2023 and information was provided on the council website, notifying people of the Notice. The objections received, along with a response from City Environment, are detailed in Appendix 4.
- 3.17 It is clear from the feedback that there were a number of queries raised seeking clarification regarding the proposals. The Notice had to follow a legal template and the majority of the feedback received, as detailed in Appendix 4, was seeking clarification on what was being advertised, rather than an objection. When further information was provided to the objector, some responded to say they did not object, whilst others did not respond to the additional information provided.
- 3.18 The proposal to extend the flyering licensing area was a recommendation within a project within the City Environment Improvement Programme. The recommendation stated that flyering licences should be required for other areas of the city and not only Brighton city centre. Flyering can cause lots of litter and via the issuing of licences, the council can try and ensure that some of the cost of cleaning this litter is covered.
- 3.19 Taking into consideration the objections received, it is recommended that the flyering licence area is extended to include the roads detailed in Appendix 5. If approved by Committee, a further Notice will be published announcing the decision. The Notice will be published in a local newspaper, posted directly on the land and on the council website. The Notice will contain the date the Order will come into force.
- 3.20 As stated on the Order, subject to approval by Committee, it will come into effect from 1 December 2023. The information on the council website will be updated to inform those wishing to flyer about what the arrangements are.

Increasing the FPN amount

- 3.21 As part of the Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023, local authorities can now increase the FPN amounts for some offences:

Offence	Current FPN amount	New upper limit	Proposed new FPN amount	Proposed early payment discount
Littering	£150	£500	£300	£150
Graffiti	£150	£500	£500	N/A
Flyposting	£150	£500	£500	£250

Household waste duty of care offences (residential fly-tipping)	£400	£600	<ul style="list-style-type: none"> • Up to three 80 litre sacks, or loose equivalent, £400 • Four-to-six 80 litre sacks, or loose equivalent, £500 • Seven-plus 80 litre sacks, or loose equivalent, £600 	N/A
Flytipping (commercial fly-tipping)	£400	£1000	<ul style="list-style-type: none"> • Up to three 80 litre sacks, or loose equivalent £600 • Four-to-six 80 litre sacks, or loose equivalent, £800 • Seven-plus 80 litre sacks, or loose equivalent, £1000 	N/A

3.22 It is proposed that the FPN amounts for the offences listed above are increased to the proposed new FPN amount.

3.23 If Committee approves the FPN amounts, the implementation date will be 1 December 2023.

Implementation of other offences

3.24 At its meeting on 15 November 2022, ET&S Committee agreed for household waste bin and box offences to be added to the Environmental Enforcement Framework. Work is taking place to begin enforcing these offences in the New Year. The council website will be updated in advance of the enforcement activity commencing and communication will take place to notify Members and residents.

3.25 At its meeting on 20 June 2023, City Environment, South Downs & The Sea Committee agreed for engine idling to be added as an offence in the Environmental Enforcement Framework. Signs are being prepared, which will be installed across the city, to notify motorists that engine idling is now an offence, with a £40 FPN to be issued to a driver witnessed idling, with an early payment discount of £20. These signs are to be put in place in December and following this, the offence will start to be enforced. The council's website is being updated and a news story will be issued in advance of the go-live date.

4. Analysis and consideration of alternative options

4.1 Committee can decide not to expand T-zones. This will mean businesses in the Phase 2 area can continue to leave their waste bins and bags on the public highway at all times. This will be of benefit to businesses as they will not have to make any changes to their waste management arrangements.

However, this will not achieve the objectives of improving access to and use of the highway, improving safety, reducing litter, or improving the appearance of key areas in the city.

- 4.2 Committee can decide not to increase the flyering licence area. This will mean businesses can continue to flyer in some parts of the city without requiring a licence. This will be of benefit to businesses as there will be no financial implication for them. However, flyering does lead to litter which the council is required to clear up. Without extending the flyering licence area, there will be no financial contribution towards this.
- 4.3 Committee can decide not to increase the FPN amount for some offences. This will mean the perpetrators of some environmental crimes will have to pay the current FPN amounts and not the increased amounts. However, increasing the FPN amounts for some offences may act as a further deterrent and contribute to efforts to keep Brighton & Hove tidy.

5. Community engagement and consultation

- 5.1 The results of the public consultation on expanding T-Zones are included in the main body of the report and appendices.
- 5.2 The feedback received in relation to extending the flyering licence area is included in the main body of the report and appendices.
- 5.3 No community engagement or consultation has taken place in relation to increasing the FPN amount.

6. Conclusion

- 6.1 The Environmental Enforcement Service delivers the objectives as detailed in paragraph 3.1. Opportunities have been identified to enhance the Framework by extending the T-Zone area and extending the flyering licence area. Recent legislative changes have meant its now possible to increase the FPN for some offences to act as a further deterrent and contribute to efforts to keep Brighton & Hove tidy.

7. Financial implications

- 7.1 There are no direct financial implications arising from the recommendations of this report. Any surplus income from Fixed Penalty Notices, as set out in paragraph 3.3 of this report, are legally ringfenced to support specific environmental purposes. Any 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: 20/10/2023

8. Legal implications

- 8.1 The Fixed Penalty Notice (FPN) provides an alternative to other enforcement options and prosecution. It allows an individual to discharge their liability for the relevant offence by payment of a financial penalty. There is no obligation for the Council to offer an offender the option to discharge liability through an FPN. However, for some cases and offences, it can be more proportionate than proceeding with a prosecution through the courts. An FPN is offered as an alternative under various legislation and the proposed penalty levels can vary.
- 8.2 The Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023 enables authorities to increase the level of fine they issue if they so choose and uplifts the amounts payable for some offences.
- 8.3 There is also the ability to give discounted amounts for early payment and, based on clear and transparent criteria, to vary fines dependent on the seriousness of the offence.
- 8.4 It may be of assistance to note that criminal court penalties are significantly higher. For instance, court fines: littering maximum fine £2,500, fly-tipping maximum fine £50,000 with the possibility of imprisonment.

Name of lawyer consulted: Simon Court Date consulted: 20/10/2023

9. Equalities implications

- 9.1 Special category data is not collected when issuing FPNs, therefore data on “service users” is unknown.
- 9.2 An Equality Impact Assessment on the introduction of T-Zones was completed when the outcomes of the first consultation were presented to ET&S Committee on 22 June 2021. This is available in the Background Documents below.
- 9.3 Increasing the flyering licence area is not anticipated to have any disproportionate impacts on any protected characteristics.
- 9.4 Increasing the FPN amount for some offences may have some disproportionate impacts on some protected characteristics. For example, those on lower incomes may not be able to pay the FPN amount in full in one go. Payment plans are available in these situations. In 2022/23, nine payment plans were in place for nine littering offences and seven for flytipping offences. Payment plans will continue to be available to those that need one.

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 Improving how commercial bins on the highway are managed allows the council to protect the environment from detrimental activities associated with them, such as littering, fly-tipping and graffiti.

11. Other Implications

Crime & disorder implications

- 11.1 Environmental enforcement activities combats illegal and anti-social behaviour.
- 11.2 Improving how commercial bins on the highway are managed allows the council to tackle other environmental crimes such as littering, fly-tipping and graffiti. can lead to anti-social behaviour and environmental crimes.
- 11.3 Increasing the FPN amount will act as a deterrent, hopefully reducing the incidence of littering, graffiti, flyposting, flytipping and household waste duty of care offences.

Supporting Documentation

Appendices

- Appendix 1: managing commercial bins on the highway (phase 2): analysis of responses to the public consultation
- Appendix 2: proposed roads, and their wards, for inclusion in time-banding zones
- Appendix 3: map of proposed extension of time-banding zones
- Appendix 4: objections to flyering Notice
- Appendix 5: extension of flyering licence area
- Appendix 6: Environmental enforcement Framework (tracked changes)

Background documents

- [Environmental Enforcement Report](#) presented to Environment, Transport & Sustainability Committee on 27 November 2018 (item 46)
- [Environmental Enforcement Framework Update](#) presented to Environment, Transport & Sustainability Committee on 25 June 2019 (item 11)
- [Environmental Enforcement Framework](#) presented to Environment, Transport & Sustainability Committee on 29 September 2020 (item 31)
- [City Environment Modernisation Update Report](#) presented to Environment, Transport & Sustainability Committee on 16 March 2021 (item 80)
- [Commercial Bins on the Highway: Outcome of Public Consultation](#) presented to Environment, Transport & Sustainability Committee on 22 June 2021 (item 10)
- [Environmental Enforcement Framework Update](#) presented to Environment, Transport & Sustainability Committee on 22 June 2021 (item 11)
- [Commercial bins on the highway](#) presented to Environment, Transport & Sustainability Committee on 15 March 2022 (item 92)

- [Public Space Protection Orders - barbecues, lanterns and balloons: Outcome of Public Consultation](#) presented to Environment, Transport & Sustainability Committee on 15 March 2022 (item 95)
- [City Environment Modernisation Update](#) to Environment, Transport & Sustainability Committee on 21 June 2022 (item 8)
- [Outcomes of environmental enforcement consultations](#) presented to Environment, Transport & Sustainability Committee on 15 November 2022 (item 45)
- [City Environment Improvement Programme Update](#) presented to Environment, Transport & Sustainability Committee on 14 March 2023 (item 88)
- [Environmental Enforcement Framework Update Report](#) to City Environment, South Downs & The Sea Committee on 20 January 2023 (item 8)
- Explanatory Memorandum to The Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023 No. 770 [The Environmental Offences \(Fixed Penalties\) \(Amendment\) \(England\) Regulations 2023 \(legislation.gov.uk\)](#)

