

4 September 2019		ITEM: 11
Cabinet		
Proposal to Adopt S34 Duty of Care for Domestic Waste; and S42 Idling Engines in Parked Vehicles		
Wards and communities affected: All	Key Decision: Non Key	
Report of: Councillor Rob Gledhill, Cabinet Member for Public Protection and Anti-Social Behaviour		
Accountable Assistant Director: Daren Spring, Assistant Director for Street Scene and Leisure		
Accountable Director: Julie Rogers, Director of Environment and Highways		
This report is Public		

Executive Summary

The Department for Environment, Food and Rural Affairs (DEFRA) has published guidance which has been addressed to local authorities, who are now able to issue fixed penalty notices (FPN's) for breaching the duty of care for household waste in England under the provisions of the Environmental Protection Act 1990.

Secondly, the Road Traffic (Vehicle Emissions) England Regulations 2002 enables local authorities to request vehicle users to switch off their engines when parked and to issue Fixed Penalty Notices to those who refuse to co-operate. The aim is to reduce polluting emissions from unnecessary engine idling.

This report seeks approval from Cabinet to adopt the power to issue FPN's for domestic waste duty of care breaches and to adopt the power to issue FPN's to persons who refuse to switch off their vehicle engines whilst parked and after being requested to do so.

- 1. Recommendation(s)**
 - 1.1 Cabinet to approve the adoption and enforcement of S34 – Duty of Care for domestic waste.**
 - 1.2 Cabinet to approve the adoption and enforcement of S42 – Idling engines in parked vehicles.**
- 2. Introduction and Background**

- 2.1 The Environmental Enforcement Service seek approval to adopt two new powers to enable them to issue Fixed Penalty Notices (FPNs) for breaches of:
- Domestic Waste Duty of Care
 - Failing to switch off engines in a stationary vehicle (Idling)
- 2.2 It is important for publicity to be carried out and for the Council to work with schools before the scheme is implemented to ensure that it is understood by the majority of motorists. This will be publicised on the Council website, through press releases and via social media.

3. Issues, Options and Analysis of Options

3.1 Duty of Care for Domestic Waste

3.1.1 Householders must ensure that household waste is properly disposed of at all times, which includes waste from domestic properties, caravans and residential homes.

3.1.2 Householders must fulfil the duty of care and ensure that:

- The person who takes control of their waste is licensed to do so.
- Take steps to prevent it from escaping from their control.
- Store it safely and securely.
- Prevent it from causing environmental pollution or harming anyone.

3.1.3 Guidance from Government states that FPN's can be issued when an individual appears to have failed to comply with their duty of care under section 34(2A) of the Environmental Protection Act 1990 in England. For example:

- Where fly-tipped waste can be traced back to an individual who is found to have failed to take reasonable steps to ensure that they transferred the waste to an authorised person
- Where an unauthorised carrier is found to be carrying household waste that was directly transferred to them by the occupier of a domestic property
- Where an individual is found to have transferred their household waste to an unauthorised person at a site that does not have a permit or exemption

3.1.4 The FPN for such breaches of the household waste duty of care provides an alternative to prosecution. It allows an individual to discharge liability for the duty of care offence by payment of a financial penalty. The duty of care requires occupiers of domestic property to take all reasonable measures available to them in the circumstances to ensure that they only transfer household waste produced on that property to an authorised person. This

reduces the chance of waste ending up in the hands of those who would fly-tip it.

- 3.1.5 The resident should take steps to check the waste carrier is registered with the Environment Agency web site, record details of vehicles that removes waste, record details of the waste carrier/contact details/receipts.
- 3.1.6 The penalties applicable are minimum £150 and maximum £400. It should be noted that Thurrock Council always seek the maximum penalty due to the wide spread effect that fly tipping has on our local communities, members of the public and environment.
- 3.1.7 There is no right of appeal against an FPN issued as it simply offers an optional means of discharging liability for the offence. However, liability for that alleged offence can be disputed or the appropriateness of enforcement challenged.
- 3.1.8 Although legislation already existed to enforce offenders who breach their duty of care in respect of waste generated from domestic property's, the powers were enforced by reporting offenders for prosecution through a criminal court in accordance with section 34 and/or section 33 of the Environmental Protection Act 1990 regarding the fly tipping of household waste.

The new powers allow fixed penalty notices to be issued for breaches of duty care in respect of household waste. This provides offenders with the opportunity to discharge their liability to conviction by making payment of an FPN, as opposed to offenders being summonsed to attend court with the possibility of receiving a criminal record and upon conviction the fines could be far higher than the fixed penalty notice. Also, the Council will always seek to recover all costs incurred from the offenders, in bringing the matter to court. Issuing these type of FPN's will also prevent the courts from being overburdened with these type of cases, which can be dealt with by issuing a fixed penalty notice in the first place where appropriate.

3.2 Idling Engines in a parked vehicle

- 3.2.1 It is a requirement of Regulation 98 of the Road Vehicles (Construction and Use) Regulations 1986, as amended, that drivers switch off engines in parked vehicles. Local Authorities can use the power to carry out enforcement of the offence in an effort to address the growing concerns about pollution and the environment by reducing unnecessary exhaust emissions from vehicles. The guidance encourages that a common sense approach should be followed when using these powers. FPNs should only be issued when a driver is uncooperative and refuses to switch off their engine when requested to do so by an authorised officer.

- 3.2.2 Local authorities will be able to instruct motorists to switch off their engines while their vehicles are parked and to issue FPN's to those who refuse to co-operate. The powers are designed to encourage all motorists to have due regard to the local environment when parking. Emissions from stationary vehicles are only a small contributor to overall levels of air pollution, but they can cause discomfort to people in the immediate vicinity, particularly where they occur in sensitive areas such as schools or hospitals.
- 3.2.3 Guidance issued by the Secretary of State for Transport in 2002 ("Guidance on powers to require drivers to switch off engines") under section 88 of the Environment Act 1995 states that FPNs would mainly be used as a deterrent and should be issued only as a last resort. FPNs would be issued in limited circumstances, and only if a driver refused to turn their vehicle engine off when asked to do so by an authorised officer of the Council.
- 3.2.4 Regulation 98(2) of the Road Vehicles (Construction and Use) Regulations 1986 sets out the circumstances where vehicles are permitted to be stationary with the engine running:
- When vehicles are queuing at traffic lights,
 - Where an engine is being run so that a defect can be traced and rectified,
 - Where machinery on a vehicle requires the engine to be running e.g. where the engine powers refrigeration equipment or the compaction equipment in a refuse vehicle.
- 3.2.5 The regulation stipulates the penalty for an offence is £20, which will increase to £40 if not paid within 28 days. There is no discretion to amend the charge.
- 3.2.6 A further FPN could be issued if a vehicle is found stationary during the initial 28 day period with its engine running unnecessarily on a second or subsequent occasion. The offence is absolute and applies equally on every occasion the offence occurs.
- 3.2.7 Recipients of an FPN do have the right to challenge this type of fixed penalty notice, which must be done through a magistrate's court within 28 days of the fixed penalty notice being issued. The Council will accept representations from recipients of an FPN, which will be reviewed and responded to accordingly.

4. Reasons for Recommendation

- 4.1 This report seeks support and approval from Cabinet to adopt the section 42 idling engines in parked vehicles; and S34 Duty of Care for Domestic Waste, in providing authorisation to the enforcement service to issue fixed penalty notices in respect of breaches of these regulations.

5. Consultation (including Overview and Scrutiny, if applicable)

5.1 This report was presented to Cleaner, Greener and Safer Overview and Scrutiny Committee on the 4 July 2019, where the committee recommended the adoption of these powers to Cabinet.

6. Impact on corporate policies, priorities, performance and community impact

6.1 The Air Quality and Health Strategy, adopted in December 2016, shows that transportation, in particular emissions from motor vehicles, accounts for approximately 45% of the emissions and particulates which contribute to poor air quality and impacts on the health of residents.

This measure is listed as Action 16, Engine Switch-Off Zone and is anticipated to be most effective if targeting the 18 air quality management areas declared within Thurrock, where residential dwellings are in close proximity to idling traffic and where people are likely to experience long-term exposure, such as a workplace, or those who are vulnerable to impacts on their health by emissions and particulates – in particular children and the elderly and those with long-term health problems.

Idling nearby schools or care homes would have the most harm on the health of the buildings occupants, as well as residential dwellings which maybe nearby those facilities or are in close proximity to heavily congested areas such as level-crossings.

With careful consideration of where these powers are used, they have the potential to make a significant improvement on the health and wellbeing of our communities.

6.2 Ensuring that household waste is properly disposed of at all times, has the potential to contribute toward reducing the number of fly tips in the borough, through a reduction in the use of unauthorised carriers. This contributes to a cleaner environment that everyone has reason to take pride.

7. Implications

7.1 Financial

Implications verified by: **Laura Last**
Management Accountant (Environment)

There are no direct budget implications at this stage as the measures proposed including setting fixed penalty notices at the maximum allowable amount would mean the service delivering on a cost neutral basis.

7.2 Legal

Implications verified by: **Adam Rulewski**

Barrister- Litigation and Prosecutions Law and Governance

The Local Authority has a duty to prevent crime and disorder (s17 Criminal Justice Act 1988). The Local Authority has wide-ranging powers and duties under The Environmental Protection Act 1990, Anti-Social Behaviour Crime and Policing Act 2014, Town and Country Planning Act 1990, Building Act 1984, Highways Act 1980, Traffic Management Act 2004 and related subordinate and primary legislation, to address those areas of responsibility.

Where it is necessary or expedient to protect or promote the interests of the inhabitants of its area, the Local Authority may institute proceedings (s222 Local Government Act 1972

7.3 Diversity and Equality

Implications verified by: **Roxanne Scanlon**
Community Engagement and Project Officer

A zero tolerance approach taken will ensure that all offenders who commit offences will be penalised consistently regardless of any protected characteristics as defined by the Equalities Act 2010.

Concessions are made for young people under 16 and those who are classified as vulnerable including those who suffer from relevant mental health conditions.

A Community Equality Impact Assessment will inform any further actions required to ensure fair enforcement.

7.4 Other implications (where significant) – i.e. Staff, Health, Sustainability, Crime and Disorder, or Impact on Looked After Children)

The proposals in this report directly contribute to the achievement of Thurrock's Statutory Health and Wellbeing Strategy Goal 2, which focusses on providing Thurrock residents with a Healthier, Safer and Accessible Environment within which to exercise and remain active.

Objective 2D of the Health and Wellbeing Strategy provides a commitment to improving the air quality in Thurrock. Cabinet providing approval to adopt and enforce S42 regulations – Idling engines in parked vehicles will contribute toward improving air quality and reinforce the work undertaken last year by Woodside Academy and Purfleet primary school on raising awareness of the impact of idling vehicles on the health of children outside of schools.

Cabinet approval to adopt and enforce S34 regulations – Duty of Care for domestic waste will demonstrate the Council's commitment to reducing wider pollution within Thurrock and will be reflected in the Health and Wellbeing Strategy for the Health and Wellbeing Board's consideration.

8. Background papers used in preparing the report (including their location on the Council's website or identification whether any are exempt or protected by copyright):

- N/A

9. Appendices to the report

- N/A

Report Author:

Phil Carver

Strategic Lead for Environmental Enforcement and Community Protection

Environment and Highways