

ADOPTION AND IMPLEMENTATION OF ANTI-IDLING ENFORCEMENT POWERS

Head of Service: Rod Brown, Head of Housing & Community
Wards affected: (All Wards);
Urgent Decision?(yes/no) No
If yes, reason urgent decision required:
Appendices (attached): None

Summary

This report adopts the Environment and Safe Communities Committee's recommendation of 26 January 2021 to seek approval for the implementation of anti-idling legislation aimed at reducing vehicle emissions and improving clean air.

Recommendation (s)

The Committee is asked to:

- (1) approve the implementation and enforcement of provisions relating to anti idling set out in the Road Traffic (Vehicle Emissions) (Fixed Penalty) (England) Regulations 2002 ("2002 Regulations");**
- (2) delegate authority to the Head of Housing and Community to:**
 - i. develop, produce and keep updated policies and procedures for the introduction, service and management of enforcement powers under the 2002 Regulations;**
 - ii. authorise and train relevant officers, or any other person, to stop the commission of stationary idling offences and issue fixed penalty notices ("FPNs") under Pt 6 and Pt 7 of the 2002 Regulations.**
 - iii. where appropriate seek relevant permission from Surrey County Council for the erection of signage for enforcement for the 2002 Regulations**
 - iv. launch a public education campaign on the 2002 Regulations in January 2022**
 - v. report progress to Environment and Safer Communities Committee in March 2022**

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1 Reason for Recommendation

- 1.1 The cutting of emissions by reducing and stopping the idling of engines is an important component in the Council's action plans and strategies to improve clean air and tackle climate change.

2 Background

- 2.1 As part of the Ewell Air Quality Management Area the Council agreed a localised action plan to tackle air pollution in an area of Ewell Village. This included education and awareness training, particularly with local schools as well as changes in road layout which has helped even traffic flow. At the time there were also recommendations to adopt powers to take enforcement action to prevent vehicles idling. Following the creation of additional enforcement officer roles, we are now able to enforce against idling vehicles.
- 2.2 At a full Council meeting on 21 July 2020 the Council resolved to refer a motion of "Enforcement against cars idling" to this Committee which was noted on 26 January 2021. As well as the duty to improve areas of poor air quality, tackling carbon emissions is also part of a wider commitment to tackle climate change. To that end the Council agreed its Climate Change Action Plan ("CCAP") in January 2020.
- 2.3 The CCAP included the objective to implement the #DontBeldle campaign which enables the Council to begin to 'Fine drivers who leave [their] engine running whilst parked'. At a committee meeting on 26 January 2021 it was agreed the Council would continue with the current arrangements of the CCAP relating to car idling (page 6. [here](#)).
- 2.4 There are various pieces of legislation that create anti-idling rules and prohibitions including under road traffic statutes and regulations. At this stage, the most straightforward approach is to adopt enforcement powers under Pt 6 and Pt 7 of the 2002 Regulations. The current recommendation is to implement anti-idling areas and to authorise officers to enforce anti-idling. This approach is considered straightforward as the Department for Transport's authorisation is not required and the proposals do not require the Council to undertake air quality assessments when enforcing anti-idling.

3 The Road Traffic (Vehicle Emissions) (Fixed Penalty) (England) Regulations 2002 ("2002 Regulations")

What are the enforcement powers?

- 3.1 Under the 2002 Regulations power can be given to Council officers etc. to require drivers to turn-off their engine while they are parked and running their engine unnecessarily. If they fail to comply with this requirement the officer etc. has the power to issue a fixed penalty notice ("FPN"). An FPN is a financial penalty.

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Guidance on use of enforcement powers

- 3.2 Guidance issued by the Secretary of State for Transport 2002 – “Guidance on powers to require drivers to switch off engines” advises that FPNs should be used as a deterrent and only issued as a last resort. With this in mind, it is anticipated that FPNs will be issued in limited circumstances where a driver refuses to switch off an engine when asked to do so by an authorised officer etc.. The guidance also recommends that a ‘common sense’ approach is taken by officers when using the powers under the Regulations.

Vehicles and exempted circumstances?

- 3.3 Reference to cars is not exclusively to be understood as cars. FPNs can be issued in respect of any motorised vehicle including cars, taxis, buses and all commercial vehicles. Modern cars, particularly electric vehicles, are fitted with idling switches that automatically cut the engine switch when stationary. The Council can be confident this will not cause enforcement problems/difficulties if officers etc. take a ‘common sense’ approach.
- 3.4 As well as taking a ‘common sense’ approach, those enforcing anti-idling measures will need to be familiar with exempted circumstances where vehicles are permitted to keep their engines idling while parked (see Regulation 98(2) of the Road Vehicles (Construction and Use) Regulations 1986). The exempted circumstances include, for example: queuing at a red traffic light; while an idling vehicle is being worked on by break-down assistance and recovery; the idling vehicle is a refrigerated delivery van; the idling vehicle is a refuse lorry.

How much is the penalty and what happens to the proceeds?

- 3.5 The enforcement process under the 2002 Regulations allows for a £20 FPN to be served in relation to stationary idling offences. This increases to £40 if not paid within 28 days. There is no discretion to amend this charge.
- 3.6 The Council can retain the income generated from the FPNs, albeit that the amount of income is expected to be minimal and the purpose behind the enforcement powers is deterrence and to improve air quality and vehicle emissions. There are no stipulations on how income from FPNs will be used.

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What is the appeal process?

- 3.7 It is a requirement that the FPN contains the person and address to whom any correspondence relating to the FPN may be sent. The guidance recommends that an FPN can be queried through correspondence with the Council. The terms of the FPN remain in place even if a query is raised, although it is envisaged that the Council would not expect payment until it had been decided and notified that the representation had been unsuccessful. Alternatively, a person to whom an FPN has been issued may give notice requesting a hearing in respect of the offence to which the FPN relates. A request in writing for a hearing can be made no later than 28 days after the FPN was issued. A hearing is effectively a prosecution in the magistrates' court. In this situation, the FPN is suspended once a hearing has been requested.

Can the Council take action to enforce an unpaid penalty?

- 3.8 Where an FPN remains unpaid after the maximum period allowed (56 days after service), and there is no appeal made within the specified time the penalty can be recoverable through the County Court system. As with any contravention of Regulation 98 of the Road Vehicles (Construction and Use) Regulations 1986, a request to use the County Court system as a means of recovering unpaid FPNs would be dealt with electronically by the Traffic Enforcement Centre (Northampton County Court).

Does the Council need to involve other organisations?

- 3.9 Designation from the Department for Transport is not required for the enforcement of stationary idling offences nor the exercise of enforcement powers by officers etc.
- 3.10 The enforcement powers under Pt 6 and Pt 7 of the 2002 Regulations only apply to vehicles idling on highways. Before officers can exercise enforcement powers under the 2002 Regulations the Council must put up signs to notify drivers that anti-idling enforcement can take place in the Borough. Signage wording and locations will need to be agreed with Surrey County Council as the Highway Authority prior to installation.

What are the Next Steps?

- 3.11 If the recommendations are approved by the Committee, the next stage will be to develop and introduce procedures for the introduction, service and management of the enforcement powers under the 2002 Regulations. Once these are in place, along with the relevant signage, enforcement can begin. It is recommended that in the meantime the Council carries out a public education campaign to raise awareness of the issues and future enforcement.

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Proposals

- 3.12 The current proposal recommended in this report is for the Committee to approve the implementation and enforcement of provisions relating to anti idling set out in Pt 6 and Pt7 the 2002 Regulations, and delegate powers to develop, produce and keep updated appropriate policies and procedures and authorise relevant officers, or any other person, to use the enforcement powers under the 2002 Regulations.
- 3.13 These proposals follow the implementation process required under the 2002 Regulations and ensure the Committee retains oversight of the process, while allowing the relevant heads of service to manage and oversee the day-to-day use of the enforcement powers by officers. For completeness, this would not only include producing written policies and procedures that would be publicly available but ensuring officers etc. are properly trained to exercise enforcement powers.

Alternative Options

- 3.14 The Committee could choose not to follow the above proposals. In this situation, education on anti-idling would still continue in limited areas within Ewell Village; however this will be primarily limited to areas around participating schools only.

4 Risk Assessment

Legal or other duties

4.1 Impact Assessment

4.1.1 None

4.2 Crime & Disorder

4.2.1 None

4.3 Safeguarding

4.3.1 None

4.4 Dependencies

4.4.1 None

4.5 Other

4.5.1 None

5 Financial Implications

- 5.1 The Council is expected to receive limited income through the payment of FPNs.

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- 5.2 The costs associated with signage are minimal. Any necessary costs associated with the signage will be met from existing revenue budgets within the Parking service. The Council already employs Civil Enforcement Officers and the issuance of FPNs in relation to this offence would be undertaken during their existing operation, therefore at no additional cost to the Council.
- 5.3 **Section 151 Officer's comments:** The financial implications are set out in the body of the report. The Council does not budget to receive income for Fixed Penalty Notices but any received will contribute to funding the enforcement provision.

6 Legal Implications

- 6.1 The body of the report sets out the legal implications concerning enforcement activity. As explained, the Council can authorise any officer of its authority, or any other person, to stop the commission of stationary idling offences (in accordance with Regulation 12 2002 Regulations) and to issue a FPN in respect of such an offence committed in its area. The enforcement powers under Pt 6 and Pt 7 of the 2002 Regulations are decentralised and do not require approval from the relevant Secretary of State. Consultation is not required to adopt anti-idling enforcement powers under the 2002 Regulations; however, given this Committee's oversight of the clean air and climate change strategies and plans, the decision to implement the 2002 Regulations and delegate certain ancillary matters to relevant officers is a decision that rightly falls with this committee.
- 6.2 The exercise of enforcement powers includes the power to require a driver to provide his personal details so that he can be identified for the purposes of issuing a FPN. Failure to provide these details amounts to a criminal offence subject to a fine set by the magistrates' court. The Council will need to produce a publicly available document describing the procedure for investigating drivers who refuse to provide their details, its prosecution policy and the use and retention of personal details for the purpose of enforcement.
- 6.3 **Legal Officer's comments:** none arising from the content of this report.

7 Policies, Plans & Partnerships

- 7.1 **Council's Key Priorities:** The following Key Priorities are engaged: Effective Council, Safe and Well, Green and Vibrant.
- 7.2 **Service Plans:** The matter is included within the current Service Delivery Plan.
- 7.3 **Climate & Environmental Impact of recommendations:** The CCAP and this report outline the risks associated with poor air quality and climate change locally.

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- 7.4 **Sustainability Policy & Community Safety Implications:** None arising from the content of this report.
- 7.5 **Partnerships:** The implementation of anti-idling legislation, along with promotion and educational messages from the Council, may lead to partnership opportunities with local schools to present positive climate change messages and warnings of the dangers caused by idling vehicles and partnership with Surrey County Council in placement of signage.

8 Background papers

- 8.1 The documents referred to in compiling this report are as follows:

Previous reports:

- Motion: Enforcement Against Cars Idling Environment and Safe Communities Committee 26 January 2021 ([here](#))

Other papers:

- The Road Traffic (Vehicle Emissions) (Fixed Penalty) (England) Regulations 2002 - <http://www.legislation.gov.uk/ukxi/2002/1808/contents/made> - Specifically Reg. 6(3), Pt 6 and Pt 7
- The Council's Climate Change Action Plan ("CCAP") agreed to by the Council in July 2019 ([here](#) p.21)