

Non-Executive Report of the: General Purposes Committee 10 January 2022	 TOWER HAMLETS
Report of: Director Health, Adults and Community Corporate Director, Health, Adults and Community	Classification:
Use of Fixed Penalty Notices for Breaches of Byelaws and Setting of Penalties. Sections 15 – 18 London Local Authorities Act (LLA) 2004 – Facilitated Through London Councils’ Transport and Environment Committee (TEC)	

Originating Officer(s)	Ann Corbett, Barry Scales
Wards affected	All Wards

Executive Summary

Antisocial Behaviour (ASB) in the London Borough of Tower Hamlets has been and remains an extremely high priority and concern for our residents. It also remains a cross cutting Council and Mayoral priority and is linked to Outcome 7 in the Council’s Strategic Plan – ASB is tackled and fear of crime reduced.

In 2017 the Council published an ambitious ASB Blueprint for action. In this Blueprint the Council committed to utilising all of its powers to tackle the issues that impact upon the quality of life for residents. The recently published Community Safety Partnership Plan prioritises tackling Neighbourhood Crime and ASB. Governance and oversight of the issues is provided through the statutory Community Safety Partnership Board.

The Council has a large number of byelaws. They cover a broad sweep of prohibited activity in places such as parks but also in other open spaces. Public use of open and safe spaces is also closely linked to health and wellbeing outcomes and is referenced in the new (draft) Health and Wellbeing Strategy.

The only means to deal with breaches of byelaws currently is by way of prosecution. This is not a cost effective or a timely solution. It incurs considerable costs in legal fees and is underused as our records show. In Tower Hamlets in the years 2017/18 and 2018/19 combined there were only 14 prosecutions commenced with 6 withdrawn, 2 not issued and 6 convictions for breach of byelaws. There is also inconsistency in relation to how Tower Hamlets Enforcement Officers (THEOs), can currently dispose of some offences by means of Fixed Penalty Notices (FPNs), but not other relevant offences that are covered by byelaws. This means that the Council’s THEOs, who are often dealing with difficult and complex issues of

antisocial behaviour, are unable to effectively use the full range of powers available to them via the byelaws.

We aim to maximise the impact of our enforcement activity, seek behaviour change and reduce the incidence of ASB and disorder recurring. On this basis we recommend that our enforcement approach would be more effective if this method of dealing with ASB offences was available to use alongside our existing powers.

Research shows that to actively seek to bring about behaviour change, ideally there should be as little delay as possible between the offence and the consequences of committing that offence. FPNs for the breach of byelaws will provide improved impact for our THEO service. This enhancement to our powers is more likely to bring respite to communities often blighted for several years by ASB. Residents have consistently told us they want visible and proactive enforcement, and this proposal supports that.

The means to progress this proposal has been agreed with the Council's Democratic Services Team. We are advised that it is a matter which would need to be considered by the General Purposes Committee, followed by a formal referral to the London Council's Transport and Environment Committee (TEC). This body has the authority on behalf of all London Boroughs, to make recommendations on issues such as this to the Minister of State for the Department for Levelling up, Housing and Communities.

Recommendations:

The General Purposes Committee is recommended to:

1. Comment on the proposal.
2. Agree to the submission of this proposal for consideration by the London Council's Transport and Environmental Committee (TEC). Request for that Committee to recommend it for approval to the Secretary of State at the Department of Levelling up, Housing and Communities.

1. REASONS FOR THE DECISIONS

- 1.1 Required, to agree the proposed approach to manage breaches of byelaws in a timelier, cost effective and visible manner.
- 1.2 Submission through the London Council's TEC is the only means for

London Local Authorities to progress proposals regarding the uses for Fixed Penalty Notices.

2. ALTERNATIVE OPTIONS

- 2.1 The only alternative option is to do nothing. At present, the only means to deal with breaches of byelaws is by way of prosecution in the magistrates' court. If this remains the case, although more prosecutions could be undertaken to make use of a greater range of powers available to Tower Hamlets Enforcement Officers (THEOs) provided in byelaws, it may mean that the visible and timely response that our residents expect of the Council would not be provided. More costs would be incurred and enforcement officer time would be diverted from front line patrolling and response to ASB problems that impact on neighbourhoods.

3. DETAILS OF THE REPORT

3.1. The Council has a large number of byelaws. They cover a broad range of prohibited activity in places such as parks but also in other open spaces. Public use of open and safe spaces is also closely linked to health and wellbeing outcomes and is referenced in the new (draft) Health and Wellbeing Strategy.

3.2. The only means to deal with breaches of byelaws at this Council is by way of prosecution. This is not a cost effective or a timely solution. It incurs considerable costs in legal fees. We estimate this to be on average £300 per case and based on our research is often not always recovered in full. In total for the years 2017/18 and 2018/19 there were only 6 convictions for breach of byelaws in Tower Hamlets. There is also inconsistency in relation to how THEOs can deal with some offences by means of Fixed Penalty Notices (FPNs), but not other relevant offences that are covered by byelaws. This means that the Council's THEOs, who are often dealing with difficult and complex issues of antisocial behaviour, are unable to use the full range of powers available to them via the byelaws.

3.3. We aim to maximise the impact of our enforcement activity, seek behaviour change and reduce the incidence of ASB and disorder recurring. On this basis we recommend that our enforcement approach would be more effective if this method of dealing with byelaw offences was available to use alongside our existing powers for which FPNs can be issued under, such as for litter under the Environmental Protection Act 1990 and Community Protection Notices under the Anti-Social Behaviour, Crime and Policing Act 2014. To actively seek to bring about behaviour change, ideally there should

be as little delay as possible between the offence and the consequences of committing that offence. FPNs for the breach of byelaws will provide improved impact for our THEO service. This enhancement to our powers is more likely to bring respite to communities often blighted for several years by ASB. Residents have consistently told us they want visible and proactive enforcement.

3.4. The means to secure the authorisation for use of FPNs for byelaws is a two stage process. It has been confirmed through Democratic Services that the matter can be submitted for decision to the LBTH General Purposes Committee. That committee can authorise a formal approach to London Councils whose Transport and Environment Committee (TEC) is the body in London that has the authority of the Secretary of State (Department for Levelling Up, Housing, Communities) to authorise use of FPNs for byelaws for an authority and set the penalty.

3.5. Discussions were initiated with the LB Wandsworth, that followed this process in 2019, and also collaborative links are in place with officers at London Councils. The proposed byelaws shown below have already been given an informal assessment by the legal department at London Councils. They do appear to be a group of byelaws that if submitted to the TEC would be an acceptable initial proposal. Of course, this is not the final decision of the TEC but an indicative guide based on officer discussions. If the approach to London Councils is agreed via the General Purposes Committee, it will be another valuable means to enhance the Council's ability to tackle some types of ASB and improve the confidence of residents in the Council to act on their issues.

3.6. Several years ago, the council refreshed its Byelaws and along with a large number of other local authorities and adopted the Model Byelaws Set 2, produced by the then Department for Communities and Local Government. The comprehensive set of byelaws covers a very broad spectrum of behaviour. However it is important to take a proportionate approach to enforcement. This proposal recommends that only the byelaws below, which address the key areas of ASB that the THEOs currently encounter, will be subject to this means of dealing with breaches.

3.7. The proposed list of the byelaws shown below include the full description of each in order to illustrate the types of behaviour for which each can be applied. There are some specific examples and case studies of where THEOs would be able to apply these and illustrates their relevance to the ASB and some of the behaviours that impact upon quality of life in this borough.

N.B. The following are the only byelaws where the means to deal with breaches by FPNs is proposed, relevant to the roles of our THEOs. The complete list of Model Byelaws Set 2, is an appendix to this report.

Climbing – No person shall without reasonable excuse climb on any wall or fence in or enclosing the ground, or any tree, or any barrier, railing, post or other structure.

Gates – 1) No person shall leave open any gate to which this byelaw applies and which he has opened or cause to be opened. 2) This applies to any gate to which is attached, or near to which is displayed, a conspicuous notice stating that leaving the gate open is prohibited.

Camping – No person shall without the consent of the Council, erect a tent or use a vehicle, caravan or any other structure for the purpose of camping (except in a designated area for camping).

Fires – No person shall light a fire or place, throw or drop a lighted match or any other thing likely to cause a fire. (Exceptions around properly constructed camp stove in an authorised camp ground)

Interference with lifesaving equipment – No person shall, except in case of emergency, remove from or displace with the ground or otherwise tamper with any lifesaving appliance provided by the Council.

Cycling – No person shall without reasonable excuse ride a cycle in the ground except in any part of the ground where there is a right of way for cycles or on a designated route for cycling, nor in such a way which may endanger the public.

Skateboarding – No person shall skate, slide or ride on rollers, skateboards or other self-propelled vehicles in such a manner as to cause danger or give reasonable grounds for annoyance to other persons.

Bathing – No person shall without reasonable excuse bathe or swim in any waterway.

Boats – No person shall sail or operate any boat, dinghy, canoe, sailboard or inflatable on any waterway without the consent of the Council.

Fishing – No person shall in any waterway cast a net or line for the purpose of catching fish or other animals except in a designated area for fishing and with the prior consent of the Council and in accordance with the rules governing such consent.

Model Aircraft – No person shall cause any power-driven model aircraft to, take off or otherwise be released for flight or control the flight of such an aircraft in the ground or land in the ground without reasonable excuse.

Excessive Noise – No person shall, after being requested to desist by any other person in the ground, make or permit to be made any noise which is so loud or so continuous or repeated as to give reasonable cause for annoyance to other persons in the ground by shouting or singing, playing on a musical instrument or by operating or permitting to be operated by any radio, amplifier, tape recorder or similar device (does not apply to persons holding or taking part in any entertainment held with the consent of the Council).

Obstruction – No person shall obstruct any officer of the Council in the proper execution of his duty, any person carrying out an act which is necessary to the proper execution of any contract with the Council or any other proper use of the ground.

3.8. The following **case study examples** set out the relevance of using FPNs to deal with the different types of behaviours included in some of the byelaws above:

3.8.1. **Shadwell Basin** – an open space with a long history of a range of ASB relating predominately to seasonal issues i.e., activities each summer around use of the water for “wild swimming” within the Basin and associated ASB in the immediate open areas surrounding it. There have been many complaints to the council over the years to address the ASB and health and safety issues in this area. Parks Service have a critical and lead role in relation to management of the open space, signage and safety equipment and work closely with community safety and partners in managing and mitigating the levels of ASB there. There is a Community Safety Plan for the area overseen by the Community Safety Partnership. The range of behaviours include unlawful and dangerous swimming (two tragic deaths in the past couple of

years including a prevention of death report), people climbing and jumping from disused cranes and gantries into the water, noise from portable music devices, alcohol, unlawful barbecues, nuisance flying of drones. The scope of the byelaws in this proposal, allows for their application at this venue to practically improve management of such issues. Having the ability to deal with Bathing, Climbing, Fires, Interference with Safety Equipment, Noise and Model Aircraft before things escalate to more serious ASB that may require other powers or higher level interventions, will be an additional step in reducing the nuisance caused in areas with recurring ASB.

3.8.2. One of the byelaws proposed to be dealt with for breach by issuing of FPNs relates to Camping. This does not relate to vulnerable people who may be rough sleeping. The THEOs work extremely closely with housing service and rough sleeping support services dealing with the rough sleeping cohort and have a well-established means of engaging with this group of vulnerable people with support/help as a main intervention not enforcement. This byelaw has applications regarding activities that are prevalent now post the pandemic and subsequent lockdowns. THEOs have become more engaged recently through the pan London protocol with ASB and noise associated with Unlicensed Music Events (UMEs). UMEs take many forms but can and do include the erection of gazebos or similar temporary structures in parks and other places and it is for this purpose that this byelaw is proposed and again designed to be used to nip issues in the bud before they escalate. Currently UMEs have been dealt with in a number of areas but most recently around and within the Queen Elizabeth Olympic Park near the boundary with Newham and have been on land and also include “party boats” on the waterways there.

3.8.3. Noise is a key byelaw for which the issuing of an FPN would be most useful because the wording is clearly designed to allow an early intervention where the effect does not need to reach the threshold of a statutory nuisance (as per Environmental Protection Act), which would require the intervention and investigation by the Council’s specialist environmental health noise team within the Place Directorate. It requires a much lower threshold of “annoyance”. This has applications in parks with groups setting up amplifiers and holding impromptu parties, but by doing so causing annoyance to others using that park for example and of course UMEs would fall under this byelaw again as a lawful and proportionate means to deal early with issues.

3.9. As part of the preparation for this proposal, consultation was undertaken with other enforcement teams as regards their views on use of byelaws and fixed penalty notices. Those consulted included the Director Public Realm, the Head of Environmental Health and Trading Standards, Director of

Commissioning and Culture, Business Manager Operational Services (Environmental Services) Legal and Democratic Services. This was undertaken to establish the extent to how byelaws are used and if a similar approach to that proposed here would be applicable in any other departments.

3.10. Environmental Health managers confirmed that their staff do use FPNs for a number of enforcement matters including the recent COVID-19 restrictions but that the only byelaw that they might wish to prosecute would be touting (outside restaurants), not included in the proposed byelaws subject to this paper. However, they do not use the byelaw but deal with that issue by reverting to enforcing a premises licence and would not need the facility to issue an FPN for any breaches of a byelaw. The EH response also raised issues regarding difficulties associated with current Fixed Penalty Notice management, particularly following up on non-payment. In cases within their experience, where non-payment of an FPN is the issue, it is normally written off due to low income versus high cost of recovery. However the more effective management of FPNs and in particular more efficient means to ensure greater levels of payment, will be significantly enhanced for the THEO service by removing its reliance upon a lengthy back-office support team process. It is being replaced with the “Cradle to Grave” automated process provided by a recently procured hand-held enabled system with in-built back office functions called Liberator. It manages FPNs from issue to payment and if necessary as a last resort, prosecution, and it has a target date for go live of January 2022.

3.11. We have aimed to make the THEO service a “trusted brand”. The THEO service has been reorganised. This provides a 7 day a week service now across the Borough. All the Standard Operating Policies and Procedures have been updated. There is a new Performance Management Framework. Along with a detailed training and development needs assessment for officers. The Service has professional leadership and management. Along with PDRs there are supervision processes such as daily briefings, de-briefings, and officers have responsibility to meet neighbourhood taskings that are intelligence led and must be reported back upon. The Service also has the capacity to respond where issues arise spontaneously, but again with effective leadership support and daily supervision for officers. The adoption of the means to deal with breach of byelaws by issuing FPNs (retaining of course the option still to prosecute where that is more appropriate – e.g. repeat offenders) will provide a more effective response to some types of ASB in this borough.

4. EQUALITIES IMPLICATIONS

- 4.1 A full Equalities Impact Assessment has been completed. It concludes that the supervision, performance monitoring and reporting regime in place to assure proportionality relating to enforcement generally by the THEOs, will apply to this proposal. It will enable identification of any emerging needs to mitigate impacts should they arise. The numbers of people from White backgrounds do currently appear to be featured disproportionately in the category of those engaged by the service in regards to antisocial behaviour. However these tend to be those individuals with drugs and other substance misuse issues. There has been a longstanding approach involving work with support agencies with this cohort and this will remain with enforcement as a last resort. Further detail is contained in the full EIA.

5. OTHER STATUTORY IMPLICATIONS

- 5.1 **Crime Reduction** - The council has the statutory obligation, Section 5 of Crime and Disorder Act 1998, to work with other statutory partners and to bring key local agencies together to deliver multi-agency solutions to local problems by pooling resources and setting the strategies. The strategies are for the reduction of crime and disorder, combatting the misuse of drugs, alcohol and other substances and for the reduction of re-offending.

6. COMMENTS OF THE CHIEF FINANCE OFFICER

- 6.1 This report seeks to initiate the use of Fixed Penalty Notices for Breaches of Byelaws and Setting of Penalties subject to approval by the LBTH General Purposes Committee and London Councils TEC. The TEC body will further facilitate discussion with the responsible Central government department to explore the possibility of recommending adoption of the use of the FPNs to deal with breaches of byelaws.
- 6.2 There are no adverse financial implications arising from the recommendation made within this report. At this stage it is difficult to establish how many FPNs will be issued, and therefore how much income would be generated, should the proposal be agreed.
- 6.3 Should further cost be incurred as a result of expanding the use of the FPNs, the service will need to get necessary approval as part of the budget setting process.

7. COMMENTS OF LEGAL SERVICES

- 7.1 FPNs can only be issued where the relevant legislation permits it. Offences against byelaws can be prosecuted in the magistrates' courts. Section 237A(1) of the Local Government Act 1972 (as amended) allows the Secretary of State to make regulations so as to permit an FPN to be issued as an

alternative to prosecution in respect of certain classes of byelaws. To date, however, no such regulations have been made under s.237A(1).

- 7.2 However, Part 4 of the London Local Authorities Act 2004 (“the 2004 Act”) allows London boroughs to introduce an FPN regime to deal with offences against byelaws made under any enactment, which includes the Local Government Act 1972.
 - 7.3 Section 17(1) of the 2004 Act requires the Council to set the level of fixed penalty. This may take into account the reasonable costs and expected costs incurred or to be incurred in connection with the administration of the legislation under which the fixed penalty offence is created. The level of fixed penalties set is to be published in any such way as the Secretary of State determines (s.17(5)). These functions are to be carried out by “the joint committee.” The joint committee is a committee established under s.101(5) of the Local Government Act 1972, which in this case is the London Council’s Transport and Environment Committee. If the Council wishes to implement an FPN regime for breaches of byelaws, that can only be achieved by the joint committee taking this forward.
 - 7.4 Once the level of fixed penalty has been set the Secretary of State must be notified. The penalty will not come into force until one month after notification has been given, or such shorter period that the Secretary of State may allow. If the Secretary of State considers that some or all of the fixed penalty amounts are excessive he or she may object to the joint committee or make regulations prescribing the amounts to be set.
 - 7.5 If a park or open space named in the Schedule to the byelaws has since changed name, those byelaws will continue to apply to that area and enforceable by way of FPN. Any FPN issued in that area should make reference to any other name by which it was known.
 - 7.6 The use of FPNs, if approved, will apply only to those parks and open spaces listed in Schedule 1 to the byelaws approved in 2013. Any parks and open spaces not named in that Schedule (subject to 7.6 below) would not be covered by the byelaws and the use of FPNs for breaches would not be available until such time as further byelaws were approved in respect of those areas.
 - 7.7. The proposed use of FPNs will apply to all the byelaws approved by London Councils TEC and not simply those proposed to be used by the THEOs. The specific extent to which the power is delegated to THEOs will be dealt with under their operating procedures.
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Linked Reports, Appendices and Background Documents

Linked Report

- None

Appendices

- Model Byelaws Set 2
- Equalities Impact Assessment

Local Government Act, 1972 Section 100D (As amended)

List of “Background Papers” used in the preparation of this report

List any background documents not already in the public domain including officer contact information.

- NONE

Officer contact details for documents:

N/A