


<p>Cabinet</p> <p>25 July 2018</p>	 <p>TOWER HAMLETS</p>
<p>Report of: Ann Sutcliffe, Acting Corporate Director Place</p>	<p>Classification: Unrestricted</p>
<p>Anti-idling designation in the London Borough of Tower Hamlets</p>	

Lead Member	Councillor David Edgar, Cabinet Member for Environment
Originating Officer(s)	David Tolley - Head of Trading Standards and Environmental Health Muhammad Islam- Team Leader, Pollution
Wards affected	All wards
Key Decision?	Yes
Forward Plan Notice Published	29 May 2018
Reason for Key Decision	Statutory decision, impact on all wards
Community Plan Theme	A Great Place to Live A borough that our residents are proud of and love to live in

Executive Summary

Poor air quality has an impact on the health and quality of life of all in Tower Hamlets. The Council has a statutory duty to comply with the London Local Air Quality Management (LLAQM) Regime under the Environment Act 1995.

The whole of the borough of Tower Hamlets has been declared an Air Quality Management Area (AQMA) under the UK Air Quality Strategy for two human health related pollutants, Nitrogen Dioxide and Particulate Matter (PM10). The Council has a duty to produce an Air Quality Action Plan which details measures on how it is working towards achieving the objectives.

Idling vehicle engines has been a concern to some residents and Members as the Council receives complaints of idling engines for example outside schools.

The Council's Air Quality Action Plan 2017-2022 was approved by Cabinet in October 2017. There is a commitment in the action plan to enforce anti-idling regulations by becoming a designated authority to issue Fixed Penalty Notices (FPNs) for a stationary idling engine offence.

This report is seeking approval to introduce a new FPN and charge for engine idling in the borough under the Road Traffic (Vehicle Emissions) Fixed Penalty (England) Regulations 2002, which are made under Section 87 of the Environment Act 1995 to

reduce polluting emissions from unnecessary engine idling vehicles.

Recommendations:

The Mayor in Cabinet is recommended to:

1. To authorise the use of powers under Regulations 12, 13 and 14 of the Road Traffic (Vehicle Emissions) Fixed Penalty (England) Regulations 2002 to enforce against drivers who allow their vehicle engines to run unnecessarily when parked anywhere in the borough.
2. Delegate authority to Corporate Director, Place to authorise, Environmental Health staff, Tower Hamlets Enforcement Officers (THEOs) and Civil Enforcement Officers of the Council to make use of these powers to issue FPNs, and take legal proceedings for stationary engine idling offences.

1. REASONS FOR THE DECISIONS

- 1.1 The Council has a statutory duty to improve air quality in the borough. The Council has produced an Air Quality Action Plan (AQAP) which details measures on how it is working towards achieving the national Air Quality Objectives. There is a commitment in the AQAP to enforce anti-idling regulations.
- 1.2 The ability to issue FPNs for stationary idling vehicles will enable the Council to deliver on the commitment made in the AQAP to reduce emissions caused by transport and improve local air quality within the borough through a combination of education and enforcement activities.

2. ALTERNATIVE OPTIONS

- 2.1 Not to authorise officers to issue FPNs. However, as the council has made a commitment in the AQAP which was officially signed off by the Greater London Authority, there is a risk this could result in the Council losing its Cleaner Air Borough status with the Greater London Assembly as the commitment would not be delivered.

3. DETAILS OF REPORT

- 3.1 Air Quality has an impact on the health and quality of life of all in Tower Hamlets and London. 7.4% of all deaths in Tower Hamlets in people over 30 are attributable to particulate air pollution. Over 50% of the borough's Nitrogen Oxide (NOx) emissions come from transport sources¹.
- 3.2 40% of the Council's residents live in areas of exceedance of the national air quality objectives and EU limit values for Nitrogen Dioxide (NO₂)¹.
- 3.3 The Council has declared an Air Quality Management Area (LAQM) under the UK Air Quality Strategy for two human health related pollutants (Nitrogen

Dioxide and Particulate Matter). Appendix One. The Council has a duty to produce an Air Quality Action Plan (AQAP) which details measures on how it is working towards achieving the objectives.

- 3.4 Idling vehicle engines contribute emissions of both of these pollutants unnecessarily and have been a concern to some residents and Members. Therefore the AQAP contains an action to establish effective ways to prevent drivers leaving vehicle engines idling unnecessarily within the borough.
- 3.5 Although emissions from stationary vehicles are only a small contributor to the overall levels of pollution in the borough, it can cause discomfort to people in sensitive locations such as outside schools. The ability to issue FPNs is likely to increase the level of compliance.

¹The London Borough of Tower Hamlets Air Quality Action Plan 2017-2022

Powers for engine idling enforcement

- 3.6 The Road Traffic (Vehicle Emission) (Fixed Penalty) (England) Regulations 2002 gives power to local authorities to issue Fixed Penalty Notices (FPNs) to drivers who allow their vehicle engines to run unnecessarily while the vehicle is parked.
- 3.7 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 very 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.
- 3.8 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
 - Where a vehicle is propelled by gas produced by the functioning of plant carried on the vehicle.
- 3.9 The guidance encourages 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 engine when advised to do so by an authorised officer.
- 3.10 Regulation 4 indicates there is no requirement to apply for designated authority status from the Secretary of State for engine idling powers only as the Authority has previously declared an Air Quality Management Area.

The enforcement process

- 3.11 Regulation 12 of The Road Traffic (Vehicle Emission) (Fixed Penalty) (England) Regulations 2002 (“the RTVE”) sets out the enforcement process as:

12. Stopping of engine when vehicle stationary

(1) An authorised person who has reasonable cause to believe that the driver of a vehicle that is stationary on a road is committing a stationary idling offence may, upon production of evidence of his authorisation, require him to stop the running of the engine of that vehicle.

(2) A person who fails to comply with a requirement under paragraph (1) shall be guilty of an offence and be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

- 3.12 Regulation 13 of the RTVE states that an FPN will only be issued where a driver refuses to turn off the engine when requested to do so by an authorised officer. Enforcement would not occur in case of the offence occurring accidentally or there is a genuine reason for not complying.
- 3.13 The regulation stipulates the penalty for an offence as £20 which will increase to £40 if not paid within 28 days. There is no discretion to amend the charge.
- 3.14 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.
- 3.15 Local authorities are permitted to retain income generated from Fixed Penalty Notices issued. The level of income is expected to be minimal as FPNs will only be issued as a last resort.
- 3.16 There is no formal appeal procedure to support enforcement. A formal route of appeal is not recommended as regulations do not require the introduction of an appeals process to support enforcement.
- 3.17 A recipient of an FPN could informally query it with the Council, using the complaints process. Alternatively a request in writing for a hearing can be made no later than 28th day after the day the FPN was issued. A hearing is effectively a prosecution in court. The FPN falls once a hearing has been requested.
- 3.18 Regulation 14 of the RTVE allows authorised officers in discharging their functions under regulation 12 (see para 3.11 above) to require the driver of the vehicle to disclose his name, address and date of birth and if the vehicle is not registered in his name, to give the name of that person. A person who fails

to provide the information shall be guilty of an offence and be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Consultation

- 3.19 Consultation will not be required as these powers form part of the Council's AQAP which was consulted on for a six weeks period 15th June 2017 to 27th July 2017. The AQAP was approved by Cabinet in October 2017.

Publicity

- 3.20 Maximum publicity will be carried out well before the scheme is implemented to ensure that the scheme is understood, accepted and supported by the majority of motorists. Various mediums will be used to publicise the scheme including the Council's website, press release, local newspapers and anti – idling signs being put up at idling hot spot locations across the borough.

Resourcing

- 3.21 There will be no cost implications in implementing the scheme as existing systems for the issuing of FPNs and recovery of fines will be utilised. The function can be absorbed into existing enforcement activities of the borough.

4. EQUALITIES IMPLICATIONS

- 4.1 The enforcement power is to support the Council in achieving the objectives of the AQAP to improve air quality and to tackle air pollution caused by road traffic. An Equality Analysis Checklist has been carried out within Appendix Two and has found positive effects in improving air quality across the borough.

5 OTHER STATUTORY IMPLICATIONS

- 5.1 Best Value implications: The ability to issue FPNs will help the Council in achieving the air quality objectives and demonstrate to external regulators that the Council is committed to improving air quality within its area. Improvements in air quality will benefit everyone in the borough.
- 5.2 Environmental considerations: By designating the Borough as an anti-idling Borough, will have a localised impact on air quality in areas that suffer from vehicular waiting i.e. around schools. The impact will be generally localised but will raise public awareness concerning air quality.
- 5.3 The ability to issue FPNs for stationary idling vehicle offence will improve air quality and reduce complaints from residents.

- 5.4 The Council currently benefits from being a Cleaner Air Borough status from the GLA. Failure to deliver on a commitment made in the AQAP could result in the Council losing its Cleaner Air Borough status.
- 5.5 Crime reduction: There are no crime and disorder implications, although it is recognised that failure to pay a fixed penalty notice may result in a Court Hearing and possible conviction. The number of cases is expected to be very low due to level of fine and the process of Officers having to request the vehicle driver to turn their engine off before issuing a fixed penalty notice.
- 5.6 Safeguarding: This initiative will have the opportunity to improve localised air quality around areas of vehicular concentration i.e. around school. This will give the opportunity to improve localised air quality and therefore have a positive impact on the health of children.

6. COMMENTS OF THE CHIEF FINANCE OFFICER

- 6.1 This report seeks the authorisation of the use of powers under the Road Traffic (Vehicle Emissions) Fixed Penalty) (England) Regulations 2002 and to delegate authority to Corporate Director, Place to make use of these powers to issue Fixed Penalty Notices (FPNs) and take legal proceedings for stationary engine idling offences.
- 6.2 The regulations stipulate 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.
- 6.3 There will be no impact to the service revenue budgets arising from the implementation of these powers. The cost of issuing FPNs will continue to be met from the existing enforcement revenue budgets. Income generated is not expected to be significant as the issue of a FPN will only be carried out as a last resort.

7. LEGAL COMMENTS

- 7.1 The Road Traffic (Vehicle Emissions) (Fixed Penalty) (England) Regulations 2002 ("the 2002 Regs") empowers local authorities to issue fixed penalty notices to users within their areas who contravene or fail to comply with Section 98 of the Road Vehicles(Construction and Use) Regulations 1986. These regulations are concerned with emissions of smoke, vapour etc and allow enforcement by Fixed Penalty Notice ("FPN") .
- 7.2 Regulation 6(3) of the 2002 Regulations states that a local authority "may authorise any officer of the authority, or any other person, in any area of that authority to (a) stop the commission of stationary idling offences; and (b) to issue a fixed penalty notice "

- 7.3 Regulation 7 of the 2002 Regulations states that FPNs can be issued in relation to stationary /idling motor vehicles if a driver unreasonably refused a request to turn off their motor vehicle subject to certain exceptions e.g. owing to the necessities of traffic eg when vehicles are queuing at traffic lights or where an engine is being run so that a defect can be traced and rectified.
- 7.4 Any offence in relation to regulation 12 (see para 3.11 above) can attract a fine not exceeding level 3 on the standard scale i.e up to the sum of £1,000.
- 7.4 Section 101 of the Local Government Act 1972 enables the Council to delegate authority to the Corporate Director, PLACE to authorise officers to make use of these powers to issue fixed penalty notices.
- Part 3.1.3 of the Constitution also states that the discharge of functions relating to the control of pollution or the management of air quality is delegated to the Corporate Director which will include the issuing of Fixed Penalty Notices.
- 7.5 When considering these proposals, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who do not (the public sector equality duty). To inform the Council in discharging this duty, an Equalities Checklist has been completed and a copy is attached to this report as Appendix 2. If the recommendations in this report are adopted, the issuing of FPN's should be monitored to ensure that if those with protected characteristics are affected, appropriate action is taken.

Linked Reports, Appendices and Background Documents

Linked Report

NONE

Appendices

- Appendix 1 Air Quality Management Area Order 2000
- Appendix 2 - Equalities Action Checklist

Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

- The London Borough of Tower Hamlets Air Quality Action Plan 2017-2022
- The Department for Transport guidance on powers to require drivers to switch off engines
- The Road Traffic (Vehicle Emissions) (Fixed Penalty) (England) Regulations 2002

Officer contact details for documents:

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