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# Draft Environmental Enforcement Policy (2023- updated)

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## Background:

In April 2018 regulations came into force. The provision to issue a fixed penalty notice (FPN) to a person for littering under the Environmental Protection Act 1990, which is a criminal offence, remains and it's for the authority to determine which is the most appropriate enforcement approach on a case-by-case basis.

When the regulations<sup>1</sup> were introduced, the government issued advice on their implementation and consulted on revised Statutory Guidance in the form of a Code of Practice setting out enforcement guidance to local authorities on dealing with littering and other environmental offences.

This report sets out a draft Enforcement Policy for the Council's environmental enforcement activities including the use of fixed and or civil penalties. The policy will have regard to the revised Statutory Guidance and Code of practice on litter and refuse.

## General Principles:

Our environmental enforcement activities are aimed to support the achievement of a clean and attractive local environment in Elmbridge, and to help keep public land clear of litter and refuse. Our enforcement activities will seek to deal with the specific offences of littering, including from a vehicle, dog fouling, fly-posting or graffiti defacement, fly-tipping and other waste related offences including waste duty-of-care breaches and noise annoyances.

Our activities will be targeted in those areas where these offences are known or likely to regularly occur. Where necessary CCTV will be utilised at these locations as part of the evidence gathering and investigative process, and in particular for the offence of fly-tipping.

Where enforcement action is necessary it will be undertaken in accordance with the Regulators Code and will be proportionate, consistent, targeted, transparent and accountable. To this end, we will: -

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<sup>1</sup> The Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulation 2018  
Environmental Offences (Fixed Penalties) (England) Regulations 2018

- Ensure that staff are adequately trained and apply this policy and supplementary procedures professionally and consistently.
- Advise individuals and businesses to assist them in complying with their legal duties and obligations.
- Provide information about the policy and local standards and make the policy available to the public and businesses and keep it under regular review.
- Be impartial and objective, and will not be affected by race, politics, gender, sexual orientation or religious beliefs of any alleged offender, victim or witness.
- Normally offer the opportunity of discharging any liability to conviction for less serious environmental offence(s) by issuing a Fixed Penalty Notice.
- In instances where an offence has been committed, which cannot be dealt with by means of a Fixed Penalty Notice, for example a breach of the householder's duty of care, a formal caution may be issued as an appropriate alternative to formal prosecution.
- Where an alleged offence is enforced by another authority or agency the details will be disclosed to that agency for investigation.
- Take reasonable steps to recover any additional costs including clearances because of works carried out in default.
- Consider the cancellation of penalties and stopping enforcement action where the alleged offender provides evidence of extenuating circumstances.
- Use the penalty payment receipts to offset the cost of our environmental enforcement activities.

## Fixed Penalties:

General: Where the enforcement officer believes an offence has been committed the option to pay a fixed penalty will usually be offered as an alternative to prosecution. Unless stipulated below, the Council will adopt the default level of penalty level and the minimum discounted amount for an offence where it offers the choice of paying a fixed penalty. Where the alleged offender is a juvenile (aged 10-17) the enforcement officer shall have regard to statutory guidance for issuing fixed penalties. Prosecution may be more suitable where the offence is major, e.g. it is accompanied by violent, aggressive, or abusive behaviour, or it is persistent or deliberate.

Littering: A fixed penalty will be issued to any known person witnessed by an authorised officer of the Council, or where there is a reliable witness testimony. A penalty will be issued at the time of the offence or by post within 3 days where practicable. Having considered the upper limit of £150, and lower limit of £65, (from April 2019) the penalty will be set at £100 and reduced to £75 when paid in full within 14 days of its issue.



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Dog Fouling: A fixed penalty will be issued to any known person witnessed by an authorised officer of the Council as failing to remove the fouling of a dog (that is considered to be under that person's control) from designated land. There are at present two regimes in place for issuing fixed penalties: Under transitional provisions, a £50 penalty applies for fouling offences on most open public land (land previously designated by the Council under the Dogs (Fouling of Land) Act 1996), and a penalty of £75 for fouling on parts of the Borough covered by Public Space Protection Orders (specific areas of land previously designated by a Dog Control Order).

Graffiti & Fly-Posting: A fixed penalty will be issued to any known person witnessed by an authorised officer of the Council, or where there is a reliable witness testimony. A penalty may be issued for each incident which includes, the unauthorised attachment and display of an advertisement on public or private property. A penalty will be issued at the time of the offence or by post within 3 days where practicable. Having considered the upper limit of £150, and lower limit of £65 (from April 2019), the penalty will be set at £150 and reduced to £100 when paid in full within 14 days of its issue. The selection of the upper limit reflects the intrusive nature of these offences, and the associated cost and risk in removing the items.

Fly-Tipping: A fixed penalty will be issued to any known person witnessed by an authorised officer of the Council, or where there is a reliable witness testimony, or adequate evidence obtained from the tipped waste. A penalty may be issued for each incident which includes, the unauthorised deposit of controlled waste on public or private property. A penalty will be issued at the time of the offence or by post within 5 days where practicable. Having considered the upper limit of £400, and lower limit of £150, the penalty will be set at £350 and reduced to £250 when paid in full within 10 days of its issue. Fixed penalties will generally not be issued for larger fly-tips and involving several items. In these cases, a prosecution will be sought.

Duty-of-Care (Waste Offences): A fixed penalty will be issued to a person and or business where they fail to provide satisfactory documentary evidence that they have appropriate measures in place to meet their Duty of Care requirements for their waste. A penalty will be issued by post within 5 days where practicable. The law sets a penalty level of £300 for these offences, with a minimum discounted level set out £180. The Council will apply a discounted level of £200 when the penalty is paid within 10 days of its issue.

Commercial Waste (Receptacle Offences): A fixed penalty may be issued to a person and or business where they fail to comply with a notice issued under Section 47 of the Environmental Protection Act 1990 for the proper storage and collection of commercial waste. Having considered the upper limit of £110, and lower limit of £75, which may be reduced to not less than £60 when paid in full, the penalty will be set at £110 and reduced to £70 when paid in full within 10 days of its issue.



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## Civil Penalties:

Noise: The environmental enforcement officers will apply the provisions within the Anti-Social Behaviour Crime and Policing Act 2014 for issuing community protection notices (CPNs) for dealing with instances of unreasonable noise annoyance from a domestic property which are having a detrimental effect, of a persistent and continuing nature, on the quality of those in the locality. In the first instance there will be an expectation that the complainant would have sought to resolve the situation informally themselves, without success.

Following the receipt of an apparent domestic noise annoyance report, an enforcement officer will aim to visit the property complained of within 3 working days and discuss the complaint with the principle householder. The officer will assess if a warning notice is required, or any further action after a warning notice which will normally result in the issue of a CPN. Where a CPN is subsequently breached, a fixed penalty of £100 will normally be issued, which will reduce to £75 when paid within 14 days of its issue.

The Environmental Protection Act 1990 is the legislation controlling noise which is more than an annoyance and would have a significant impact on the health and wellbeing of those affected. For this reason, noise complaints relating to commercial premises and cases where a statutory nuisance may be occurring will generally be investigated and dealt with under other legislation by the pollution team.

Littering from Vehicles: Regulations enables the Council to issue a civil penalty notice to the keeper of a vehicle from which litter is thrown. The Council will apply these regulations and in addition to enforcement by its own staff it will also authorise its parking civil enforcement officers that operate under a service contract, to issue civil penalties on its behalf. The civil penalty will be set at the same amounts as set for the fixed penalty i.e. £100 and reduced to £65 when paid in full within 14 days of its issue. However, as set out in the regulations the amount of the civil penalty will increase to £200 if not paid in full within 28 days of its issue.

## Public Space Protection Orders:

In October 2014 the Anti-Social Behaviour Crime and Policing Act 2014 ("the Act") came into force. This Act introduced several tools and powers for use by councils and the police to address anti-social behaviour (ASB) in their local areas. These tools, which replaced and streamlined a number of previous measures, were brought in as part of a government commitment to put victims at the centre of approaches to tackling ASB, focussing on the impact behaviour can have on both communities and individuals, particularly on the most vulnerable. This act introduced the powers available to the police and local authorities to deal with anti-social behaviour. One of these measures is the use of Public Space Protection Orders (PSPO).

PSPOs are intended to deal with a particular nuisance or problem in a particular area where the behaviour is detrimental to the local community's quality of life, by imposing conditions on the use of that area. These can apply to everyone who uses



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that area or can be specifically structured to apply only to certain groups or categories of person, at different times or in specified circumstances. The Council is responsible for making a PSPO and also have enforcement powers, along with Surrey Police and other agencies as delegated by the Chief Executive.

The Council can make a PSPO if satisfied, on reasonable grounds that the following conditions are met in relation to the activities sought to be regulated:

- That they are or are likely to be carried out in a public place within the Borough;
- That they have had, or are likely to have, a detrimental effect on the quality of life of those in the locality;
- The effect, or likely effect of the activities is likely to be, persistent or continuing in nature;
- Is or is likely to be such as to make the activities unreasonable; and
- justifies the restrictions sought to be imposed by the order.

Elmbridge introduced 2 PSPO's on its green spaces for the Overnight Fishing, and Barbeques or Lighting of fires in July 2023 and is proposing a further PSPO for Unauthorised Mooring.

### **PSPO use of barbeques naked flames**

The PSPO prohibits the use of campfires, BBQs, bonfires, fire pits or any other activity that involves the lighting of a fire or a naked flame within the identified areas. This applies at all times of the day and night within the identified areas.

UNLESS the use of campfires, BBQs, bonfires, fire pits or any other activity that involves the lighting of a fire or a naked flame is agreed in advance by the Council on receiving a formal application booking for an event.

### **PSPO Overnight Fishing**

The PSPO prohibits any person(s) carrying out a overnight fishing or any associated overnight camping, littering or defecating within the identified areas between the hours of 7pm (19:00 hours) and 7am (07:00 hours).

### **PSPO mooring**

The proposed PSPO prohibits mooring without consent for longer than 24 hours in the ordinary course of navigation with no return within 72 hours within the listed areas

UNLESS- the Guidance on River Thames: current river conditions advise boats either not to navigate, or to find a safe mooring (on Yellow boards unpowered craft should not navigate, this might include some houseboats without engines, and on Red boards no craft should navigate.)

In these cases, the PSPO would not be enforced before river conditions return to no stream warnings.



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We will work closely with the EA and have due regards to the [Non-Tidal River Thames Regulation and Enforcement Plan 1 April 2023 to 31 March 2024 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/642222/Non-Tidal_River_Thames_Regulation_and_Enforcement_Plan_1_April_2023_to_31_March_2024.pdf)

### **Public Sector Equality Duty and Human Right considerations relating to the PSPO mooring**

It is recognised that a small portion of persons who are overstaying and/or persistently overstaying may also have a protected characteristic, e.g. a Bargee Traveller. A near equivalence of a Bargee Traveller may be their land counterparts – Travellers, Gypsies and Roma Groups.

When Enforcement Officers, or other agents that may be appointed by the Council (Officers), assess whether to enforce a breach of a PSPO, they will review any welfare considerations as might be appropriate in the circumstances. The users of the boats will need to cooperate with the Officers and provide information that they wish the Officers to consider prior to the Officer making any decision to enforce or delay such a decision.

The decision maker(s) will consider its equality obligations under the Equality Act 2010, including to have due regard to the public sector equality duty, and to consider any human rights considerations, e.g. whether an interference with the right to respect for private and family life, home and correspondence is lawful, necessary and proportionate in order to protect national security, protect public safety, protect the economy, protect health or morals, prevent disorder or crime, or protect the rights and freedoms of other people under the Human Rights Act 1998.

Where people are on Council-owned land or in Council-owned buildings which are not suitable for use as accommodation and where the Council has not given consent for such use, including the river bank/riverside, the Council has an obligation to consider the housing needs of the person or persons concerned. Council officers will work in a coordinated manner to seek a resolution of these issues, but such resolutions are subject to the limitations of the relevant housing legislation .

Where there is a risk of homelessness due to the particular facts and circumstances under consideration, the Officers will engage with the occupants/users of boat(s) and refer them to the Council's Housing Options Team. The Housing Options Team will either:

- arrange to visit the site and make contact with the occupant (including leaving a calling card if there is nobody there at the time).
- Pass the referral onto a local outreach service (currently provided by Elmbridge Rentstart) with a request to visit the site and to locate and engage with the person or persons concerned liaising with the Housing Options Unit as necessary.



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An assessment will be made by the Council's Housing Services to determine if the person(s) is homeless and eligible for assistance and their needs. A personalised housing plan will be developed to include the reasonable steps to be taken to help the person(s) secure that suitable accommodation becomes available for their occupation for at least six months and setting out the actions the person should take. This does not mean that the Council has to source and provide accommodation for all, and temporary/ emergency accommodation is normally only provided where the person is considered to be vulnerable

The proposals for this PSPO is to cover 7 areas of land, and not the full length of the River Thames, in Elmbridge and therefore the Council considers that enforcing a breach of a PSPO in a timely manner will usually be a proportionate, reasonable and justified response to address the activities that has been restricted or prohibited under the PSPO.

The Council will follow a similar welfare assessments process as that contained within the [Joint Unauthorised Encampment Protocol](#).

### **Offences**

- Under section 67, it is an offence for a person, without reasonable excuse, to do anything that the person is prohibited from doing by a public spaces protection order, or to fail to comply with a requirement to which the person is subject under a public spaces protection order.
- A person guilty of an offence under section 67 is liable on summary conviction to a fine not exceeding level 3 on the standard scale which is currently £1,000.

### **Fixed Penalty Notice**

An Authorised Person may issue a Fixed Penalty Notice to anyone he or she believes has committed an offence. The amount of the Fixed Penalty Notice shall be £100. The penalty can be reduced to £65, if paid within 14 days otherwise the full penalty will be due. If you do not pay the penalty within 15 days, you may be prosecuted.

### **Appeals**

Under section 66 of the Act, any Interested Person who wishes to challenge the validity of this Order on the grounds that the Council did not have the power to make the Order or that a requirement under the Act has not been complied with may apply to the High Court within six weeks from the date upon which the Order is made.