

Brighton & Hove City Council

Environment, Transport & Sustainability Committee

Agenda Item 45

Subject: Outcomes of environmental enforcement consultations

Date of meeting: 15 November 2022

Report of: Executive Director: Economy, Environment & Culture

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Ward(s) affected: All

For general release

1. Purpose of the report and policy context

1.1 This report and appendices detail the results of two public consultations on environmental enforcement activities:

- Addressing flyposting and stickering
- Managing household waste bins and boxes

1.2 It also provides information on alternative barbecue provision following committee's decision to ban the use of single use barbecues in and on council owned land in March 2022.

2. Recommendations

2.1 That Committee agrees to introduce new enforcement measures to tackle flyposting and stickering as set out in the report and tracked as changes in the Environmental Enforcement Framework in Appendix 1.

2.2 That Committee agrees to introduce new enforcement measures to tackle household waste bin and box offences as set out in the report and tracked as changes in the Environmental Enforcement Framework in Appendix 1.

2.3 That Committee notes the research completed into alternative approaches to single use barbecue provision in Appendix 7.

3. Context and background information

3.1 The purpose of environment enforcement is to:

- enforce certain environmental legislation
- improve the cleanliness of the city
- issue Fixed Penalty Notices (FPNs), Community Protection Warnings (CPWs) and Community Protection Notices (CPNs) in the city for the offences detailed in section 5 of the Framework in Appendix 1
- enable the council to be more responsive to commercial waste offences and to incidents of fly-tipping encourage behavioural change to reduce environmental crimes
- minimise waste clean-up and disposal costs

3.2 The Environmental Enforcement Framework is reviewed on a regular basis to consider additional offences to be included to address anti-social and illegal behaviour and to minimise waste clean-up and disposal costs. This update includes additional offences for inclusion in the Environmental Enforcement Framework following the public consultation on flyposting and stickering enforcement measures and household waste bin and box offences.

4. Flyposting and stickering

4.1 Flyposting is putting up posters or sticker on properties, lampposts, telephone boxes or other structures on the streets, without consent. Examples include:

- Sticking posters onto boarded up shops advertising an event
- Attaching a poster to lamppost advertising a business
- Putting stickers onto road signs showing political statements

4.2 Flyposting and stickering looks unsightly and costs the council thousands of pounds to remove. At present, Fixed Penalty Notices (FPN) are issued to those witnessed flyposting. For a FPN to be issued, an Environmental Enforcement Officer must witness the crime being committed which is difficult, as evidenced by the number of FPNs issued:

- 2019/20: 16
- 2020/21: 2
- 2021/22: 8

4.3 Under Section 43 of the Anti-Social Behaviour Crime and Policing Act 2014, Community Protection Warnings (CPWs) and Community Protection Notices (CPNs) can be issued to an individual aged 16 or over, or a body, if satisfied on reasonable grounds that: a) the conduct of the individual or body is having a detrimental effect, of a persistent or continuing nature, on the quality of life in the locality, and b) the conduct is unreasonable.

4.4 It is considered that flyposting and stickering:

- is having a detrimental effect on the quality of life of those in the locality: this activity is criminal and anti-social and can lead to other anti-social activities such as graffiti
- is a persistent or of a continuing nature: even after posters and stickers are removed, they do reappear meaning council resources are continually used to remove them
- is unreasonable: fly-posting and stickering is unlawful and the council has to use its limited budgets to continually pay for its removal

4.5 By issuing CPWs and CPNs to the individuals and bodies responsible for the flyposting, the council can seek to improve the cleanliness of the city as this is a much more cost-effective way than issuing FPNs.

4.6 A public consultation on introducing this new enforcement approach was held from 8 June to 14 August 2022. The consultation sought views on the introduction of CPWs and CPNs to tackle flyposting across the city.

- 4.7 There were 77 responses to the consultation, 90% of which were residents of Brighton & Hove. The results have been analysed and are provided in more detail in Appendix 2. The high-level results show:
- 67.5 % of respondents strongly agreed or tended to agree that flyposting and stickering are a problem in Brighton & Hove
 - 59.7% of respondents strongly agreed or tended to agree that flyposting and stickering have a detrimental effect on the quality of life of those in the locality
 - 63.6% of respondents strongly agreed or tended to agree that the council should introduce a new way to enforce against those responsible for flyposting and stickering
 - 64.9% of respondents strongly agreed or tended to agree that a FPN of £100 or prosecution through the Magistrate's Court should be issued to those not complying with the CPN, depending on the number of posters or stickers put up
- 4.8 Some respondents provided additional feedback. This is detailed in Appendix 2.
- 4.9 Based on the results of the consultation, it is recommended that the new approach for addressing fly posting is incorporated into the Environmental Enforcement Framework as per Appendix 1. An Equality Impact Assessment of this new approach is contained in Appendix 3.

5. Household waste bins and boxes

- 5.1 Under Section 46A of the Environmental Protection Act 1990, the council can issue a Fixed Penalty Notice (FPN) when a household is causing harm to the local environment by not following the rules relating to household waste bins and boxes (receptacles). This includes:
- When it causes, or is likely to cause a nuisance, or
 - When it has a negative effect or is likely to have a negative effect on local amenities
- 5.2 Examples include:
- When a bin or box is causing an obstruction, forcing pedestrians and those using wheelchairs or buggies to walk on the road
 - When a bin or box restricts access to the pavement or street by being left out for several days, including bags of waste
 - When a bin or box is likely to attract vermin, such as leaving bags or open bins out for many days before a collection is due
- 5.3 The consultation proposed that where a bin or a box was causing harm to the local environment, a three-stage process, following government guidance, would be introduced to address the issue.
- 5.4 The consultation ran from 12 July to 28 August 2022. There were 770 responses to the consultation, 97% of which were residents of Brighton & Hove; 89.4% of which use bins and boxes for their rubbish and recycling.

- 5.5 The results have been analysed and are provided in more detail in Appendix 4. The high-level results show:
- 62.4 % of respondents strongly agreed or tended to agree that household waste bins are causing a nuisance, or having a negative effect on local amenities, in their local area
 - 65.7% of respondents strongly agreed or tended to agree that household waste bins are causing a nuisance, or having a negative effect on local amenities, in Brighton & Hove
 - 68.3% of respondents strongly agreed or tended to agree that the council should introduce measures to address household waste bins causing a nuisance, or having a negative effect on local amenities
 - 55.1% of respondents strongly agreed or tended to agree with the proposal described
 - 52.2% of respondents strongly agreed or tended to agree that a FPN of £80 should be issued if the request to fix the problem is not resolved
 - 53.5% of respondents strongly agreed or tended to agree that, where possible, residents should store their bins and boxes in their back gardens, if there is no room on the pavement, except in exceptional circumstances
- 5.6 The results were also analysed by respondents that did use bins and boxes for their waste and those that didn't to better understand the views of the residents potentially affected by the proposals. The percentages that strongly agree or tend to agree are affected by whether a respondent has adequate outside storage space.
- 5.7 Of those that do not have adequate outside storage space at the front to store their bin or box:
- 56.7% of these respondents strongly agreed or tended to agree that household waste bins are causing a nuisance, or having a negative effect on local amenities, in their local area
 - 59.1% of these respondents strongly agreed or tended to agree that household waste bins are causing a nuisance, or having a negative effect on local amenities, in Brighton & Hove
 - 57.1% of these respondents strongly agreed or tended to agree that the council should introduce measures to address household waste bins causing a nuisance, or having a negative effect on local amenities
 - 34.7% of these respondents strongly agreed or tended to agree with the proposal described
 - 34.8% of respondents strongly agreed or tended to agree that a FPN of £80 should be issued if the request to fix the problem is not resolved
 - 34.8% of these respondents strongly agreed or tended to agree that, where possible, residents should store their bins and boxes in their back gardens, if there is no room on the pavement, except in exceptional circumstances
- 5.8 Of those that do not have a back garden or outside area:

- 58.5% of these respondents strongly agreed or tended to agree that household waste bins are causing a nuisance, or having a negative effect on local amenities, in their local area
- 60.5% of these respondents strongly agreed or tended to agree that household waste bins are causing a nuisance, or having a negative effect on local amenities, in Brighton & Hove
- 39.0% of these respondents strongly agreed or tended to agree that the council should introduce measures to address household waste bins causing a nuisance, or having a negative effect on local amenities
- 37.5% of these respondents strongly agreed or tended to agree with the proposal described
- 39.0% of these respondents strongly agreed or tended to agree that a FPN of £80 should be issued if the request to fix the problem is not resolved
- 39.0% of these respondents strongly agreed or tended to agree that, where possible, residents should store their bins and boxes in their back gardens, if there is no room on the pavement, except in exceptional circumstances

5.9 Some respondents provided additional feedback. These have been themed and are detailed in Appendix 4.

5.10 Based on the results of the consultation, it is recommended that the approach to address household waste bin and box offences is incorporated into the Environmental Enforcement Framework as per Appendix 1. This states that enforcement action will be taken when:

- the household has adequate private outside storage space, and the receptacle(s) is not stored within it
- the receptacle(s) is causing an obstruction, such as forcing pedestrians and those using wheelchairs or buggies to walk on the road, and there is adequate storage space on the property
- the receptacle(s) restricts access to the pavement or street, for example leaving receptacles out for several days, including bags of waste
- the receptacle(s) is likely to attract vermin like foxes and rats, such as leaving bags or open receptacles out days before a waste collection
- the receptacle(s) is unsightly (torn bags or overturned receptacles are left out)

5.11 Adequate private outside storage space includes:

- an outside area including: front garden, driveway, front patio area, back garden (accessible without needing to take the receptacle through the house)
- a front patio area over a small lip / step
- space available if taken up three steps or fewer

5.12 The approach in the Framework differs slightly from the proposal within the consultation. An Equality Impact Assessment of this new approach is contained in Appendix 5. The approach has been amended due to the

responses received in relation to question 6, which asked “*to what extent do you agree or disagree that, where possible, residents should store their bins and boxes in their back gardens, if there is no room on the pavement, except in exceptional circumstances?*” Based on the feedback, there is not an expectation for residents to take their receptacles through their house to store in their gardens, unless they choose to do so. If the back garden is accessible without needing to go through the house, there is an expectation that the back garden is used to store receptacles, if there is no outside space at the front.

- 5.13 It is important to note that a proportionate approach will be taken, accounting for local circumstances, such as available room to store a bin and Protected Characteristics. The council acknowledges that household bins and boxes are issued to household where, in some circumstances, the only option is to store them on the highway. Also, a FPN will only be issued when the first two stages have not been adhered to. Some indicative examples are contained in Appendix 6.
- 5.14 Cityclean recognises that some households have no other option but to store their bin or box on the pavement. The rollout of further communal bins, to further reduce the number of bins and boxes on the street, is being considered through another project within the Modernisation Programme.

6. Alternative barbecue provision

- 6.1 At its meeting on 15 March 2022, the Environment, Transport & Sustainability Committee approved to stop the use of single-use, disposable barbecues and the release of lanterns and balloons in or on council-owned parks, open spaces and the seafront. Members requested that officers bring a future report, *outlining alternative provisions (such as, but not limited to; permanent communal barbecue pits), that could be provided to allow residents without gardens or outdoor spaces the opportunity to enjoy barbecues.*
- 6.2 Alternatives to single use barbecues include:
- metal barbecue stations which use coal;
 - concrete barbecue stations which use coal;
 - electric barbecue stations.
- Appendix 7 sets out the costs of alternatives to single use barbecues, as well as a series of other considerations.
- 6.3 There is no budget available for the purchase, maintenance or repair of barbecues. There is also no capacity to take on additional project work. Therefore, it is recommended that Committee notes the research completed into alternative approaches to single use barbecue provision in Appendix 7.
- 6.4 The current barbecue bins are being reviewed to ensure they are fit for purpose.

7. Analysis and consideration of alternative options

- 7.1 The changes to the Environmental Enforcement Framework proposed in this report are based on the outcomes of two public consultations. Committee can choose not to add these offences to the Framework and this will mean offences will be carried out, but there are no enforcement measures in place to tackle them.
- 7.2 The alternative options for barbecue provision are detailed in Appendix 7. The recommendation is to note the research. Committee could ask for alternative barbecue provision to be introduced in Brighton & Hove. This decision will need to be taken alongside the identification of an appropriate budget to purchase, maintain and repair the barbecues, along with resource to employ staff to complete these activities.

8. Community engagement and consultation

- 8.1 The results of the community consultation exercises are presented within the main body of the report.
- 8.2 The co-chairs of committee, along with two City Environment officers met with representatives from Brighton Active Travel, Community Works, Hove Civic Society, Living Streets Brighton & Hove and Possability People to discuss the consultation. They were supportive of measures to improve the accessibility of pavements for those wheeling or walking. Concerns were raised about penalising residents who are not causing the problem. It was explained that criteria would be in place to identify cases where action is required, and this is detailed in the Framework in Appendix 1. Additional work is required in terms of a wider strategy for waste receptacles and collections as not all streets with wheelie bins and boxes are suitable. It was explained that another project is looking at this, which includes the potential rollout of further communal bins. They asked how this would be communicated to residents. Cityclean will look to use the existing channels, such as the website and social media, as well as stakeholder groups, such as the ones in the meeting, to share with their networks.
- 8.3 The Framework will continue to be regularly reviewed to consider stakeholder feedback and any changes will be brought to Committee for approval.

9. Conclusion

- 9.1 The Environmental Enforcement Service delivers the objectives as detailed in section 3.1. To enhance this, additional offences have been identified for including in the Framework based on the feedback from two public consultations.
- 9.2 The research into alternative barbecue provision has been provided following Committee's decision to stop the use of single-use, disposable barbecues and the release of lanterns and balloons in or on council-owned parks, open spaces and the seafront.

10. Financial implications

- 10.1 There are no direct financial implications arising from the recommendations of this report. Costs associated with the consultations and research into alternative approaches to single use barbecue provision are maintained within existing City Clean Budgets. Any surplus income from Fixed Penalty Notices, are legally ring fenced to support specific environmental purposes.
- 10.2 Enforcement will be carried out within existing resources, but any additional spend is expected to be funded from additional income and any significant variation to budget will be reported as part of the council's monthly budget monitoring process.

Name of finance officer consulted: John Lack Date consulted: 01/11/2022

11. Legal implications

- 11.1 The statutory bases for taking enforcement action are set out in the Environment Enforcement Framework.

Name of lawyer consulted: Alice Rowland Date consulted: 02/11/2022

12. Equalities implications

- 12.1 Equality Impact Assessments have been prepared for both proposed offences. These are available in Appendix 2 (fly posting) and Appendix 4 (household waste).
- 12.2 The enforcement measures relating to receptacle offences, a proportionate approach will be taken, accounting for local circumstances, such as available room to store a bin and Protected Characteristics.
- 12.3 As per the Environmental Enforcement Framework, a FPN will not be issued when enforcement action is inappropriate. This may include when the offender is vulnerable; for example, someone who is a rough sleeper or suffers from a mental impediment.

13. Sustainability implications

- 13.1 Environmental enforcement activities improve the environment by reducing littering, dog fouling, fly-tipping, graffiti, fly-posting and littering associated with flyers. Enhancing the Environmental Enforcement Framework allows the council to further protect the environment from these detrimental activities.

14. Crime & disorder implications:

- 14.1 Environmental enforcement activities address illegal and anti-social behaviour and has a beneficial impact on crime and disorder.

Supporting Documentation

Appendices

1. Revised Environmental Enforcement Framework with tracked changes
2. Outcomes of consultation: flyposting and stickering
3. Equality Impact Assessment: fly posting and stickering
4. Outcomes of consultation: household waste bin offences
5. Equality Impact Assessment: household waste bin offences
6. Examples of bin and box storage
7. Alternative barbecue provision

