

# Prevention of Engine Idling

For Cabinet on 29<sup>th</sup> July 2021

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## Summary

**Lead Member and Portfolio Holder:** Cllr Alan McDermott

**Lead Director:** Lee Colyer

**Head of Service:** Jane Fineman

**Report Author:** John Strachan

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**Wards Affected:** All

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Management Board	23 <sup>rd</sup> June 2021
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## Recommendations

The recommendation is to trial for 6 months, the use of existing Littering Enforcement Officers to approach drivers who are stationary with their engines idling and advise them of the illegality of their behaviour and its impact on the environment. They would ask the driver to turn off their engine, but in the event a driver refuses, no enforcement action, through the issue of a FPN would take place.

# 1. Introduction and Background

1.1 This report has been produced to clarify the Borough Council's position in respect of nuisance and the environmental impact of idling vehicles following comments and questions from Council members and members of the public.

1.2 The issue of idling vehicles was raised at full Council on 23 September 2020, where Officers were asked to consider whether "Council enforcement staff should be used to enforce the existing law against anti-social drivers who leave their engines running".

1.3 This report considers the current legislation, actions already taken and measures in place, together with proposals for further action, some of which would be operated on a trial basis.

## 2. Air Quality Management Area and Action Plan

2.1 It is widely recognised that emissions from vehicles play a large part in poor air quality which can exacerbate health problems such as heart and lung disease. As well as emitting NO<sub>2</sub> and particulates, vehicle fumes also contain CO<sub>2</sub> which contributes towards climate change. Idling vehicles can emit more pollution than a vehicle moving at 30mph.

2.2 Under the Environment Act 1995 and the Local Air Quality Management framework, Tunbridge Wells Borough Council has a statutory duty to review and assess air quality within its borough and take the necessary actions to improve areas of poor air quality. If Air Quality Objectives (AQO) for key pollutants are exceeded, an Air Quality Management Area (AQMA) must be declared. The Council declared an AQMA in 2005 covering much of the A26, which was extended in 2011 and amended in 2018 to include parts of the A264 and A267.

2.3 An Air Quality Action Plan was adopted by Tunbridge Wells Borough Council in March 2019 with a Climate Emergency being declared by the Council in July of the same year.

2.4 The Air Quality Action Plan includes a number of specific actions categorised in three main themes – Transport, Planning and Public Health. The action detailed in Transport Priority 8 is to 'Reduce idling of engines whilst stationary with focus on Taxis, coaches/buses and HGV's.' The action included an option to extend to anti-idling campaigns outside schools located near the AQMA.

## 3. Legislation

3.1 A stationary idling offence under the Road Traffic (Vehicle Emissions) (Fixed Penalty) (England) Regulations 2002, hereafter referred to as the 2002 Regulations, is defined to be a contravention of, or failure to comply with Regulation 98 of the Road Vehicles (Construction and Use) Regulations 1986 (stopping of engine when stationary) as relates to the prevention of exhaust emissions. The Regulation 98 offence, driver failing when the vehicle is stationary to stop the running of the engine of that vehicle, is contrary to Section 42 of the Road Traffic Act 1988 (as substituted by the Road Traffic Act 1991).

3.2 The 2002 Regulations are made under Section 87 of the Environment Act 1995. Under the 2002 Regulations powers are given to Local Authorities to issue Fixed Penalty Notices (FPNs) to drivers who allow their vehicle engines to run unnecessarily while the vehicle is parked, if they fail to comply with a requirement to stop the running of the engine of that vehicle. The Regulations cover all vehicles including cars, taxis, buses and all commercial vehicles.

3.3 Designation from the Secretary of State is not required for the enforcement of stationary idling offences. A Local Authority can authorise any officer of its authority, or any other person, to stop the commission of a stationary idling offence and to issue a FPN in respect of such an offence committed in its area.

3.4 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 would only ever be issued in limited circumstances where a driver refuses to switch off an engine when asked to do so by an authorised officer/person. The guidance also recommends that a ‘common sense’ approach is taken by officers when using the powers under the Regulations.

3.5 There are exempted circumstances where vehicles are permitted under Regulation 98(2) of the Road Vehicles (Construction and Use) Regulations 1986 and these apply to the 2002 Regulations:

- (a) when the vehicle is stationary owing to the necessities of traffic;
- (b) so as to prevent the examination or working of the machinery where the examination is necessitated by any failure or derangement of the machinery or where the machinery is required to be worked for a purpose other than driving the vehicle; or
- (c) in respect of a vehicle propelled by gas produced in plant carried on the vehicle, to such plant.

3.6 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.

3.7 Local Authorities can retain the income generated from the FPNs. However, the amount of income would be minimal as FPNs would only be issued as a last resort.

3.8 There is no formal appeal route under the Regulations although, it is required the notice 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 the 28<sup>th</sup> day 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.

3.9 Where an FPN remains unpaid after the maximum period allowed of 56 days after service, and a request for a Hearing hasn't been made within the specified time the Regulations state that 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).

## **4. Actions to Date**

4.1 A Clean Air for Schools (CAFS) project has been run by Mid-Kent Environmental Health across the boroughs of Tunbridge Wells (TWBC), Maidstone (MBC) and Swale (SBC). It has been extremely successful in introducing air quality to pupils and teachers, promoting our anti idling campaign and encouraging the school to consider how their individual behaviour can help to improve the air quality in their local community. Over 80 primary schools have been engaged with.

4.2 In partnership with Canterbury City Council a Department for Environment, Food and Rural Affairs (DEFRA) grant has been awarded to develop a 'digital resource' which will allow primary school children to learn about air quality in a fun and engaging way. Educational messages around 'anti idling' will be included within the resource.

4.3 Anti-idling signage has been erected by Mid-Kent Environmental Health on lighting columns in strategic places across the Borough with this being targeted at locations near schools, traffic signals and other places where traffic either queues on a regular basis or vehicles are frequently stationary. The latter includes the central station near the taxi rank in Mount Pleasant Road.

4.4 To date, no enforcement action has been taken in the Borough in respect of anti-idling laws and no officers have been authorised to issue Fixed Penalty Notices (FPNs) for this offence. When advised about specific or recurring instances of vehicles idling for lengthy periods, in particular buses, Environmental Health officers have engaged with the vehicle operator.

## **5. Options Available**

5.1 Three options are considered to be available:

5.2 Option One - continue the current campaigns, providing education and raising public awareness rather than enforcement, with the opportunity to extend and expand these campaigns through additional signs in identified hotspots and where complaints or requests are received.

5.2 Option Two - use Littering Enforcement Officers to undertake regular enforcement patrols using the existing anti-idling legislation outlined previously in this report. In the event of a driver's refusal to turn their engine off, a FPN would be issued.

5.3 Option Three - use Littering Enforcement Officers carrying out their normal enforcement roles, to approach drivers of stationary vehicles whose engines are idling, ask them to switch off their engines and advise them of the illegality of their behaviour and its impact on the environment. This would just be a request and if the driver refused, no enforcement action, through the issue of an FPN would be taken. Compliance would be monitored for a trial period of 6 months, after which a review would take place.

## Consideration of Options

5.4 Option One would continue current initiatives in place within minimal financial and operational implications. This option will continue to educate and raise awareness of the issue of engine idling, though it would not provide direct action against offending drivers. It is proposed that Option One would continue to operate in parallel and in support, should Option Two or Option Three be chosen.

5.5 Option Two would be a formal Boroughwide enforcement activity as outlined earlier in this report, through the issue of FPNs to drivers who refuse to turn off idling engines. The enforcement would take place only in exceptional circumstances where, upon being asked to turn off an idling engine, the driver refuses to do so.

5.6 Option Two has significant operational and financial implications:

- Additional Enforcement staff and administrative staff would be required to patrol and manage appeals and debt collection.
- A new software module would be required to process vehicle idling FPNs, with the associated consultancy costs and annual maintenance costs.
- Additional printing stock for the new idling FPN and associated enforcement documentation.
- Training for specialist enforcement and processing staff.
- Cost of registration of cases at the County Court.
- Potential legal representation to deal with appeals through the Magistrates' Court system

A budget would need to be allocated as this work could not be accommodated within existing budgets.

Even if there are high levels of non-compliance and refusals to turn idling engines off, the statutory FPN level of £20 will not make any significant contribution towards the costs of carrying out this work.

5.7 Option Three would, for an initial 6-month trial period, see Littering Enforcement Officers making drivers aware of the harm being caused through allowing an engine to idle unnecessarily and advising that it is an offence to do so. They would be asked to switch off their engine and a record could be kept of the levels of compliance.

5.8 It is envisaged that adopting Option Three would utilise existing Littering Enforcement Officers, already trained and deployed to carry out littering enforcement patrols. These officers would require basic training in the legislative powers around engine idling, so that they could explain these arrangements to the public. They would carry out regular patrols to

locations where idling problems are known to exist and targeted patrols in respond to complaints and requests from the public.

5.9 Aside from the issue of a £20 FPN for non-compliance, Option Three could achieve all of the outcomes offered by Option Two without the financial and operational implications of the FPN route, which as was explained earlier in this report, would only happen in exceptional circumstances.

## **Officer Recommendation**

The Officer recommendation is for Option Three, which would enable the Council to take action to tackle the problem of engine idling while having a minimal operational and financial impact on the Council over a 6-month trial period. This option would give an opportunity to gain invaluable insight into the scale of the issue of engine idling in the Borough and the effectiveness of the Council's actions.

## **6. Cross Cutting Issues**

### **A. Legal (including the Human Rights Act)**

Choosing Option Two may require Legal Services action to deal with challenges to FPNs through the Magistrates' Court system

### **B. Finance and Other Resources**

The Financial and Operational implications are set out at 5.6 of this report. The council must identify savings to its revenue budget due to the impact of the Covid pandemic, so must prioritise spend carefully to provide excellent value for money. Option Three is the most cost effective option and at the 6-month review it will be possible to establish whether it has had the desired effect on driver behaviour

### **C. Staffing**

Staffing implications are set out at 5.6 and 5.8 of this report

### **D. Risk Management**

Option Two presents a risk of additional operational costs to the Council that would not be recovered from the revenue income from a small number of £20 FPNs

## **E. Environment and Sustainability**

All of the three options offered in this report would, to a degree, benefit public health and the environment through a reduction in vehicle emissions

## **F. Community Safety**

Action to tackle engine idling will help to reduce this anti-social behaviour

## **G. Equalities**

There are no equality issues identified by this report

## **H. Data Protection**

Under option two personal data will be collected and processed in accordance with the existing framework managing data protection

## **I. Health and Safety**

Carrying out additional enforcement activity is likely to have additional health and safety implications to staff who would not otherwise necessarily engage with the public. These can be mitigated through additional risk assessments and specialised training

## **J. Health and Wellbeing**

The reduction of vehicle emissions will improve the health and wellbeing of residents and the wider community