



Joint Enforcement Team- Environmental Crime Enforcement Policy

Version	V1
Date Drafted	14/04/2023
Date Issued	
Document Status	Issued
Document Adoption Date	
Review Frequency	Annually
Owner	Martin Cole
Authors	Martin Cole
Authorised by	Jackie Taylor

Joint Enforcement Team
(JET) The White House
Depot Kingston Road
Ashford
TW15 3SE

Contents

1.	Introduction.....	3
2.	Enforcement Options	4
2.1.	No Action.....	4
2.2.	Informal Action	4
2.3.	Fixed Penalty Notices	4
2.4.	Simple Cautions.....	6
2.5.	Prosecutions.....	7
3.	Corporate Priorities and Values.....	8
3.1.	Consideration prior to taking Enforcement Action.....	8
3.2.	Request for Personal Details by an Authorised Officer.....	11
4.	Evidence	12
5.	Persistent Offenders.....	13
6.	Juveniles (person aged under 17).....	13
6.1.	Vulnerable Persons	14
7.	Payment of Fixed Penalties.....	14
8.	Non-payment of Fixed Penalties	15
9.	Authorisation.....	15
10.	External Partners.....	15
11.	Core Offences.....	16
11.1.	Pedestrian Litter.....	16
11.2.	Abandoning a Vehicle	17
11.3.	Nuisance Vehicles.....	18
11.4.	Dog Control PSPO.....	19
11.5.	Graffiti	20
11.6.	Fly-Posting	20
11.7.	Fly-Tipping	22
11.8.	Duty of Care Offences - Commercial.....	24
11.9.	Industrial and Commercial Waste	24
11.10.	Breach of Duty of Care - Householders.....	25
12.	Control of Litter and Refuse.....	26
12.1.	Community Protection Notices	27
12.2.	Controlling the Distribution of Free Literature	29
12.3.	Abandoned Shopping Trolleys.....	29
12.4.	Psychoactive Substances PSPO	29
13.	Spelthorne Borough Council byelaws.....	30
13.1.	River Thames Moorings.....	30
13.2.	Abandoned Boats or Vessels	32
14.	Current and Future Legislation	32
15.	Protecting Our Staff	33
16.	Media Arrangements.....	33
17.	Recovering of Costs	33
18.	Equality and Diversity.....	33
19.	Customer Feedback and Complaints.....	34
20.	Monitoring and Review of Policy.....	34
21.	Appendix- Current Spelthorne Borough Council byelaws.....	35

1. Introduction

This policy sets out the general principles that the Council intends to follow in relation to the enforcement and prosecution of environmental crimes investigated by Spelthorne Borough Council's Joint Enforcement Team (JET).

In the first instance, the Council's preferred action is to secure compliance through education and information. Enforcement action will require authorised officers to follow set procedures and protocols to ensure consistency in the collection of evidence and the enforcement actions applied. These actions represent a zero tolerance to environmental crime but will not always require prosecution action.

Publicity for the policies and procedures in place will be ongoing with appropriate leaflets, posters, articles in Council publications, web pages and school education. Enforcement action should only be taken if there is evidence of an offence having taken place and, in those circumstances, where individuals or businesses commit serious breaches, flout the law, where it would otherwise have an adverse effect upon community confidence, where the offence although not serious in of itself is widespread in the area, or where the offender refuses to work with us to seek compliance.

If the Council receives information that an environmental crime is or will take place, then this will be reported to the Police using the relevant partner intelligence form and if possible mobile CCTV will be deployed to the area along with the requisite signs with a view to disrupting the activity or obtaining evidence sufficient for enforcement action to be considered.

The Council has the power to take appropriate enforcement action against persons that commit a variety of environmental crimes. The following are the core offences upon which action will be taken, although not exclusive:

- Littering (including littering from vehicles)
- Abandoned and nuisance vehicles
- Dog Fouling
- Fly tipping
- Graffiti/Flyposting
- Duty of care offences- Business and household
- Dog Control and Psychoactive substances PSPO offence
- Waste carrier licence and waste transfer notice offences
- Scrap Metal Collector offences
- Failure to comply with a Community Protection Notice

This list is not exhaustive and represents the most common offences and may be added to as legislation is updated or amended.

2. Enforcement Options

2.1. No Action

In some cases, no action will be taken, and these are cases where there is little or no evidence or where the offender has fully co-operated with information given in accordance with the Enforcement Policy. In all cases the offender will be advised in writing of the decision.

2.2. Informal Action

Informal action includes verbal or written warnings and requests for remedial action. It may involve offering advice, information, and assistance to ensure compliance with legislation.

Informal action will be taken when one or more of the following apply:

- The act or omission is not serious enough to warrant formal action
- The consequence of non-compliance will not pose a significant risk to public health
- Confidence in the individual/business management is high
- Past history indicates that informal action is likely to achieve compliance
- Other mitigating circumstances apply

When an informal approach is used, any written warning should contain the following information: date, time and location of the alleged offence, personal details of the alleged offender, the nature of the offence and relevant legislation. It should also contain all information to understand what work is required and the reasons. The warning should be signed and dated upon issuing by the investigating officer.

2.3. Fixed Penalty Notices

It is not the intention of this policy to be prescriptive as to when a fixed penalty notice should be issued; authorised officers must consider each set of circumstances when reaching a decision to ascertain if the issue of a fixed penalty notice is appropriate. A fixed penalty notice (FPN) may only be issued where an officer has reason to believe a person has committed a relevant offence and that there is sufficient evidence to provide a reasonable prospect of conviction if prosecuted. If a notice is unpaid, then the only recourse would be to prosecute the individual for the offence.

A FPN may be issued to persons who have committed a small-scale relevant offence; payment of the FPN will discharge the original offence for which the individual cannot then be prosecuted, provided that full payment is received within the specified period.

FPNs provide enforcement agencies with an effective and visible way of responding to low level environmental crime. The public generally welcomes the use of FPNs provided they are issued sensibly, enforced even-handedly, and are seen as a response to a genuine problem.

FPNs will not normally be issued to juveniles (see Section 8)

It is essential for the issuing of a fixed penalty notice that the authorised officer collects adequate evidence to support any legal proceedings if the notice is returned unpaid.

The current list of Environmental Offences for which authorised officers issue a fixed penalty notice are shown at the end of this section.

The fixed penalty notice must contain the following information: date, time and location of the offence, personal details of the offender, the nature of the offence and relevant legislation, and be signed and dated upon issuing by an authorised officer.

The notice will clearly state that by opting to pay the fixed penalty the Council will take no legal action for the prescribed offence, providing that the payment is received within 14 days of the issuing of the notice.

Current Environmental Crime Enforcement FPN Levels

Description of offences	Act	Fixed Penalty amount	Maximum Penalty on conviction
Depositing Litter (Includes illegal disposal of waste)	Section 87/88 Environmental Protection Act 1990	£80	£2,500
Fly Tipping	Section 33(1) Environmental Protection Act 1990	£400	Magistrates Court an unlimited fine or 12 months imprisonment. Crown Court an unlimited fine or up to 5 years imprisonment.
Graffiti	Section 43(1) Anti-Social Behaviour Act 2003	£80	Dependent on legislation used
Fly Posting	Section 43(1) Anti-Social Behaviour Act 2003	£80	£2,500
Sale of two or more vehicles on the highway within 500 metres	Part 2 Section 3 Clean Neighbourhoods and Environmental Act 2005	£100	£2,500

Repair of vehicles on the highway	Part 2 Section 4 Clean Neighbourhoods and Environmental Act 2005	£100	£2,500
Unauthorised distribution of free printed matter	Schedule 3A, paras 1(1) and 7 Environmental Protection Act 1990	£80	£2,500
Breach of duty of care in relation to controlled waste	Section 34(1) Environmental Protection Act 1990	£300	Unlimited fine
Breach of duty of care in relation to Household waste	Section 34(2A) Environmental Protection Act 1990	£200	Magistrates and Crown Court unlimited fine
Failure to produce Waste Transfer Note(s)	Part 5 CNEA 2005. Environmental Protection Act 1990 and Regulation 35 of the waste (England and Wales) Regulations 2011, Section 34(5)	£300	Unlimited fine
Failure to produce Waste Carriers Licence	Section 58(2) of the control of Pollution Act 1989	£300	Unlimited fine
Abandoning a vehicle	Part 2 CNEA 2005 Refuse Disposal Amenity Act 1978	£200	£2,500
Failing to comply with a Community Protection Notice	Section 48 Anti-social behaviour, Crime and Policing Act 2014	£100	£2,500 Individual £20,000 Business

2.4. Simple Cautions

The Council may consider the offer of a simple caution. The purpose of a caution is to.

- Deal quickly and simply with less serious offences
- Divert less serious offences away from the courts
- Reduce the chance of repeat offences

As with all types of enforcement action, the alleged offender will be required to supply the officer with their personal details. These details cannot be used to issue any other type of enforcement action for that offence; however, they can be used in conjunction with future enforcement action.

The decision whether to offer a simple caution or higher-level enforcement action will relate to the nature of the offence and the attitude of the alleged

offender.

The following conditions must be fulfilled before a caution is administered:

- There must be evidence of the alleged offender's guilt sufficient to provide a realistic prospect of conviction
- The alleged offender must admit the offence
- The alleged offender must understand the significance of a caution and give informed consent to be cautioned

If there is insufficient evidence to prosecute, then a simple caution will not be considered.

There is no legal obligation for a person to accept the offer of a caution and no pressure should be applied to the person to accept one, however full information will be disclosed to the offender as to the consequences of the refusal. If an offender refuses to accept a simple caution, a prosecution should normally be pursued.

Simple cautions must contain the following information: date, time and location of the alleged offence, personal details of the alleged offender, the nature of the offence and relevant legislation. It must be signed and dated by an authorised officer and must be issued using a notice which also includes the signature of the offender agreeing to accept a caution.

The Group Head Neighbourhood Services or nominated deputy will be authorised to issue simple cautions.

2.5. Prosecution

In certain cases, prosecution through the courts may be the most appropriate course of action, or where other enforcement actions have had no effect.

A prosecution will likely follow when:

- A Fixed Penalty Notice is issued to an alleged offender is unpaid after the 14-day payment period.
- An offence is of a size or nature where other enforcement actions are insufficient.
- Previous actions have failed and there is no option for other enforcement action.
- The nature of the offence is deemed to be in the interest of the public.
- The offence has a serious or significant impact on the environment.

In all cases considered for prosecution the evidence of the offence must provide a realistic prospect of conviction in Court and be in the public interest to prosecute an alleged offender. The Group Head of Corporate Governance

or nominated deputy is authorised to instigate legal proceedings after thorough consideration by the Council's legal representatives of the file.

3. Corporate Priorities and Values

The Council takes the following corporate priorities and values into consideration when determining the expediency and necessity of enforcement action against Environmental Offences.

The priorities for the 2021 - 2023 focus on:

C - Community

A - Affordable housing

R - Recovery

E - Environment

S - Service delivery

Our values, ethos and ways of working will inform and underpin everything that we do:

P - Pride in our Council, communities, and Borough

R - Responsive and flexible

O - Open and accountable

V - Value for money

I - Integrity

D - Dependable

E - Empowering communities

Our priorities and values are outlined in more detail in the Corporate Plan 2021 - 2023 which can be found here:

<https://www.spelthorne.gov.uk/article/16732/Corporate-publications>

Underlying this policy are the principles of: -

- proportionality in applying the law and securing compliance.
- consistency of approach.
- transparency about how the Service operates.
- accountability in accordance with the guidance provided by central government.
- and targeting of enforcement action.

Proportionality

Proportionality means related enforcement action to the risks. Those whom the law protects and those on whom it places duties, authorised officers expect that action taken by enforcing authorities, to achieve compliance, should be proportionate to any risks to public health, safety, the environment, the rights of others and to the seriousness of any breach or offence.

Consistency

Consistency means taking a similar approach in similar circumstances so that any person being investigated or dealt with by our officers would expect a certain level of consistency from an enforcing authority when:

- i. Issuing words of advice, verbal warnings or taking no further action
- ii. Written warnings
- iii. Issuing Fixed Penalty Notices
- iv. Simple Caution
- v. Deciding to prosecute

Transparency

Transparency is about the Council being open and clear about its enforcement activities and in particular helping authorised officers, and individuals understand what is expected of them and what they can expect from the Service. It also means making it clear about what they must do, but also, where this is relevant, what they do not have to do. That means distinguishing between what is a statutory requirement as opposed to what is advice or guidance about best practice.

Accountability

Accountability means that authorised officers should be responsible for their enforcement actions and conduct. They should undertake their duties in a courteous and efficient manner and procedures are in place to allow individuals the opportunity to provide feedback and make complaints about the standard of service.

Targeting

Targeting means making sure that enforcement is targeted primarily on those whose activities give rise to the most serious risk or where the hazards are least well controlled. The Environmental risk will ensure that action is focused on the Council officers who are responsible for the risk and best placed to control it by the effective use of Enforcement tools and powers.

3.1. Consideration prior to taking enforcement action

Several factors must be taken into consideration prior to any enforcement action.

Human Rights Act 1998

When deciding whether to take enforcement action, the Council will pay due regard to the Human Rights Act 1998 and to the requirement not to act in a way which is incompatible with any relevant convention rights which are the right to a fair trial, right to respect for private and family life, prohibition of discrimination and protection of property. These rights are qualified rights which means that, when considering enforcement action, the Council will balance the rights of those who may have committed an Environmental offence against those affected by the offence, including the community at large.

Public Sector Equality Duty (Equality Act 2010)

A public authority must, in the exercise of its functions, have due regard to the need to-

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act.
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

For the purposes of the provisions of this Section, pregnancy and maternity, age, gender reassignment, disability, race, religion or belief, sex and sexual orientation are all protected characteristics. That question in every case is whether the decision maker has in substance had due regard to the relevant statutory need, to see whether the duty has been performed.

The Council's obligation is to have due regard to the need to achieve these goals in making its decisions. Due regard means to have such regard as is appropriate in all the circumstances.

The Council must consider if formal enforcement action to remedy harm is wholly appropriate and proportionate. If an Environmental Crime requires further investigation, then the subsequent investigation must be proportionate.

In any event, if human rights or public sector equality rights are potentially affected, the Council must consider that the public interest factors outweigh any potential interference.

Enforcement action will be generally retrospective to the alleged offence being committed although minor breaches of the regulations if witnessed at the time can be dealt with by way of words of advice or a verbal warning. Informal actions

such as words of advice and verbal warnings will be recorded by an Officer in his official notebook.

The Council's standard procedure (subject to the above legislation) will be to issue Fixed Penalty Notices, Community Protection Notices, Warnings and Simple Cautions, Interview under caution requirement to attend the Council Offices or interview under caution letter through the post. Delivery will be by recorded delivery or hand delivered.

It is therefore essential that the evidence and information collected by the investigating officer must be of an adequate standard to support any resultant legal action (paragraph 4 applies)

3.2. Request for Personal Details by an Authorised Officer:

Authorised officers investigating offences to which this policy applies are entitled to ask a person suspected of committing such an offence to provide their name and address. If a person refuses to provide their name and address or provides a name and address that the authorised officer reasonably believes to be false, then the authorised officer should contact the Police and ask that a Police Officer or Police Community Support Officer attend and make the request to the person again.

Failing to supply a name and address or giving a false name and address to a Police Officer or PCSO is an offence Contrary to S.50 Police Reform Act 2002 and if the Police consider prosecution, then if convicted a person may be liable to a fine not exceeding £1000 (current level 3 scale).

If a person under investigation has provided a name and address then confirmation of their identity can be confirmed through the Electoral Register where personal details can be checked against the electoral roll (but this will not include juveniles), company records. Where appropriate, assistance from partners may be required via use of the services provided by National Anti-Fraud Network (NAFN) which can provide Officer's with DVLA registered keeper checks and Experian type checks on Individuals to ascertain a current address and date of birth. These checks are subject to the relevant criteria as laid down by NAFN and must be complied with, these checks and usage of the systems are subject to regular audits. Upon confirmation of the alleged offender's personal details, the appropriate enforcement action can then be taken.

The Data Protection Act 2018 and the UK General Data Protection Regulations - The Council is the data controller for this data which will be processed under the lawful basis for processing of Legal Obligation or Public Task (depending on the circumstances) and retained in accordance with our retention schedule which is available on the council's website see below hyper-link for the current schedules.

<https://www.spelthorne.gov.uk/article/16835/Retention-Schedules>

4. Evidence

Evidence is the key to the enforcement procedure. The recording and storage of this evidence must be carried out in a concise and consistent manner and in accordance with the Police and Criminal Evidence Act to ensure its admissibility in Court. Evidence collected by investigating officers will come in various forms, from various sources and, dependent on its quality, could be used in a variety of enforcement actions.

A locked evidence room will be used. All evidence will be clearly logged and recorded and held in accordance with provisions of the Data Protection Act 2018 and UK General Data Protection Regulations (GDPR).

Evidence that is obtained by an investigating officer 'in the field' will be recorded contemporaneously in ink in a PACE notebook. All entries must be clear and precise.

Evidence obtained by use of Body Worn Cameras or CCTV will be in accordance with existing policy and procedure.

Evidence may also be in the form of:

- **Addressed documents**
Evidence gathered in relation to an offence, can come in the form of an addressed document, which may relate to the person believed to have committed the offence (e.g., when household waste is found to be fly tipped, an investigating officer will search the waste for any documentation which may relate to the person responsible). Any relevant evidence found will be photographed in situ where practicable and then seized and exhibited.
- **Witness statement from an investigating officer**
When enforcement action is taken against an alleged offender, where an investigating officer has witnessed the offence occurring, that officer will have to produce a witness statement.
- **Witness statement from other persons**
Evidence received from members of the public can be used to issue formal cautions, Fixed Penalty Notices, or other enforcement action. For the evidence to be of value the witness must be willing to attend court to give evidence if that becomes necessary. Any statement made by a witness must be signed and dated by the witness and witnessed by the authorised officer at the time of taking of the statement. Statements will be recorded on forms prepared to comply with evidential procedures.
- **Interview of alleged offenders**
The Police and Criminal Evidence (PACE) Codes of Practice require any person interviewed regarding his involvement or suspected involvement in

a criminal offence must be under caution, otherwise the evidence will be inadmissible in court. This caution must be carried out before any questions are put to the person suspected of the offence regarding the offence. PACE interviews will only be undertaken by trained persons and included in staff training plans.

No juvenile (a person aged under 17) or mentally impaired person (as defined by Section 1A of the Mental Health Act 1983) should be interviewed without an appropriate adult being present. This could include parent, social worker, or carer.

- Interview under caution by letter
It may be necessary to try to interview the suspect by way of correspondence. In this way it will be possible to write to the suspect under caution asking them relevant questions, providing them with copies of any evidence, photos etc. that the Council seek to rely on and giving them a time by which to reply.

5. Persistent Offenders

To ensure that the enforcement procedure is fair and consistent, persistent offenders will be dealt with as follows.

Where an informal action has been recorded on a previous occasion, and a further offence is committed on a separate occasion, no further warnings will be issued.

Where a simple caution has been issued on a previous occasion, and a further offence is committed on a separate occasion, no further cautions will be issued. On acceptance of the caution, the alleged offender understands that any future infringement of the law will result in further enforcement action. In these cases, the next likely course of action would be to either issue a Fixed Penalty notice or institute legal proceedings.

A person may be issued with up to two Fixed Penalty Notices in total. If found to have infringed the law on a third separate occasion no further penalty notices will be served upon that person (except in very exceptional circumstances) and court proceedings will be instigated.

6. Juveniles (person aged under 17)

When a juvenile is alleged to have committed an offence the name, address, age, and date of birth of the suspected offender should be obtained, together with the name and address of his or her parent or legal guardian. Once the age of the offender has been ascertained, the correct course of action can then be followed.

For offenders between 10 and 15 years old, The Department of Environment,

Food and Rural Affairs (DEFRA) guidelines state that a fixed penalty should not normally be issued in the first instance. Alleged offenders under 10 are below the current age of criminal responsibility, but if such an offender has been identified then efforts must be made to inform the child's parents.

Legally Fixed Penalty Notices can be issued to anyone over the age of 10 and authorities are recommended to adopt special procedures for issuing notices to young offenders. This ensures that they are acting in accordance with their duty under the Children Act 2004, which requires that authorities have regard to the need to safeguard and uphold the welfare of children and to seek the introduction of a non-financial, non-criminal, restorative justice scheme as an alternative to FPN payment.

For offenders aged 16 or 17 years old, a Fixed Penalty Notice can be issued using the same procedure as for adults.

6.1. Vulnerable Persons

Applying enforcement options

When deciding which enforcement option to apply, several factors need to be considered, including: the seriousness of the offence, previous conduct of the offender, likelihood to re-offend and impact of the offence on others.

In certain circumstances outlined below, further consideration will be given to the appropriate action that should be taken in relation to an offence.

Dealing with vulnerable people

It is recognised that normal enforcement procedures are not appropriate in all circumstances, and that individual circumstances such as mental health, disability issues must be considered when deciding on any appropriate action.

7. Payment of Fixed Penalties

When a Fixed Penalty Notice has been issued, the alleged offender has 14 days within which to make the full payment amount. Spelthorne Borough Council do not offer a discounted rate for Environmental FPN's.

Payment of the fixed penalty notice will normally be made in one of three ways:

- by debit or credit card over the phone to the Council Offices
- by cheque or postal order through the post
- Via the- Pay a fixed penalty notice FPN option on www.spelthorne.gov.uk

Payment of FPN by instalments will not normally be accepted. Although Instalments may be allowed where demonstrable hardship is proven.

Appeals cannot be made against the issue of a Fixed Penalty Notice. This is

because the issue of such a penalty requires an admission of guilt on behalf of the alleged offender and the notice allows the offender to avoid any further liability in respect of an alleged offence once paid. If a Fixed Penalty Notice is challenged or disputed, then as shown below the matter should be treated as one of non-payment and consideration given to legal proceedings being instituted.

8. Non-payment of Fixed Penalties

If a Fixed Penalty Notice remains unpaid after the 14-day period has elapsed, the alleged offender will be sent a reminder letter. This letter will state the terms of the penalty payment, along with a copy of the original FPN, and the fact that the deadline has now passed.

If the Fixed Penalty Notice remains unpaid for a further period of 14 days after the reminder letter, then, a file will be put together to enable legal proceedings to be instigated. All unpaid penalties will normally be followed up by legal proceedings.

9. Authorisation

The statutes enforced by the Council require that the enforcement officers be duly authorised.

Authorised officers will be either:

- i) an employee of the Council who is authorised in writing by the Council for the purpose of giving notices under the relevant legislation.
- ii) any person who, in pursuance of arrangements made with the Council, has the function of giving such notices and is authorised in writing by the Council to perform that function; or
- iii) any employee of such a person who is authorised in writing by the authority for the purpose of giving such notices.

It is essential that officers are correctly authorised, so that any action taken on behalf of the Council is lawful. Authorised officers will be trained on how to gather evidence that will be in accordance with judicial requirements and on conflict avoidance techniques when dealing with alleged offenders.

The authorisation will identify the officer by name and position, will describe the legislation that the officer is authorised to enforce and will be signed by a delegated senior officer on behalf of the Council.

10. External Partners

The Council will seek support from Surrey Police and other agencies within the Spelthorne Borough Community Safety Partnership, Environment Agency, Keep Britain Tidy, DEFRA, Surrey County Council, A2 Dominion and other registered social landlords, Staines Business Improvement District (BID) and local businesses for support in the delivery of this policy.

Where there is a need for the Council to share enforcement information/intelligence with other agencies, the Council will follow the provisions of the Data Protection Act 2018.

11. Core Offences

11.1. Pedestrian Litter

There is no formal definition of litter, however Section 87 of the Environmental Protection Act 1990 (as amended by the Clean Neighborhoods and Environment Act (CNEA 2005) defines the offence of littering as the throwing down, dropping or depositing of litter on any land and would include litter deposited by people in vehicles, including land covered by water, and leaving it. The land must be within the area of a principal litter authority and 'open to the air' (if the land is covered, but open to the air on at least one side, the offence only applies if the public has access to that land). Littering is an offence in public places as well as on private land unless the owner of that land has given permission for the dropping of the litter, or a legal authorisation exists to do so. A litter offence can be prosecuted through a magistrates' court and carries with it a maximum fine of level four on the standard scale (currently £2,500).

The CNEA 2005 also makes it clear that litter includes smoking-related litter and discarded chewing gum.

In every case where the action of littering has been witnessed or there is other firm evidence, then in the first instance a written warning letter may be issued depending on the severity of the littering or by the issue of FPN in lieu of prosecution. This allows some discretion with the authorised officer as to their course of action.

The policy applies to dropped/thrown litter in any open place in Spelthorne.

Offences observed on overt CCTV or via Officers body worn cameras will be pursued where identity can be obtained.

On a case-by-case basis, authorised officers may, choose to consider the placing of bags of rubbish (where evidence can be found) as littering. Public urination may also be regarded as a littering offence.

Penalty

In lieu of prosecution for a litter offence the alleged offender will be given the opportunity to discharge any liability to conviction for the offence by the payment of a fixed penalty of £80.

11.2. Abandoning a Vehicle

Under S.3 Refuse Disposal (Amenity) Act 1978, a person commits an offence if they, without lawful authority, abandon on any land in the open air, or on any land forming part of a highway, a motor vehicle or anything that has formed part of a motor vehicle.

S.2a of the same act (as inserted by the Clean Neighbourhoods and Environment Act 2005) allows local authorities to issue Fixed Penalty Notices to persons alleged to have committed such an offence (if the offence is relatively minor) or prosecute them.

There is no legal definition of an abandoned vehicle. Council authorised officers will check the following when forming decisions on abandonment using guidance issued by the Department of Environment, Farming and Rural Affairs (DEFRA)

- road tax and MOT status
- If there is a registered owner
- The roadworthiness of the vehicle
- Parked in a place likely to be a danger to other road users (Police have an immediate removal power)
- Vehicle has been left at location for a period of currently 2 months and 1 day
- Vehicle is burnt out, extensively damaged or in a dangerous condition
- Other Environmental factors

Notice of immediate, 7- or 15-day removal will be issued after consideration by authorised officers as to the location and state of a vehicle.

Vehicles can be removed immediately, but some must be stored for a certain length of time and notice served before disposal.

For vehicles that the local authority considers having some value, the written notice period to the last registered keeper before a vehicle must be disposed of is seven days. The local authority may dispose of the vehicle as they see fit. For example, they can sell it at an auction or have it destroyed at an authorised treatment facility.

Vehicles that the Council considers having no value can be destroyed immediately if it is thought that they have been abandoned. The Council no longer must wait for the expiry of a valid licence and may destroy immediately any

vehicle that it regards as only fit for destruction. In cases where it is not evident that the vehicle has been abandoned, the vehicle can then be disposed of if the owner cannot be traced or fails to respond to a notice.

Vehicles with some value that have been abandoned on the highway may be removed immediately by the Council who then send a 21-day notice to the address of the last registered keeper (a subsequent notice of 14 days may be issued to enable the local authority to make further enquiries).

The Council reserves the right to recover costs of removal, storage, and disposal from the person responsible for abandoning the vehicle.

The Council must also issue a 15-day notice to the owner or occupier of the intention to remove abandoned vehicles on private land. The landowner or the occupier must agree with this removal. The Council reserve the right to recharge the cost of doing so to the registered keeper (if one has been identified).

The Government guidance outlining the Council responsibilities can be found on the below hyperlink.

<https://www.gov.uk/guidance/abandoned-vehicles-council-responsibilities>

Penalty

If found guilty of abandoning a vehicle on a highway or on land in the open air, a person can be fined up to £2,500.

In lieu of prosecution for an abandoned vehicle offence, the Council will give an alleged offender the opportunity to discharge any liability to conviction for the offence by the payment of a fixed penalty of £200.

11.3. Nuisance Vehicles

The CNEA 2005 make it an offence to leave two or more motor vehicles parked within 500 metres of each other on a road or roads where they are exposed or advertised for sale, or to cause two or more motor vehicles to be so left. This only applies to persons who are carrying out a business of selling motor vehicles.

The CNEA 2005 also makes it an offence to carry out restricted works (repair, maintenance, servicing, improvement, or dismantling) on a motor vehicle on a road. This only applies to persons who are running a business of carrying out restricted works or for gain or reward.

Authorised officers will only be able to take enforcement action, including the removal of a vehicle, for nuisance vehicles on a public road or highway.

Penalty

A person found guilty of a nuisance vehicle offence can be fined up to £2,500, or a term of not exceeding three months imprisonment, or both.

There are few instances of this offence in Spelthorne, however, the right is reserved and where action is required then in lieu of prosecution for a nuisance vehicle offence, to give an alleged offender the opportunity to discharge any liability to conviction for the offence by the payment of a fixed penalty of £100.

11.4. Dog Control - PSPO

Regulation for offences relating to dog offences are dealt with under Part 4, Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014.

The Spelthorne Public Spaces Protection Order (Dog Control) order came into on 2 January 2021 and will remain in force for a period of 3 years unless extended by a further order under the Councils Statutory powers; A further period of consultation would be required to extend the order. The current order creates the following provisions: -

- i) Dogs' exclusion areas
- ii) Dog Fouling
- iii) Professional dog walkers limit to four dogs
- iv) Dogs on lead by direction
- v) Dogs on lead
- vi) Carrying suitable means for the proper disposal of dog faeces

The full order and exemptions are shown on below link.

Penalty

In lieu of prosecution for a dog related offence under this PSPO, the Council will give an alleged offender the opportunity to discharge any liability to conviction for the offence by payment of a Fixed Penalty Notice of £100 to be paid within 14 days. If prosecuted the maximum fine is currently set at £1000.

The full Dog Control PSPO can be viewed via the below hyperlink.

<https://www.spelthorne.gov.uk/article/20314/Public-Space-Protection-Order-dog-control>

11.5. Graffiti

The tackling of graffiti will continue to be monitored using ongoing processes in partnership with all Council services, Police, and other partners. Offensive or racial graffiti will be removed from Council assets within 24 hours where practicable.

Section.43(1) Anti-social Behaviour Act 2003 (ASSA 2003) allows the Council to issue Fixed Penalty Notices to persons who commit 'minor' graffiti offences as an alternative to prosecution (except where the offence is racially or religiously motivated). The offence(s) must be witnessed, or substantial proof obtained as to the identity of the offender.

Penalty

In lieu of prosecution for a graffiti offence, the Council reserve the right to give an alleged offender the opportunity to discharge any liability to conviction for the offence by the payment of a fixed penalty of £80 within 14 days.

A failure to discharge a fixed penalty notice could result in consideration being given to prosecute for offences of:

- I. Section 1 (1) Criminal Damage Act 1971
A person who without lawful excuse destroys or damages any property belonging to another intending to destroy or damage any such property or being reckless as to whether any such property would be destroyed or damaged shall be guilty of an offence.
- II. Section 131 (2) Highways Act 1980
If a person without lawful authority or excuse pulls down or obliterates a traffic sign placed on or over a highway or a milestone or direction post (not being a traffic sign) so placed is guilty of an offence
- III. Section 132 (1) Highways Act 1980
A person who, without either the consent of the highway authority or an authorisation given by or under enactment or a reasonable excuse, paints or otherwise inscribes or affixes any picture, letter, sign, or other mark upon the surface of a highway or tree, structure or works on or near a highway is guilty of an offence.

11.6. Flyposting

There is no formal definition of fly posting, although it is taken to be the display of advertising material on buildings and street furniture without the consent of the owner and contrary to the provisions of the appropriate legislation. In simple terms they are illegal advertisements which can saturate an area within a matter of hours.

It is appropriate for a distinction to be drawn between, for example, a poster

advertising a local community or charitable event and a poster advertising a commercial activity.

Regulation 3(1-4) of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 allows the display of temporary notices or signs which are intended to advertise any local event being held for charitable purposes.

Advertisements within this category must not exceed 0.6 square metres in area. (Roughly 3 feet by 2 feet). In addition, the advertisement must not be displayed more than 28 days before the event and must be removed within 14 days after it ends.

1. The signs must be kept clean and tidy
2. The signs must be kept in a safe condition
3. The signs should have the permission of the asset owner
4. The signs should not obscure road signs.

Applications from charities or local organisations will be accepted on this basis, providing permission has been granted from the asset owner or landowner.

There are various legislative powers available to the Council for tackling fly posting problems. The Council will take appropriate action against those responsible for fly posting. In the first instance we will endeavour to make informal contact with offenders and request removal of items within 24 hours. Offenders will also be given advice on processes for application of legal advertising and signage and be made aware of the enforcement actions which can be taken. Failure to respond advice will result in further appropriate action.

Under Section 225, Town, and Country Planning Act 1990, it is possible to remove any placard or poster displayed in contravention of the Town and Country Planning (Control of Advertisements) Regulations 1992. Notice is not required where the fly post does not identify the person who displayed it and where the person cannot be identified after enquiry. Where a person can be identified, two days' notice must be given for the removal of illegal posters and placards. Failure to comply with a notice will result in removal of the signage.

Persistent offences and/or where an offender has had two notices of removal, the Council will seek to prosecute, with offenders upon conviction, subject to a fine of up to £2500.

All Estate Agents in Spelthorne have been previously sent a letter warning them that for sale, for let, sold, let or any other estate agent sign will be removed if attached to Council land, the highway or roadside property. Persistent offenders will be dealt with as outlined below.

S.43(1) Anti-Social Behaviour Act 2003 (ASBA 2003) allows the Council to serve a £80 Fixed Penalty Notice on persons who commit fly posting offences as an alternative to prosecution (except where the offence is racially or religiously motivated). The offences must be witnessed, or substantial proof obtained as to

the identity of the offender.

Failure to pay a FPN may result in prosecution, which can be considered using the following legislation: -

Section 220-224, Town & Country Planning Act 1990 If any person displays any advertisement in contravention of the regulations, he shall be guilty of an offence. If prosecuted the maximum fine in the Magistrates Court is currently £2500.

11.7. Fly Tipping

There is no specific definition of fly-tipping other than that set out in section 33 of the Environmental Protection Act 1990 (EPA), which says it is an offence in general terms, to treat, keep or dispose of controlled waste other than in accordance with an environmental permit or in a manner likely to cause pollution of the environment or harm to human health.

It is generally recognised though that one black bin bag or above full of waste would constitute an offence of fly-tipping.

The offence may only be committed in relation to controlled waste, although nearly all wastes now qualify as controlled waste (household, commercial, industrial, or clinical).

Illegal dumps of waste can vary in scale and the type of waste involved. Tipping a mattress, electrical items, or a bin bag full of rubbish in the street causes a local nuisance, and tipping household items and small-scale building or garden waste in open spaces reduces their amenity value to the community.

The powers to deal with fly tipping incidents are shared between local authorities and the Environment Agency. The National Fly Tipping Protocol (agreed between the Environment Agency and LGA) gives guidance on which authority should take the lead in dealing with fly tips dependent on their size, composition, and location.

The national fly-tipping protocol can be found via the below hyperlink.

[Fly-tipping-responsibilities-Guide-for-local-authorities-and-land-manage....pdf \(tacklingflytipping.com\)](#)

All incidents of fly-tipping must be reported (requirement to send quarterly figures to DEFRA) and investigated, however the Council is only able to remove fly tipped material from "Relevant land" - land that is open to the air (notwithstanding that it is covered if it is open to the air on at least one side), which is under direct control of a principal litter authority (Spelthorne Borough

Council) and to which the public are entitled or permitted to have access, with or without payment (EPA section 86(4)).

The Council must also ensure that any "relevant highway" for which it is responsible, as far as is practicable, is kept clear of litter and refuse (EPA section 89(1) (a)). A "relevant highway" is one that is maintainable at public expense, but not a trunk road which is a special road. A local council is responsible for so much of the highway as falls within its area (section 86(9)). In Spelthorne, all fly-tipping on highways will be reported to the relevant authority for clearance. The responsible authorities are Surrey County Council or National Highways. The Council will investigate such matter and act upon any recovered evidence that identifies an offender.

Land managers, occupiers or owners of private property are responsible for clearing and disposing of any fly-tipping found on private land. Further details can be found on the below hyperlink.

<https://www.tacklingflytipping.com/landowners/1500>

Vehicles concerned in fly-tipping.

In all cases of fly-tipping where a vehicle has been used to transport the waste then the Council will consider seizing the vehicle pending the outcome of a fly-tipping investigation and subsequent prosecution.

If a person is convicted of a fly-tipping offence and the Council have previously seized a vehicle then in all cases the Council will ask the Court for a forfeiture Order and if granted the Council will dispose of the vehicle, full details can be found on the below hyperlink.

[Local authorities: seizing vehicles for suspected waste crime - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

Criminal Behaviour Orders

If a person is convicted of a fly-tipping offence, then the Council may also consider asking the Courts to impose a Criminal Behaviour Order (CBO) in relation to the convicted person.

To obtain a CBO, the Council must satisfy the Court to the criminal standard of proof - beyond all reasonable doubt that: -

An offender has engaged in behaviour that caused or was likely to cause harassment, alarm, or distress and the making of such an order will help in preventing the offender from engaging in such behaviour.

A CBO can prohibit a person from doing anything described in the order and/or require an offender to do anything described in the order. A CBO for a person under 18 can last between 1 and 3 years and in relation to a person over 18

between 2 years and an indefinite period, the maximum order is likely to be 10 years.

Any breach of a CBO in a Magistrates' Court can carry a penalty of imprisonment not exceeding 6 months or a fine or both and in the Crown Court a period of imprisonment not exceeding 5 years a fine or both. See below link for the legislation in relation to CBOs

<https://www.legislation.gov.uk/ukpga/2014/12/part/2/enacted>

Penalty

In lieu of prosecution for a fly tipping offence the Council reserve the right to give an alleged offender the opportunity to discharge any liability to conviction for the offence by the payment of a fixed penalty to the maximum allowed by statute -The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 introduced the fixed penalty, and the maximum fixed penalty currently stands at £400 and must be paid within 14 days.

The maximum penalty if prosecuted is currently an unlimited fine and/or a term of imprisonment in a Magistrates Court with a maximum of 12 months and in a Crown Court a maximum of 5 years.

11.8. Duty of Care Offences - Commercial

Section 34(1) of the Environmental Protection Act 1990 sets out the waste duty of care that applies to anyone who imports, produces, carries, keeps, treats, or disposes of controlled waste or, as a broker has control of such waste.

Penalty

In lieu of prosecution for a breach of duty of care (commercial) offence the Council reserve the right to give an alleged offender the opportunity to discharge any liability to conviction for the offence by the payment of a fixed penalty to the maximum allowed by statute currently £300 if paid within 14 days. The maximum penalty if prosecuted is an unlimited fine.

Section 53 of the CNEA 2005 extends the powers of section 108 of the Environment Act 1995 (powers of enforcing authorities) to investigate illegal waste disposal or duty of care offences to authorised council officers.

11.9. Industrial and Commercial Waste

It is an offence to place trade (industrial) or commercial waste into street or domestic litter bins and all businesses must have a trade refuse collection agreement with a contractor authorised to carry waste or be the holder of an

Environment Agency Lower Tier Waste Licence and dispose of the waste in the specially designated Local Authority Recycling Centre.

Businesses will receive advisory visits on a planned basis or as reports are received of waste and associated litter issues.

Businesses are legally obliged to keep any waste resulting from their activities safe whilst in their possession. The Council will seek to act on the following duty of care offences: -

- o **34 (1) (b) Failing to take reasonable steps to prevent escape of controlled waste**

All businesses must ensure their waste is stored in appropriate containers so that it cannot fall out, blow away or escape. The waste should also be secured against unauthorised removal and secure from animals, vandals, thieves, accident, or weather.

- o **34 (1) (c) Failing to take reasonable steps to ensure that a transfer of the waste is to an authorised person or to a person for authorised transport purposes; and accompanied by a waste transfer note**

Waste can only be passed on to an authorised person and the producer must retain a waste transfer note that sets out certain details of the waste.

Where offenders are identified, amendments to section 34, by the CNEA 2005, make it an offence when a person has failed to perform their duty to provide the necessary authority for transporting waste.

As part of the education process, businesses will be asked to provide the relevant waste transportation documents at the time of visit and the Council will allow that person 14 days within which to produce the documentation or provide proof that the waste contract has been signed.

If the documentation is not produced within 14 days and in lieu of prosecution for failing to produce the necessary authorisation for transporting waste, the Council will give an alleged offender the opportunity to discharge any liability to conviction for the offence by the payment of a fixed penalty of £300.

A business or waste carrier found guilty of failing to provide the necessary authority for transporting waste can be liable to an unlimited fine.

11.10. Breach of Duty of Care - Householder

It is an offence contrary to s.34 (2A) Environmental Protection Act 1990 (as inserted by The Waste (Household Waste Duty of Care) (England and Wales) Regulations 2005 if a householder does not take all available measures available to ensure that all domestic waste is transferred to an authorised person for

disposal. The authorised persons are: -

- i) Any authority which is a waste collection authority
- ii) Any person who is the holder of a waste management licence or of a disposal licence under section 5 of the Control of Pollution Act 1974
- iii) Any person to whom section 33(1) above does not apply by virtue of regulations under subsection (3) of that section or by virtue of S.2 of the Pollution Prevention and Control Act 1999
- iv) Any person registered as a carrier of controlled waste under section 2 of the Control of Pollution (Amendment) Act 1989
- v) Any person who is not required to be so registered by virtue of regulations under section 1(3) of that Act.

Householders employing a contractor to remove waste from their property (such as garden or building waste) have a duty to take reasonable measures to ensure that their waste is passed on to an authorised person as outlined above. The duty emphasises the responsibility that residents must not support illegal waste transfer and fly tipping, whether knowingly or unknowingly.

Evidence found in fly tipped rubbish will be used to identify the owner. In the first instance, where practicable. A process of education and awareness will be implemented as a preferred course of action along with a warning letter. However, in more serious cases an FPN as outlined above or even prosecution may be considered.

Penalty

In lieu of prosecution for a Household Breach of Duty of Care offence the Council reserve the right to give an alleged offender the opportunity to discharge any liability to conviction for the offence by the payment of a fixed penalty of £200, which must be paid within 14 days. The maximum penalty if prosecuted is an unlimited fine.

Section 53 of the CNEA 2005 extends the powers of section 108 of the Environment Act 1995 (powers of enforcing authorities) to investigate illegal waste disposal or duty of care offences to authorised council officers.

12. Control of Litter and Refuse

Authorised officers will ensure that businesses are made aware of any litter or refuse concerns that are or become apparent because of their business activities such as those shown below

- Street litter outside premises including food and drink packaging and other litter from 'fast food' outlets and mobile operations or litter from cash machines.

The Anti-social Behaviour, Crime and Policing Act 2014 replaced councils' powers to issue Litter Clearing Notices, Street Litter Control Notices and Graffiti/Defacement removal notices with new, more flexible powers to issue Community Protection Notices or Public Space Protection Orders, to tackle any type of anti-social behaviour which is having a detrimental impact on the quality of life in the local community. Currently Spelthorne Borough Council has two PSPO's - Dog Control as outlined above at 11.4 above and the Possession of Psychoactive Substances is dealt with below.

12.1. Community Protection Notices

Section 43(1) of the 2014 Act gives the Council the power to issue a community protection notice (CPN) to an individual aged 16 year or over or body if they are 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 of those in the locality and
- b. the conduct is unreasonable.

A community protection notice is a notice that imposes any of the following requirements on the individual or body issued with it: -

- a. a requirement to stop doing specified things.
- b. a requirement to do specified things.
- c. a requirement to take reasonable steps to achieve specified results.

So as can be seen from the legislation the conduct has to have a detrimental effect which is persistent and unreasonable. The Council must in the first instance issue a written warning, this is a requirement of the Act. The written warning can specify whatever conditions appear reasonable to the Council to put a stop to the unreasonable behaviour and specify a timescale with which to comply with the warning.

If the warning notice is not complied with, then a Community Protection Notice can be issued with the same or varied conditions upon which the individual or company must comply with.

S.47 of the 2014 Act also gives the Council the power to carry out remedial work if an individual or company has failed to comply with any required work listed within the CPN. The Council can then invoice the person/company for the works carried out.

Unlike the warning a CPN can be appealed to the Magistrates Court within 21 days of issue if the individual believes that any of the following apply:

- (a) the behaviour did not take place
 - (b) has not had a detrimental effect on the quality of life of those in the locality
 - (c) has not been of a persistent or continuing nature,
 - (d) is not unreasonable, or
 - (e) is conduct that the person cannot reasonably be expected to control or affect.
- That any of the requirements in the notice, or any of the periods within which or times by which they are to be complied with, are unreasonable.
 - That there is a material defect or error in, or in connection with, the notice.
 - Or that the notice was issued to the wrong person.

The Magistrates on hearing an appeal can: -

- (a) quash the notice,
- (b) modify the notice (for example by extending a period specified in it), or
- (c) dismiss the appeal.

An appeal within 21 days can also be made in relation to any remedial work Completed by the Council and invoiced to an individual or company if it is considered to be excessive. The Magistrates on hearing an appeal can: -

- (a) Confirm the amount,
- (b) Substitute a lower amount

To issue a CPN the behaviour must be as outlined above but the evidential standard is that of the Civil Standard of Proof which is on the balance of probabilities.

Any breach of the CPN requires the Criminal Standard of proof, which is beyond all reasonable doubts, the penalty for breaches is shown below.

Penalty

Cases will be considered on their own individual basis and in lieu of prosecution for failing to comply with a Community Protection Notice, the Council can give an alleged offender the opportunity to discharge any liability to conviction for the offence by the payment of a fixed penalty of £100. The maximum fine if prosecuted not exceeding £2,500 (in case of an individual) and £20,000 (in the case of a body/business).

See below link for the legislation on relation to Community Protection Notices.

[Anti-social Behaviour, Crime and Policing Act 2014 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2014/12)

12.2. Controlling the Distribution of Free Literature

The CNEA 2005 gives local authorities the power to control the distribution of free literature by designating areas of their own land or highways where free literature is only permitted with their consent.

At this time anyone distributing free material in a designated area without consent (except charities or for political purposes) is committing an offence and, if found guilty, could be fined up to £2,500.

The Council will consider complaints received about the distribution of free literature and assess whether it is appropriate to make an order to restrict the distribution of free literature. If such an order were to be made, in lieu of prosecution for a distribution of free literature offence, the Council will give an alleged offender the opportunity to discharge any liability to conviction for the offence by the payment of a £80 Fixed Penalty Notice.

The Council will continue to advise any persons/businesses who distribute free literature in the borough that excess litter caused as a result may result in the issue of a Fixed Penalty Notice (Section 11.1 Pedestrian Litter above refers)

12.3. Abandoned Shopping Trolleys

Abandonment of shopping trolleys has become more of an issue in Spelthome and informal arrangements with retailers exist for their recovery. In other instances, authorised officers report the abandoned trolley to Trolley Wise via their website and they will attend, remove the trolley and repatriate to the store on payment of a fee.

There are no current provisions for issuing FPNs for abandoned trolleys.

12.4. Psychoactive Substances - NOS Cannisters - Public Space Protection Order

Regulation for offences relating to psychoactive substances- NOS cannisters are dealt with under Part 4, Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014. This section provides that a local authority may make a public spaces protection order,

The Council has made such an Order which came into force on 28 May 2021 and will remain in force for a period of 3 years unless extended by a further order under the Councils Statutory powers; A further period of consultation would be required to extend the order.

The Public Space Protection Order (PSPO) makes it an offence if a person fails without reasonable excuse to comply with any requirement of a constable or an authorised officer: -

a) To cease consumption of a psychoactive substance or anything which the

- constable or authorised officer reasonably believes to be a psychoactive substance or
- b) To surrender anything in their possession which is, or which the constable or authorised officer reasonably believes to be a psychoactive substance or a container for a psychoactive substance

see below hyperlink which details the full PSPO order.

[Public Space Protection Order Consultation - legal highs - Spelthorne Borough Council](#)

Penalty

In lieu of prosecution for a psychoactive substance related offence under this PSPO, the Council will give an alleged offender the opportunity to discharge any liability to conviction for the offence by payment of a Fixed Penalty Notice of £100 to be paid within 14 days which would discharge any liability to conviction for an offence under Section 67(1) of the Act. If prosecuted the maximum fine is currently set at £1000.

See below link for full details of the legislation relating to Public Space Protection Orders: -

[Anti-social Behaviour, Crime and Policing Act 2014 \(legislation.gov.uk\)](#)

13. Spelthorne Borough Council - Byelaws for Pleasure Grounds, Public and Open Spaces

Spelthorne Borough Council has a set of local Byelaws which restrict certain activities within the Council's Pleasure Grounds, Public Walks and Open Spaces. Any breach of these byelaws can result in prosecution and a maximum £500 fine (a full list of the byelaws can be found at appendix 1).

Authorised Officers patrol the areas to which the byelaws apply, and any detected breaches can result in prosecution but for minor breaches words of advice or a verbal warning would normally suffice. Repeat offenders are likely in the first instance to receive a written warning and thereafter probably considered for prosecution.,

13.1. River Thames Moorings

Spelthorne Borough Council provides several public mooring sites which are all clearly signposted and are currently located at: -

Lammas Park, Staines (part of bank only, see signs at location)
Staines Bridge, Staines
Memorial Gardens, Staines (Old Town Hall and beside hotel sites only)
Dockett Eddy Lane, Shepperton

Shepperton Lock, Shepperton
Lady Lyndsay's Lawn, Shepperton
Walton Lane, Shepperton
Kings Lawn, Sunbury

Owners and Master of Boats and vessels may moor at these sites for a maximum of 24-hours in any 48-hour period. Authorised officers will affix a warning notice to a boat or vessel that overstays or returns during the relevant period. Thereafter if the notice is ignored then the master or owner will likely be prosecuted.

Further action will not however be taken if any of the following circumstances apply:

- i. The vessel has broken down and the master/owner has or is in the process of arranging repairs. The fact that the vessel has broken down must be reported to Spelthorne Council by email - neighbourhoodservices@spelthorne.gov.uk or by telephone 01784 446411. The master/owner must provide details of the boat, mooring location, perceived problem, date, time and who has been contacted to repair the vessel and proposed timescale, maximum time allowed is 7 days.
- ii. Sudden unforeseen illness or injury resulting in receiving treatment at a hospital or incapacitation due to an injury or illness. Death of owner/master or other person in charge of the vessel again in these circumstances the owner or master or other responsible person must inform the Council as above.
- iii. The River Thames Conditions are such that a vessel is unable to leave the mooring (see attached link for the Environment Agency River Thames Conditions site). Authorised officers will continue to monitor boats/vessels during periods where the river conditions prevent movement and master/owners will be expected to check the river conditions daily and move off when safe to do so.
- iv. Spelthorne Borough Council has several sites which clearly state no mooring permitted. Any vessel moored on such a site will in the first instance receive a warning notice. If the boat remains after the notice has been issued, then a prosecution for a breach of the byelaws would be the outcome. The exemptions as listed at i-iii above may also be applicable but on a case-by-case basis.
- v. If a boat or vessel moors on any other area of the river Thames which is owned or managed by Spelthorne Borough Council, then under current Navigation rules a maximum period of 24 hours will be allowed and once again the exemptions as laid out above would apply.

For the latest information on the current river Thames conditions please use below hyperlink.

13.2. Abandoned Boats or Vessels

Any boats or vessels moored to Council Land that reasonably appear to an authorised officer to be abandoned will be investigated and details of the owner/master sought from partner agencies. In any event a preliminary notice will be issued under section.6 Refuse Disposal (Amenity) Act 1978- Removal and disposal of other refuse. This notice will give the owner/master a maximum of 7 days to remove the boat or vessel.

If the boat remains in situ after the 7-day notice has elapsed, then a final notice under the same legislation giving the owner/master a maximum final 7 days to remove the boat or vessel will be issued.

The prescribed notice will be attached to the vessel in a prominent position.

Any boat or vessel that remains in situ after the final 7-day notice has expired will be subject to removal and disposal by the Council. The Council will then seek to recover its costs from the identified master or owner of the boat or vessel.

14. Current and Future Legislation

The Council may also seek to take action to tackle all environmental crime using other existing statutes on a case-by-case basis for which action will be in accordance with this enforcement policy.

Together with our partners, we will make full use of relevant legislation including but not limited to:

- Anti-Social Behaviour Crime and Policing Act 2014
- Anti-Social Behaviour Act 2003
- Section 59 Environmental Protection Act 1990
- Section 215 Town and Country Planning Act Section 22 (3)
- Control of Pollution Act 1974
- Section 6 Refuse Disposal (Amenity) Act 1978
- Crime and Disorder Act 1998
- The Data Protection Act 2018 and the UK General Data Protection Regulations 2018
- Equalities Act 2010
- Housing Acts 1985, 1996 and 2004
- Environmental Protection Act 1990
- Clean Neighbourhoods and Environment Act 2005

- Refuse Disposal (Amenity) Act 1978
- Mental Health Act 1983 (amended 2007)
- Human Rights Act 1998
- Freedom of Information Act 2000
- Proceeds of Crime Act 2002
- Police and Criminal Evidence Act 1984

The council will use all reasonable endeavours to develop and publish revised procedures necessary to implement any future Environmental Legislation and/or additional legal powers.

15. Protecting Our Staff

Spelthorne Borough Council will not tolerate, under any circumstance, any threats, violence or abusive behaviour towards our staff or contractors. We will take firm action against any person who shows acts of aggression towards any person carrying out their work in respect of this Policy or any other service. We will involve the police if it is decided that this action is appropriate.

16. Media Arrangements

Where possible and if it is deemed to be in the wider community interest, we will publish the outcomes of court results where the Council has undertaken prosecutions.

17. Recovery of Costs

The Council will seek to recover the costs of any environmental crime investigation undertaken by the Council. Any monies recovered will be reused in-line with the current Government guidance.

18. Equality and Diversity

We are committed to promoting equality and diversity and ensuring that all our customers are treated fairly considering their individual needs. We will take all reasonable steps to ensure we do not unlawfully discriminate and will treat everyone with the same level of courtesy, dignity, and respect regardless of:

- Disability.
- Age.
- Gender reassignment
- Pregnancy, maternity, breastfeeding.
- Marriage and civil partnership.
- Race
- Religion and belief
- Sex

- Sexual orientation.

19. Customer Feedback and Complaints

We are committed to providing a high-quality customer-focused service and welcome feedback about what we are doing well and where we can make improvements. You can contact the Council by

- Visiting our website at <https://www.spelthorne.gov.uk/contact>
- Telephone us on 01784 451499
- To make a complaint
<https://www.spelthorne.gov.uk/article/16560/Comments-compliments-and-complaints>

20. Monitoring and Policy Review

The effectiveness of this policy will be constantly monitored and subject to a yearly review to ensure that any changes in legislation or best practice are included and updated.

We will consult with service users, staff, internal and external partners in the review.

Any changes to policy will be subject to Committee approval.

APPENDIX

SPELTHORNE BOROUGH COUNCIL

BYELAWS FOR PLEASURE GROUNDS, PUBLIC WALKS AND OPEN SPACES

ARRANGEMENT OF BYELAWS

PART 1

GENERAL

1. General interpretation
2. Application
3. Opening times

PART2

PROTECTION OF THE GROUND, ITS WILDLIFE AND THE PUBLIC

4. Protection of structures and plants
5. Unauthorised erection of structures
6. Climbing
7. Grazing
8. Protection of wildlife
9. Gates
10. Camping
11. Fires
12. Interference with life-saving equipment

PART3

HORSES, CYCLES AND VEHICLES

13. Interpretation of Part 3
14. Horses
15. Cycling
16. Motor vehicles

PART4

PLAY AREAS, GAMES AND SPORTS

- 17. Interpretation of Part 4
- 18. Skateboarding, etc.
- 19. Ball games
- 20. Ball games - Rules
- 21. Cricket
- 22. Golf
- 23. Golf - Rules

PART5

WATERWAYS

- 24. Interpretation of Part
- 25. Mooring
- 26. Pollution

PART6 MODEL

AIRCRAFT

- 27. Interpretation of Part
- 28. General prohibition

PART7

OTHER REGULATED ACTIVITIES

- 29. Provision of services
- 30. Excessive noise
- 31. Public shows and performances

PARTS

MISCELLANEOUS

- 32. Obstruction
- 33. Savings
- 34. Removal of offenders
- 35. Penalty
- 36. Revocation

SCHEDULE 1 - Grounds to which byelaws apply generally

SCHEDULE 2 - Rules for playing ball games in designated areas

Byelaws made under section 164 of the Public Health Act 1875, section 15 of the Open Spaces Act 1906 and sections 12 and 15 of the Open Spaces Act 1906 by Spelthorne Borough Council with respect to pleasure grounds, public walks, and open spaces.

PART 1
GENERAL

General Interpretation

1. In these byelaws:

"The Council" means Spelthorne Borough Council.

"The ground" means any of the grounds listed in Schedule 1;

"designated area" means an area in the ground which is set aside for a specified purpose, that area and its purpose to be indicated by notices placed in a conspicuous position.

"Invalid carriage" means a vehicle, whether mechanically propelled or not,

- (a) the unladen weight of which does not exceed 150 kilograms,
- (b) the width of which does not exceed 0.85 metres, and
- (c) which has been constructed or adapted for use for the carriage of a person suffering from a disability and used solely by such a person.

Application

2. These byelaws apply to all the grounds listed in Schedule 1 unless otherwise stated.

Opening times

3. (1) No person shall enter or remain in the ground except during opening hours.
- (2) "Opening hours" means the days and times during which the ground is open to the public and which are indicated by a notice placed in a conspicuous position at the entrance to the ground.

PART2

PROTECTION OF THE GROUND, ITS WILDLIFE AND THE PUBLIC

Protection of structures and plants

4. (1) No person shall without reasonable excuse remove from or displace within the ground:
- (a) any barrier, post, seat or implement, or any part of a structure or ornament provided for use in the laying out or maintenance of the ground; or
 - (b) any stone, soil, or turf or the whole or any part of any plant, shrub, or tree.
- (2) No person shall walk on or ride, drive, or station a horse or any vehicle over:
- (a) any flower bed, shrub, or plant.
 - (b) any ground in the course of preparation as a flower bed or for the growth of any tree, shrub, or plant; or
 - (c) any part of the ground set aside by the Council for the renovation of turf or for other landscaping purposes and indicated by a notice conspicuously displayed.

Unauthorised erection of structures

5. No person shall without the consent of the Council erect any barrier, post, ride, or swing, building or any other structure.

Climbing

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

Grazing

7. No person shall without the consent of the Council turn out or permit any animal for which he is responsible to graze in the ground.

Protection of wildlife

8. No person shall kill, injure, take, or disturb any animal, or engage in hunting or shooting or the setting of traps or the laying of snares.

Gates

9. (1) No person shall leave open any gate to which this byelaw applies and which he has opened or caused to be opened.
- (2) Byelaw 9 (1) 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

10. 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

11. (1) No person shall light a fire or place, throw, or drop a lighted match or any other thing likely to cause a fire.
- (2) Byelaw 11(1) shall not apply to:
- (a) the lighting of a fire or barbecue at any event for which the Council has given permission that fires or barbecues may be lit; or
 - (b) the lighting or use, in such a manner as to safeguard against damage or danger to any person, of
 - (i) a properly constructed camping stove or of a properly constructed barbecue, in a designated area for camping within that ground known as Laleham Park, or
 - (ii) of a properly constructed barbecue, in a designated area for barbecues.

Interference with life-saving equipment

12. No person shall except in case of emergency remove from or displace within the ground or otherwise tamper with any life-saving appliance provided by the Council.

PART3

HORSES, CYCLES AND VEHICLES

Interpretation of Part 3

13. In this Part:

"Designated route" means a route in or through the ground which is set aside for a specified purpose, its route, and that purpose to be indicated by notices placed in a conspicuous position;

"motorcycle" means a mechanically propelled vehicle, not being an invalid carriage, with less than four wheels and the weight of which does not exceed 410 kilograms.

"Motor vehicle" means any mechanically propelled vehicle other than a motorcycle or an invalid carriage;

"trailer" means a vehicle drawn by a motor vehicle and includes a caravan.

Horses

14. (1) No person shall ride a horse except:
- (a) on a designated route for riding; or
 - (b) in the exercise of a lawful right or privilege.
- (2) Where horse-riding is permitted by virtue of byelaw 14(1)(a) or a lawful right or privilege, no person shall ride a horse in such a manner as to cause danger to any other person.

Cycling

15. 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.

Motor vehicles

16. (1) No person shall without reasonable excuse bring into or drive in the ground a motorcycle, motor vehicle or trailer except in any part of the ground where there is a right of way or a designated route for that class of vehicle.
- (2) Where there is a designated route for motorcycles, motor vehicles or trailers, it shall not be an offence under this byelaw to bring into or drive in the ground a vehicle of that class for the sole purpose of transporting it to the route.

PART4

PLAY AREAS, GAMES AND SPORTS

Interpretation of Part 4

17. In this Part:

"Ball games" means any game involving throwing, catching, kicking, batting, or running with any ball or other object designed for throwing and catching.

"Golf course" means any area within the ground set aside for the purposes of playing golf and includes any golf driving range, golf practice area, putting course or crazy golf area.

"self-propelled vehicle" means a vehicle other than a cycle, invalid carriage or pram which is propelled by the weight or force of one or more persons skating, sliding, or riding on the vehicle or by one or more persons pulling or pushing the vehicle.

Skateboarding, etc.

18. 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.

Ball games

19. No person shall play ball games outside a designated area for playing ball games in such a manner:
- (a) as to exclude persons not playing ball games from use of that part.
 - (b) as to cause danger or give reasonable grounds for annoyance to any other person in the ground; or
 - (c) which is likely to cause damage to any tree, shrub, or plant in the ground.

Ball games - Rules

20. It is an offence for any person using a designated area for playing ball games to break any of the rules set out in Schedule 2 and conspicuously displayed on a sign in the designated area when asked by any person to desist from breaking those rules.

Cricket

21. No person shall throw or strike a cricket ball with a bat except in a designated area for playing cricket.

Golf

22. No person shall drive, chip, or pitch a hard golf ball except on the golf course.

Golf- Rules

23. (1) No person shall play golf on the golf course unless he holds a valid ticket issued by or on behalf of the Council entitling him to do so, which ticket shall be retained and shown on demand to any authorised officer or agent of the Council.
- (2) No person shall enter on to or remain on the golf course unless:
- (a) taking part in the game of golf or accompanying a person so engaged; or
 - (b) doing so in the exercise of a lawful right or privilege.
- (3) No person shall offer his service for hire as an instructor on the golf course without the consent of the Council.

PARTS

WATERWAYS

Interpretation of Part 5

24. In this Part:

"boat" means any yacht, motorboat, or similar craft but not a model or toy boat.

"waterway" means any river, lake, pool, or other body of water and includes any fountain.

Mooring

25. No person shall in any ground having a frontage to the River Thames moor any boat except where any part of the ground has by notice affixed in a conspicuous position been set aside by the Council as a place where mooring is permitted provided always that no boat moored pursuant to this byelaw shall remain moored in the ground for more than 24 hours in any period of 48 hours.

Pollution

26. No person shall foul or pollute any waterway.

PART6

MODEL AIRCRAFT

Interpretation of Part 6

27. In this Part:

"Model aircraft" means an aircraft which weighs not more than 7 kilograms without its fuel.

"power-driven" means driven by:

- (a) the combustion of petrol vapour or other combustible substances.
- (b) jet propulsion or by means of a rocket, other than by means of a small reaction motor powered by a solid fuel pellet not exceeding 2.54 centimetres in length; or
- (c) one or more electric motors or by compressed gas.

General prohibition

28. No person shall cause any power-driven model aircraft to:

- (a) takeoff or otherwise be released for flight or control the flight of such an aircraft in the ground; or
- (b) land in the ground without reasonable excuse.

PART7

OTHER REGULATED ACTIVITIES

Provision of services

29. No person shall without the consent of the Council provide or offer to provide any service for which a charge is made.

Excessive noise

30. (1) 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:
- (a) shouting or singing.
 - (b) playing on a musical instrument; or
 - (c) by operating or permitting to be operated any radio, amplifier, tape recorder or similar device.
- (2) Byelaw 30(1) does not apply to any person holding or taking part in any entertainment held with the consent of the Council.

Public shows and performances

31. No person shall without the consent of the Council hold or take part in any public show or performance.

PARTS

MISCELLANEOUS

Obstruction

32. No person shall obstruct:
- (a) any officer of the Council in the proper execution of his duties.
 - (b) any person carrying out an act which is necessary to the proper execution of any contract with the Council; or
 - (c) any other person in the proper use of the ground.

Savings

33. (1) It shall not be an offence under these byelaws for an officer of the Council or any person acting in accordance with a contract with the Council to do anything necessary to the proper execution of his duty.
- (2) Nothing in or done under these byelaws shall in any respect prejudice or injuriously affect any public right of way through the ground, or the rights of any person acting lawfully by virtue of some estate, right or interest in, over or affecting the ground or any part of the ground.

Removal of offenders

34. Any person offending against any of these byelaws may be removed from the ground by an officer of the Council or a constable.

Penalty

35. Any person offending against any of these byelaws shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Revocation

36. Byelaws 1-8 and 10 - 18, the first schedule and references in the second schedule to Echelford Recreation Ground made by Spelthorne Borough Council on 28 February 1992 and confirmed by the Secretary of State for the Home Office on 26 May 1992 relating to the ground are hereby revoked.

SCHEDULES

SCHEDULE 1

GROUND TO WHICH BYELAWS APPLY GENERALLY

PART I

RECREATION GROUNDS GOVERNED BY

SECTION 164 OF THE PUBLIC HEALTH ACT, 1875

Alexandra Road Recreation Ground - Sunbury

Ashby Recreation Ground - Staines

Ashford Recreation Ground

Bishop Duppas Park - Shepperton

Cedars Recreation Ground - Sunbury

Echelford Recreation Ground - Ashford

Feltham Hill Road Recreation Ground - Sunbury

Fordbridge Park - Ashford

Greenfield Recreation Ground - Laleham

Groveley Recreation Ground - Sunbury

Halliford Park - Shepperton

Kenyngton Manor - Sunbury

Laleham Park and Riverside Lands

Littleton Recreation Ground

Long Lane Recreation Ground - Stanwell

Manor Park - Shepperton

Memorial Gardens - Staines

Old Bathing Field - Sunbury

Poyle Children's Recreation Ground

River Ash Walk - Shepperton

Rivermead Island

Scott Freeman Gardens - Ashford

Shepperton Recreation Ground

Shrublands Recreation Ground - Ashford

Splash Meadow - Shepperton

Stanwell Moor Recreation Ground

Stanwell Recreation Ground

Staines Park
Staines Riverside Walk
Sunbury Park
Swans Rest and Foreshore
Town Lane Recreation Ground- Stanwell
Victoria Jubilee Gardens - Staines
Village Park - Stanwell
Woodthorpe Recreation Ground- Ashford

PART II
RECREATION GROUNDS GOVERNED BY
SECTION 15 OF THE OPEN SPACES ACT, 1906

Brickle Green - Sunbury
Flower Pot Green - Sunbury
Kenyngton Manor Recreation Ground - Sunbury
Littleton Green - Shepperton
Lower Halliford Green - Shepperton
Moormede Park - Staines
Russell Road Greens - Shepperton
Stanwell Village Green
Towing Path Greens - Shepperton
Upper Halliford Green - Shepperton
Windmill Green - Shepperton

PART III
RECREATION GROUNDS GOVERNED BY
SECTIONS 12 AND 15 OF THE OPEN SPACES ACT, 1906

Bishop Duppas Park - Shepperton
Echelford Recreation Ground - Ashford
Fordbridge Park - Ashford
Hengrove Park - Ashford
Kingslawn and Church Wharf - Sunbury
Littleton Recreation Ground - Sunbury
Rivermead Island - Sunbury
Riverside Land - Ashford
Stanwell Churchyard
Studios Walk - Shepperton

SCHEDULE 2
RULES FOR PLAYING BALL GAMES IN DESIGNATED AREAS
(BYELAW 20)

Any person using a designated area for playing ball games is required by byelaw 20 to comply with the following rules:

- (1) No person shall play any game other than those ball games for which the designated area has been set aside.
- (2) No person shall obstruct any other person who is playing in accordance with these rules.
- (3) Where exclusive use of the designated area has been granted to a person or group of persons by the Council for a specified period, no other person shall play in that area during that period.
- (4) Subject to paragraph (5), where the designated area is already in use by any person, any other person wishing to play in that area must seek their permission to do so.
- (5) Except where they have been granted exclusive use of the designated area for more than two hours by the Council, any person using that area shall vacate it if they have played continuously for two hours or more and any other person wishes to use that area.
- (6) No person shall play in the designated area when a notice has been placed in a conspicuous position by the Council prohibiting play in that area.

THE COMMON SEAL OF
SPELTHORNE BOROUGH
COUNCIL WAS HEREUNTO
AFFIXED ON
9th **MARCH**, 2009

MICHAEL GRAHAM
Head of Corporate Governance

The foregoing byelaws are confirmed by the Secretary of State and shall come into operation one calendar month after the date of confirmation

Signed by the authority of the Secretary of State

P Rowsell
Senior Civil Servant
in the Department for Communities and Local Government

28 May 2009