

Committee(s): Hampstead Heath, Highgate Wood and Queen's Park Committee	Date(s): 25/11/2020
Subject: Authorisation of Officers to issue Fixed Penalty Notices for byelaw offences and certain other offences under the City of London Corporation (Open Spaces) Act 2018.	Public
Which outcomes in the City Corporation's Corporate Plan does this proposal aim to impact directly?	1, 11 & 12
Does this proposal require extra revenue and/or capital spending?	No
If so, how much?	
What is the source of Funding?	
Has this Funding Source been agreed with the Chamberlain's Department?	
Report of: Superintendent of Hampstead Heath	For Decision
Report author: Richard Gentry, Constabulary & Queen's Park Manager	

Summary

The City of London Corporation (Open Spaces) Act 2018 ("the Open Spaces Act 2018") sought to modernise the management of certain offences by providing a power for Authorised Officers to offer a Fixed Penalty Notice ("FPN") as an administrative alternative to prosecution before the Magistrates' Court, known as an Out of Court Disposal.

This report sets out the proposal to seek delegated authority for the Director of Open Spaces and Superintendent of Hampstead Heath, Highgate Wood and Queen's Park to authorise Officers to issue FPNs and require a name and address where there is reason to believe that a person has committed an offence, pursuant to the Open Spaces Act 2018.

The report also provides sets out the proposal to seek authority to set the amount of the Fixed Penalty pursuant to the Open Spaces Act 2018 for a relevant offence at £80.00, with a reduction to £50.00 if the penalty is paid within 10 days. This would include all byelaw offences at Hampstead Heath, Highgate Wood and Queen's Park, as well as offences under section 87 of the Environmental Protection Act 1990 (littering) and section 10(4) of the Open Spaces Act 2018 (carrying on a specified commercial activity without a licence or in contravention of a licence).

Recommendations

Members are asked to:

- Agree the delegation of authority to the Director of Open Spaces and the Superintendent of Hampstead Heath, Highgate Wood, Queen's Park to authorise officers to issue FPNs and require a name and address where there is reason to believe that a person has committed an offence, pursuant to the City of London Corporation (Open Spaces) Act 2018.
- Agree the amount of the Fixed Penalty for offences within Hampstead Heath, Highgate Wood and Queen's Park in respect of which an FPN may be issued under the Open Spaces Act 2018 being set at £80.00 with a reduction to £50.00 if paid within 10 days.

Main Report

Background

1. FPNs may be issued as an alternative to prosecution in the Magistrates Court in respect of a range of offences. An FPN is a notice offering the person to whom it is issued the opportunity of discharging any liability to conviction for the offence by payment of a Fixed Penalty to the City of London Corporation. Unlike conditional cautions, an admission of guilt is not a prerequisite to issuing an FPN. No proceedings may be taken in respect of the alleged offence before the end of 14 days following the date on which the notice was issued and the person may not be convicted of that offence if the Fixed Penalty is paid to the City Corporation before the end of that period.
2. Section 11 of the Open Spaces Act 2018 provides the opportunity for FPNs to be introduced for all byelaw offences at Hampstead Heath, Highgate Wood and Queen's Park, as well as offences under section 87 of the Environmental Protection Act 1990 (littering) and section 10(4) of the Open Spaces Act 2018 (carrying on a specified commercial activity without a licence or in contravention of a licence). Section 12 of the Open Spaces Act 2018 also enables authorised officers to require a name and address, where there is reason to believe that a person has committed an offence, to enable FPN's (or summonses) to be issued in person or by post.
3. It is noted that the City Commons have had Committee approval to utilise FPNs in the enforcement of Dog Control Orders (and subsequently Public Spaces Protection Orders) since 2014 and that Epping Forest received similar approval with respect to the powers under the Open Spaces Act 2018 in May 2020.

Enforcement Protocol

4. The enforcement of breaches will take place as an Out of Court Disposal through the issue of FPNs pursuant to the Open Spaces Act 2018. This approach would allow the Authorised Officers to deal quickly and proportionately with low-level, often first-time offending which could be resolved more appropriately without a prosecution in court.

5. The Hampstead Heath Constabulary Manager will carry out a review of the Enforcement Strategy of the Hampstead Heath Constabulary, and bring a paper to a future meeting for discussion.

Fixed Penalty Notices

6. Under section 11(7) of the Open Spaces Act 2018 the amount of any Fixed Penalty must be prescribed by the City of London Corporation. There may be differing amounts in relation to different classes of case but any Fixed Penalty may not exceed £100.00. The proposed Fixed Penalty charge for all relevant offences is £80.00, with a reduction to £50.00 if paid within 10 days. This reflects the charging levels set for Epping Forest and the City Commons and is in line with current Local Authority best practice.
7. Table 1 sets out the current Fixed Penalty Notice fine levels across neighbouring Boroughs.

Dropping and leaving litter (littering) contrary to the Environmental Protection Act 1990)		
Authority	Discounted Penalty	Full Penalty
Camden	£80	£100
Barnet	None	£100
Brent	None	£100
Haringey	None	£80

Table 1 - Current Fixed Penalty Notice fine levels across neighbouring Boroughs.

Authorised Officers

8. Under section 11(1) of the Open Spaces Act 2018 an FPN must be issued by an Authorised Officer. The power to require a name and address under section 12(1) of the Open Spaces Act 2018 must also be exercised by an Authorised Officer. 'Authorised Officer' means an Officer or employee of the City Corporation, or other person acting under the control of the City Corporation in relation to an open space, who is authorised in writing by the City Corporation for the purposes of the function concerned.
9. It is proposed that delegated authority agreed to enable the Director and the Superintendent to Authorise Officers and contractors as and when necessary for these purposes, for example following any change of staff.

Appeals

10. There are no formal grounds of appeal against an FPN. The City Corporation will consider informal representations in writing during the 14-day period a person is given to pay the penalty. The City Corporation will consider an appeal within 10 working days from the date of the appeal is received. The FPN will be put on hold until a decision is made and the person issued the FPN will be notified in writing of the outcome. If the appeal is upheld the matter is concluded and no further enforcement action will be taken. If the appeal is rejected the person issued the FPN will have 7 days from the date of the appeal rejection letter to pay the penalty

in full. If the person issued the FPN does not pay the FPN in full the City Corporation will refer the matter to its solicitors to consider prosecution. The person issued the FPN may then be required to attend court. To appeal, the person issued the FPN will need to write to the City Corporation, setting out the reasons for appealing it, to the address that appears on the fixed penalty notice.

11. A Fixed Penalty Notice is an invitation for the offender to discharge their liability to prosecution by payment of the full amount of the penalty. In essence this means that whilst this is not an admission of guilt, the offender does agree that an offence has been committed and that by paying the sum of money specified that no further action will be taken by or on behalf of the City of London Corporation.

Key Data

12. Officers will report on the number of FPNs issued during a financial year.

Corporate & Strategic Implications

13. This proposal is in line with the City of London's Corporate Plan 2018-23 and supports the aim of 'Contributing to a flourishing society' by pursuing the priority of ensuring 'People are safe and feel safe', and the aim of 'Shaping Outstanding Environments' through the twin priorities of 'We have clear air, land and water and a thriving sustainable natural environment' and 'Our spaces are secure resilient and well maintained'.
14. The proposal also contributes to the three objectives and outcomes set out in the Open Spaces Business Plan 2020-21 (a) Open spaces and historic sites are thriving and accessible, (b) Spaces enrich people's lives and (c) Business practices are responsible and sustainable.
15. The introduction of FPNs directly supports the Hampstead Heath Management Strategy 2018-2028 Strategic Outcomes A: The Heath is maintained as a flourishing green space and historic landscape, B: Improved quality of life for Heath visitors, C: The Heath is inclusive and welcoming to a diverse range of visitors and D: Greater number of and diversity of People taking care of the Heath.

Financial implications

16. Income from FPNs will be credited to the Hampstead Heath, Highgate Wood and Queen's Park Local Risk Budgets of these Open Spaces. The costs of implementation and administration the scheme will be met from Local Risk Budgets.

Resource implications

17. Staff will be trained and will apply the FPN process and standards professionally and monitor compliance with the Enforcement Strategy.

Legal implications

18. Heath (Charity No. 803392) and Highgate Wood and Queen's Park Kilburn (Charity No. 232986) are registered charities and the City of London Corporation

is the corporate trustee for both charities. Any decision that is taken in respect of either charity must be in the best interests of that charity.

Risk implications

19. The Divisional Risk Register OSD NLOS 006 - ensuring the Health and Safety of staff, contractors, visitors and volunteers describes the risk of anti-social behaviour and dealing with members of the public.
20. The opportunity to quickly discharge offences under the FPN process may be welcomed by many offenders who wish to avoid involvement with a Magistrates Court hearing.

Equalities implications

21. A Test of relevance: Equality Analysis has been completed. It is suggested that an Equality Impact Assessment is not required.

Conclusion

22. The delegated authority to the Director and Superintendent of Hampstead Heath, will allow Authorised Officers to require names and addresses and issue Fixed Penalty Notices offering an Out of Court disposal for certain breaches including byelaw offences and will bring Hampstead Heath, Highgate Wood and Queen's Park into line with the discharge of similar processes in other authorities. This formal delegation of powers means that valuable court time is not wasted, and effective, timely resolutions can be sought for relevant breaches.

Appendices

- None

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