

London Borough of Lambeth Fixed Penalty Notice Policy

ENFORCEMENT POLICY – The Highways Act 1980, the Road Traffic (Temporary Restrictions) Act 1991 (as amending the Road Traffic Regulation Act 1984), the Traffic Management Act 2004 and the New Roads and Street Works Act 1991

1. Introduction

On 12th May 2008 the Street Works (Fixed Penalty) (England) Regulations 2007 came into force permitting street authorities to give Fixed Penalty Notices in certain instances where a breach of the noticing requirements has taken place. Payment of the FPN allows a works promoter the opportunity to discharge any liability to conviction for specified offences.

- 1.1 The Fixed Penalty fee is £120 and is required to be paid within 36 days of the issue of the notice. If the fee is paid within 29 days of the Fixed Penalty Notice being given the fee is discounted to £80.
- 1.2 The purpose of these guidelines is to outline the operational practices to be applied for assessing whether a Fixed Penalty Notice (FPN) should be given when an offence has been identified and for the giving and monitoring of FPNs.
- 1.3 The offences for which FPNs can now be given have always existed under the New Roads and Street Works Act, 1991 and all relate to the noticing of works. The offences are set out in the Regulations and are listed in the table below.

OFFENCE CODES AND DESCRIPTIONS		
(By reference to the New Roads and Street Works Act 1991)		
CODE	OFFENCE	BRIEF DESCRIPTION
01	An offence under s54 (5)	Failure to comply with duties under s54 (advance notice of certain works etc).
02	An offence under s55 (5)	Beginning to execute works in contravention of s55 (notice of starting date).
03	An offence under s55 (9)	Failure to give notice in accordance with s55 (8) (notice to be given on s55 notice ceasing to have effect)

04	An offence under s57 (4)	Failure to give notice in accordance with s57 (notice of emergency works).
05	An offence under s70 (6) consisting of a failure to comply with a subsection (3) or (4A)	Failure to comply with requirements to give notice of completion of reinstatement.
06	An offence created by regulations made under s74 (7B)	Failure to give a notice required by regulations under s74 (charge for occupation of the highway where works are unreasonably delayed).
07	An offence created by regulations made under s74A (11)	Failure to give notice required by regulations under s74A (charge determined by reference to duration of works).

1.4 Procedures relating to the identification of noticing offences resulting from Lambeth's own works will be the same as those for all other works promoters, but no FPN will result from the identification of a FPN offence. Reports of identified offences will be passed to the Highways section and will also be used as a basis for performance meetings between Highways and the Traffic Manager Team.

2. General Principles of the Enforcement Policy

2.1 The main purpose of the enforcement policy is to ensure compliance with the New Roads and Street Works Act 1991("NRSWA"), in particular Part 3 and the London Borough of Lambeth's general duty as street authority to use its best endeavours to co-ordinate works in the highway under section 59 of the NRSWA. The relevant objectives of the co-ordination function are:

- to ensure safety
- to minimise inconvenience to people using a street, including a specific reference to people with a disability
- to protect the structure of the street and the apparatus in it.

2.2 All undertakers have to comply with various requirements under the NRSWA in respect of the execution of street works and have a general duty to co-operate with the street authority under section 60 of the NRSWA.

2.3 Also relevant is Lambeth's duty (the Network Management Duty) as Local Traffic Authority under Section 16 of the Traffic Management Act 2004 to manage its road network

with a view to achieving, so far as reasonably practicable having regard to its obligations, policies and objectives, the following objectives:

- securing the expeditious movement of traffic on the authority's road network; and
- facilitating the expeditious movement of traffic on road networks for which another authority is the traffic authority.

2.4 In addition this policy should be used when considering action by the Highway Authority under the Highways Act 1980 and the Road Traffic (Temporary Restrictions) Act 1991 which amends the Road Traffic Regulation Act 1984

2.5 The following principles also underpin this policy in relation to enforcement:

- a) Standards: setting clear standards
- b) Openness: clear and open provision of information
- c) Helpfulness: helping business by advising on and assisting with compliance
- d) Complaints: having a clear complaints procedure
- e) Proportionality: ensuring that enforcement action is proportionate to the risks involved
- f) Consistency: ensuring consistent enforcement practice.

2.6 In certain instances Lambeth may conclude that a provision in the code is either not relevant or is outweighed by another provision. Lambeth will ensure that any decision to depart from the code will be properly reasoned, based on material evidence and documented.

2.7 Lambeth as street authority aims to ensure that it adheres to the following three key principles:

- the need to balance the potentially conflicting interests of road users and undertaker's customers
- the importance of co-operation and regular communication between street authorities and undertakers
- an acknowledgment that works programmes and practices may have to be adjusted to meet the statutory objectives of the co-ordination provisions

2.8 Formal enforcement action may be appropriate in certain cases, including those where the irregularity is serious or there have been repeated offences.

2.9 We will take the appropriate level of enforcement action within our statutory powers and the framework of this enforcement policy.

3. Enforcement Options

3.1 Lambeth recognises the importance of ensuring consistency of approach and effective use of resources in carrying out its regulatory functions. The procedures set out below are designed to ensure that enforcement is proportionate and that information and support is given where necessary but that firm action is taken against undertakers who fail to comply with their duty. It is also transparent in that the policies are published so that businesses and residents can be aware of Lambeth's enforcement strategy. The procedures set out below reflect these general principles.

3.2 There may be occasions where officers need to deviate from standard procedures to deal with individual cases in an effective and proportionate manner.

3.3 Having considered all the relevant information, the enforcement options are:

- Take no action
- Advice and written warnings
- Direction (s56, 56A NRSWA)
- Simple Caution
- Fixed Penalty Notices
- Improvement Notice
- Prosecution

3.4 In all circumstances, London Borough of Lambeth will give due consideration to the following general issues:

- Is the notice the correct type for the works?
- Has the notice been sent within the correct notice period?
- Does the notice contain all relevant information?
- Is that information correct and in plain English? Is the quality consistent with achieving management of works?
- This information, although checked via EToN, will often necessitate a site visit to ascertain the validity of the notice and it reflects the details on site.
- Is the works promoter working at the location given on the notice?
- Is the works promoter working in accordance with the dates and timing as stated on the notice?
- Is the traffic management as set out on the notice?
- Has the works promoter commenced early without agreement?
- Is the works promoter working without a notice?
- Have remedial works been started or completed without the appropriate notice?
- Are the works interim or permanent as given on the notice?
- Have the works been abandoned and works have taken place?
- Have no works taken place and not been cancelled?

When considering what course of action is appropriate, the factors that Lambeth will take in to account include:

- The gravity/seriousness of the infringement
- The nature of the alleged infringement
- The status, circumstances and previous history of the alleged offender
- The reliability and scope of the evidence collected
- The likelihood of the alleged offender being able to establish a statutory defence to the alleged infringement
- The desirability of a particular course of action in terms of the benefit to the community at large
- Regard to authoritative advice, guidelines and recommendations
- Explanation offered by the alleged offender, and the willingness to prevent a recurrence of any alleged infringement
- The general record and approach of the offender
- Whether it is desirable to produce some public effect (remedial or deterrent).
- The extent to which the offence limits the authority's ability to fulfil its Network Management Duty.
- Any other factors that may be relevant

3.5 Where a decision to prosecute is made, this decision will be taken in accordance with the Code for Crown Prosecutors, which details considerations to be taken in the public interest when bringing proceedings.

3.6 In certain cases a prosecution may take place without prior warning where there is potential for the most disruption to the road network, its Network Management Duty or co-ordination duty.

3.7 All enforcement decisions and actions will be made with due regard to the provisions of:

- NRSWA 1991 and Traffic Management Act 2004
- Highways Act 1980
- Road Traffic (Temporary Restrictions) Act 1991
- Other relevant legislation, regulations, authoritative advice, guidelines and recommendations
- Equal rights and anti-discrimination legislation
- The Human Rights Act 1998
- Data Protection Act 1998

3.8 In the public interest, information and data concerning non-compliance will be shared, where appropriate, with other enforcement agencies. Where this takes place, due regard will be paid to the provisions of the Data Protection Act 1998.

3.9 Details of prosecutions including the offences, verdict and sentence may be provided to other relevant agencies such as the London Highway Authority Utility Committee (HAUC) and or HAUC UK. However, all such transfers of data will comply with Lambeth's legal duties and best practice.

4. Giving FPN's and the Monitoring of FPNs payments

4.1 The Street Works team will be responsible for the process of giving FPNs in accordance with the Regulations. All actions at each stage of the process will be recorded

on the FPN database in order that the current status of each offence is easily identifiable at all times.

4.2 The Street Works team will also be responsible for notifying promoters of any relevant decisions taken at the meetings i.e. to inform a promoter that as a result of a non-payment of a FPN prosecution action is to be instigated or to inform a promoter that no further action is to be taken in a particular instance. The correspondence with promoters for these actions will be authorised by the Networks Manager or the person designated by the Networks Manager.

4.3 Wherever possible a FPN will be given electronically. This will be done through Symology. If a promoter is unable or unwilling to receive a FPN electronically, a paper copy should be sent.

4.5 The Street Works Team will monitor payments and identify instances where payments may not have been made within the prescribed timescale. The Street Works Team will liaise with the Finance Department and correspond with the promoter as required in instances where payment may appear not to have been made on the last date established for the payment.

4.6 The Street Works Team will inform the Finance Department of situations where prosecutions are to be instigated and any payment against the FPN should not be accepted.

5. Representations

5.1 If a promoter believes that a FPN should not have been given and is unable to resolve the matter informally with the person who gave the FPN (named on the FPN as the authorised officer), the regulations allow them to make a representation.

5.2 Promoters are encouraged to initially have informal discussions with the authorised officer. If these informal discussions cannot resolve the position the promoter should make a written representation.

5.3 Any decision to withdraw a FPN will require authorisation by either the Networks Manager or the authorized officer.

5.4 Formal representations must be made to the Authorised Officer, who will be the officer nominated on each FPN as the person responsible for considering representations. The representation will need to be made in writing and sent to the Networks Manager.

5.5 The Street Works Manager may decide that:

- a) An offence was not committed and the FPN should not have been given. In this case, the FPN should be withdrawn and if payment has been received it should be returned.
- b) An error was made on the FPN. In which case the FPN should be allowed to lapse and if payment has been received it should be returned. LBL may consider giving another FPN containing the correct information, in which case the FPN will be cross referenced with the notice that was allowed to lapse.
- c) The FPN was legitimate and the fixed stands.

5.6 LBL may consider extending the full payment period while a representation is being considered. Regulations do not permit the discounted payment period to be extended.

5.7 The details of any agreements for the extension of the full payment period as a result of informal representations or correspondence should be recorded in the 'Comments' field of the FPN Spreadsheet.

5.8 The Street Works Team will be responsible for arranging for and the recording of an FPN being withdrawn or for allowing an FPN to lapse.

5.9 Any decisions relating to formal representations should be entered into the FPN database.

7. Prosecutions

7.1 When a decision is taken to instigate a prosecution for an offence, the Street Works Team will create a file of all the necessary records and documentation and pass it to the Street Works Manager.

7.2 The prosecution file number will be cross referenced with the FPN reference number on the FPN database.

8. Financial Arrangements

The payment of FPN's can be made by post, in person or by Bankers Automated Clearing Services ("BACS").

9. Status and Review

9.1 This is a public document and is available at <http://www.lambeth.gov.uk/Services/TransportStreets/RoadsHighwaysPavements/TrafficManagementAct.htm>.

9.2 Complaints concerning the application of this enforcement policy dealt with in accordance with the Lambeth's customer complaints procedure. Details of the procedure are available on www.lambeth.gov.uk.

9.3 The London Borough of Lambeth has a diverse community with different communication needs. In recognition of the multi-lingual and special needs requirements in the community, the Council has the facility to provide interpreters and translations of documents in addition to the following methods of communication: Telephone, type talk, induction loop, mini-com, e-mail and fax.

10. References

- NRSWA 1991
- Traffic Management Act 2004
- NRSWA 1991 Code of Practice for the co-ordination of Street Works and Works for Road Purposes and Related Matters
- Highways Act 1980
- Road Traffic (Temporary Restrictions) Act 1991