

## **Appendix 1 Smoke Control Area Review – Briefing Document**

### **Purpose of Briefing Document**

This briefing document provides the background information required to enable members to input and shape a public consultation on revised smoke control orders within the district. In addition, it provides the options for setting of Fixed Penalty Notice charges for the failure to comply with the requirements of a Smoke Control Area.

The briefing document sets out four options for the Council to consider. The Government's Air Quality Strategy priorities include the reduction of pollution from domestic burning through Smoke Control Areas (SCAs) and use of cleaner fuels. The strategy clearly states the Government's expectation that local authorities use their powers to reduce PM2.5 and that all councils should support the delivery of national PM2.5 targets by taking action to reduce emissions from sources within their control. It is therefore officers' recommendation that the Council revokes the existing Smoke Control Orders and declares a new extended Smoke Control Orders to cover a greater area of the district, including the more urban areas, such as towns and villages (Option 4).

### **Supporting Information**

Smoke Control Areas were introduced by the Clean Air Act of 1956 which was brought about following the London smog of 1952. They are designed to reduce the amount of smoke emitted from chimneys and therefore improve air quality. Following the introduction of Smoke control areas, a reduction in open fireplaces and the increase in gas appliances as well as the use of smokeless fuels saw a dramatic improvement in air quality, with reduced sulphur dioxide and smoke levels. The Clean Air Act and its amendments were consolidated in 1993, and the 1993 Act has been amended further by the Environment Act 2021.

Air pollution can impact health when there is exposure over a lengthy period increasing the risk of those being exposed to it of developing certain health conditions.

One of the main pollutants of concern is particulate matter (PM), with the smaller particles, referred to as PM2.5, identified by the World Health Organization as the most damaging to human health. It is accepted that there is no safe level of PM2.5 pollution so any reductions of emissions of this pollutant, especially in locations close to where people live and are exposed to it, will be beneficial to health.

Whilst increased awareness of poor air quality in relation to transport has seen a rise in less polluting forms of transport, the popularity of log burners in recent years has increased dramatically, leading to a rise in particulate matter particularly from combustion within the residential environment. The level of exposure to pollution from this source is potentially much greater than the emissions from industry and manufacturing because people live much closer to home chimneys than they do from most industrial sources, so there is less opportunity for the pollution to disperse before people are exposed to it. Pollution is also released directly into the home when open fires and stoves are used.

EFDC have produced an Air Quality Action Plan and a Climate Change Action plan which aim to reduce concentrations of particulate matter in our environment due to its negative impacts on human health.

Local authorities are responsible for enforcing solid fuel regulations. These regulations set out the criteria that fuels must meet, which are designed to enable more effective combustion and therefore

reduce the creation of particulate matter. Fuel sold for domestic purposes should have the 'Ready to Burn' logo. No retailers should be selling traditional (bituminous) coal for indoor domestic burning from 1 May 2023.

Government expects that in most cases providing information to householders will be sufficient to address smoke emissions in SCA. However, where this is not the case, it is expected local authorities will enforce the SCA.

The Government is not considering a ban on domestic burning in England as there is recognition that some householders are reliant on solid fuel burning as a primary source for heating, hot water and cooking.

### **What is a Smoke Control Area?**

- Anyone responsible for premises within a SCA must not:
- Allow smoke emissions from the chimney of a building.
- Obtain and use solid fuel (including logs), other than authorised fuel; and
- Tradespersons must not sell by delivery solid fuel, other than authorised fuel to premises located within the SCA

Exemptions do apply:

- DEFRA have approved some 'authorised fuels' that can be used within SCAs because they burn either without causing smoke or are fuels that contain less harmful pollutants.
- Certain appliances are specifically listed in the regulations as 'exempt appliances' that can be used in SCAs because they have passed tests to demonstrate that, when used correctly and with the fuel for which they are designed, they are capable of burning solid fuel without emitting harmful smoke.

Unauthorised fuel, such as logs or coal, cannot be burnt in an open fireplace or wood burning appliance within a SCA. These fuels produce smoke containing harmful pollutants which have an impact on health and the environment. It should also be noted that it is already an offence to acquire or sell unauthorised fuels e.g. logs to be used within a SCA.

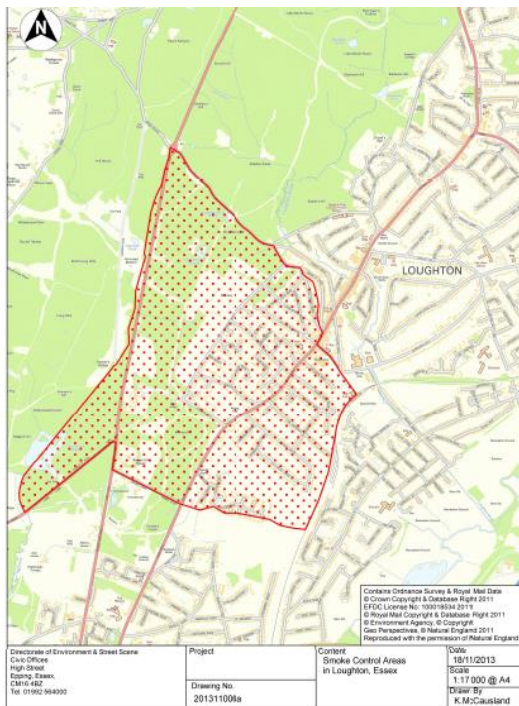
Permanent moorings including moored vessels may be entitled to apply for partial reimbursement from the Council to upgrade their solid fuel appliance to comply with the SCA requirements. There is a legal duty for the Council to reimburse permanent moorings, however it is not proposed to include the areas of the district with moored vessels in the proposals for change at this time.

The legislation gives provision for the local authority to exempt certain areas, premises or plant from any designation if they feel it appropriate.

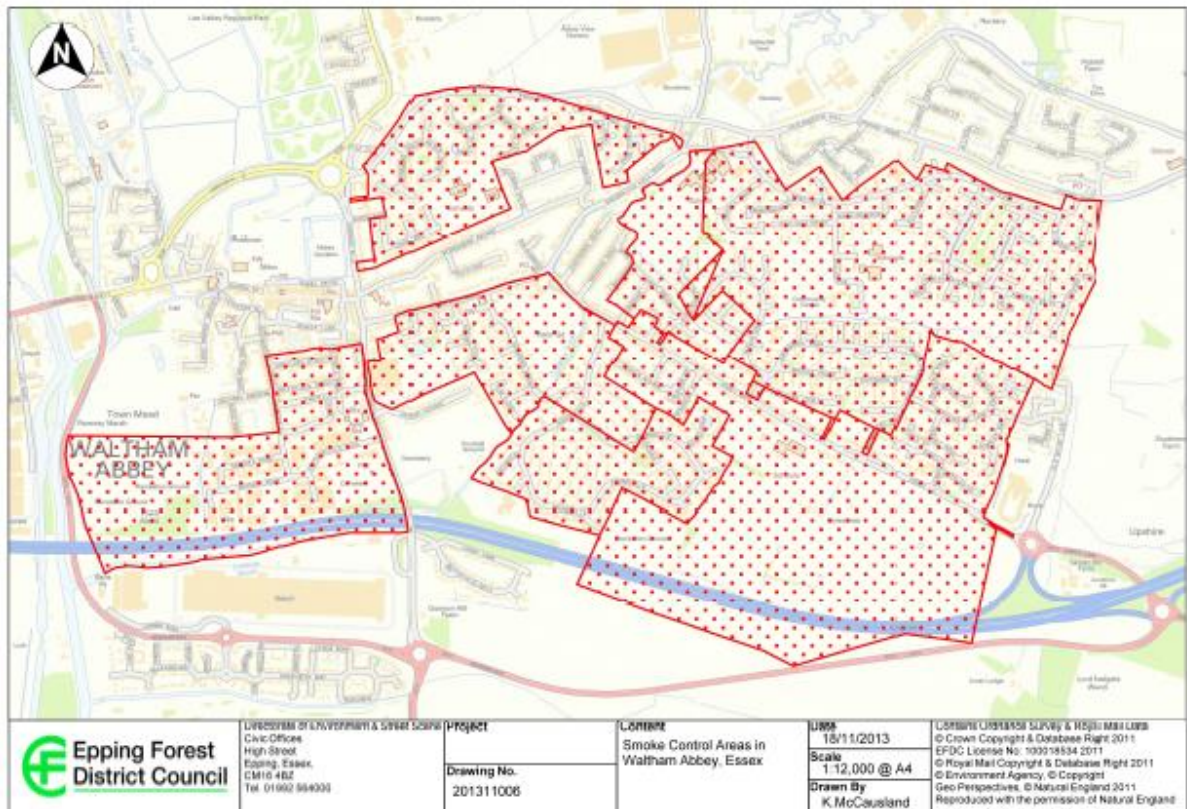
## Existing Smoke Control Areas in Epping Forest District

At present, the district has a number of small SCAs declared in parts of Loughton and Waltham Abbey. These were declared in the late 1960s / 1970s / 1980s. A review of these areas is appropriate at this time in order to establish a consistent approach which addresses the current situation.

### Loughton



### Waltham Abbey



## **Environment Act 2021 Changes**

The Environment Act 2021 made amendments to The Clean Air Act 1993 and came into force on 1 May 2022. It:

- introduced civil financial penalties for smoke emissions in a SCA.
- strengthened the offences in relation to the sale of certain solid fuels for use in SCAs.
- provision to include moored vessels in a SCA (although this is not a requirement).

Before making a SCA there is a legal requirement for the Council to undertake a public consultation exercise which, in addition to the normal channels, will include publishing a notice detailing the proposals in the London Gazette and a local newspaper. The Council is required to consider any objections. An order shall come into operation not less than six months after it is made. The consultation on any proposed changes to the SCA coverage across the district will be for a minimum of four weeks and will be widely publicised through our usual communication channels.

## **Health Impacts**

The impact that particulate matter can have on human health is determined by the volume of particles, particle size and chemical composition.

**Particle size** – Particulate matter is often referred to as PM. PM10 is the term given to all particulate matter that is up to 10 microns in size. An objective for this pollutant has been set in Air Quality Standards aimed at protecting human health as PM10 is small enough to penetrate into the lungs where it can impact health. Recent focus has shifted to the reduction of PM2.5. PM2.5 is the term given to the smaller fraction of particulate matter, including all particles up to 2.5 microns in diameter. These smaller particles are able to penetrate deeper into human lung tissue and are therefore of even greater concern.

**Chemical Composition** - Particulate Matter is the generic term given to any particles that may be suspended in the air we breathe. The chemical constituents of PM are dependent on the environment and raw materials being burnt. Major chemical components of PM include sulphates, nitrates, ammonium, sodium chloride, carbon, mineral and iron-rich particles. The impact that these particles have upon human health is therefore not uniform.

**Volume** - The greater volume of particulate matter in our atmosphere, the greater amount we will inhale and will find its way deep into our lung tissue. The likelihood of experiencing negative health impacts as a result is therefore greater with an increased concentration in our environment. There is no safe limit for PM in our air, so the greater the reduction we are able to make, the greater our health outcomes.

## **Proposed changes**

The current extent of the Smoke Control Areas in the district is illustrated above. The areas subject to these controls are surrounded by other areas of very similar land use where burning is not controlled by the legislation. This means that some residents whilst being restricted themselves may be exposed to the effects of burning in

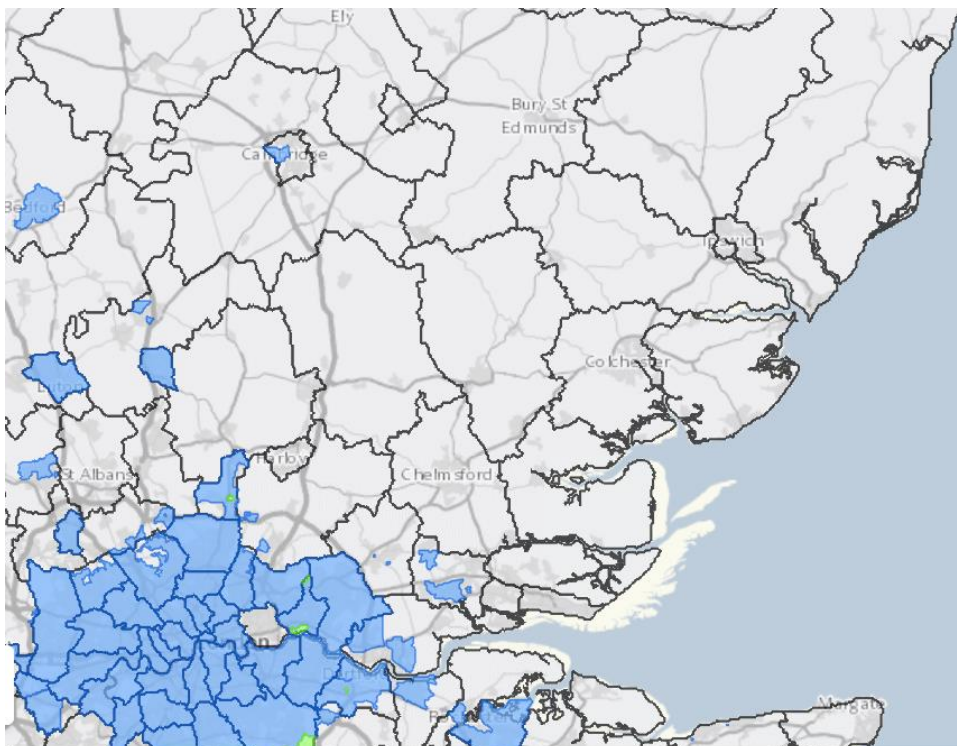
neighbouring streets where the restrictions do not apply. As the present designations appear to be randomly located, there is currently confusion as to which premises are subject to the restrictions, but more importantly they do not offer a consistent level of protection to all residents.

The recent change in legislation requires each local authority to set the level of the fine for fixed penalty notices, and this is an appropriate time to ensure that the application of the restrictions across our district is fit for purpose.

Having contacted neighbouring local authorities and those further away within Essex, the degree to which this legislation has been adopted varies greatly. The more urban authorities (eg Enfield and Waltham Forest) have designated their entire area, whilst some authorities with a greater area of rural space have chosen not to designate any SCAs. Some of the southern authorities in Essex (Basildon, Brentwood and Thurrock) have chosen to designate parts of their district to date.

Being mindful that air quality is a cross-boundary issue, it is important to consider the action undertaken by neighbouring authorities so as to adequately protect but not overburden our residents. A proportionate and appropriate response would be to reflect the needs of the largely urban south and largely rural north that currently occupies the district.

Currently designated Smoke control Areas in London and the East are shown as blue on this map (taken from the Defra website 17.12.24):



**Options for change.** There are four options for change in this review of the Smoke Control Areas:

1. No change – retain all current designations.
2. Revoke all current designations
3. Declare the entire district as a Smoke Control Area
4. Expand the area of the district that is designated as a Smoke Control Area.

| <b>Option 1</b>  | <b>Pros</b>  | <b>Cons</b>   |
|--|--|---|
| No Change  | <p>Reduced administrative work (only need to implement FPN charging scheme)</p> <p>No impact on residents</p>  | <p>perceived inequality across the district</p> <p>potential negative health impacts remain due to smoke creation in many built up areas</p> <p>Does not work towards the required improvement of particulates in our district</p> <p>Not aligned with recently written Air Quality and Climate Change Action Objectives.</p> <p>Existing SCAs have not been reviewed since the 1980s since which time other parts of the district have been developed, creating potential additional sources of smoke.</p> |
| <b>Option 2</b>  | <b>Pros</b>  | <b>Cons</b>   |
| Revocation of existing SCAs                                | <p>Level playing field for all residents</p>   | <p>Most likely to worsen Air Quality due to increased smoke production in our district</p> <p>Likely to worsen health outcomes for our residents</p> <p>Does not work towards the required improvement of particulates in our district</p> <p>Conflicts with the Councils Air Quality and Climate Change Action Objectives.</p>   |
| <b>Option 3</b>  | <b>Pros</b>  | <b>Cons</b>   |
| Designation of the entire District as a Smoke Control Area | <p>Improved Air Quality across the district and associated reduction in health impacts</p> <p>All residents are required to meet the same standard no matter where they live</p> <p>Increased clarity on what is required for all.</p> | <p>May be seen as heavy handed in rural areas where there is limited access to cleaner fuel options.</p> <p>Cost of provision of alternative sources of heating may be too great for some.</p> <p>EFDCs approach would not be aligned with the approaches taken by neighbouring authorities in Essex.</p>   |



|  |   |   |
|--|---|---|
|  | <p>Works towards the required improvement of particulates in our district</p> <p>Works in alignment with the Councils Air Quality and Climate Change Action Objectives.</p> <p>Demonstrates a readiness to take action to improve public health outcomes.</p>   | <p>Greater resource may be needed to enforce the new SCAs</p> <p>Persons wishing to burn controlled fuels will only be able to do so in an appropriate exempt appliance.</p> <p>There will be an impact on those selling and delivering logs within the district</p>  |
| <b>Option 4</b>  | <b>Pros</b>   | <b>Cons</b>   |
| Expansion of area covered by Smoke Control Designation | <p>New Smoke Control Orders would be focussed on more urban areas of the district where higher concentrations of pollution would be expected and the majority of people live, but minimising impact in rural areas of the district.</p> <p>Increasing coverage will reduce smoke emissions and therefore improve public health outcomes for the majority of residents</p> <p>Works towards the required improvement of particulates in our district</p> <p>Better alignment with the Councils Air Quality and Climate Change Action Plan objectives</p> <p>Demonstrates a readiness to take action to improve public health outcomes.</p> <p>EFDCs approach would be a hybrid designed to align with the approaches taken by neighbouring authorities in Essex.</p> | <p>Greater resource may be needed to enforce the new SCAs.</p> <p>Perceived inequality across the district. The proposed boundary's will be put out to consultation for comment.</p> <p>Persons wishing to burn controlled fuels within the new SCA will only be able to do so in an appropriate exempt appliance.</p> <p>There will be an impact on those selling and delivering logs within the district (albeit not so great as in option 3)</p> |

## **Enforcement**

The Environment Act 2021 brought about changes to the way in which enforcement of SCAs is carried out. Previously an offence received a Legal Notice, and should a breach of the notice be witnessed, the regulator had to take legal action in a Magistrates court. Changes to the legislation have introduced Fixed Penalty Notices (FPN) as the preferred enforcement route

Emitting smoke from a chimney in an SCA is an offence, which the local authority will need to investigate and where appropriate take enforcement action. This does not mean that you are not able to burn in your property however you may only do so without causing visible smoke. Enforcement action should not need to be taken where authorised fuels, or a Defra approved appliance is being used correctly.

The correct use of Defra 'exempt appliances' involves the installation by a suitably qualified engineer, appropriate maintenance and ongoing operation in accordance with parameters specified in the operator's manual. Smoke is likely to be produced if any of these criteria are not met.

Where smoke is observed from a chimney in an SCA (or boiler / plant as detailed above), the local authority may choose to issue the appropriate person with a written warning, known as an Improvement Notice. If smoke continues to be produced, the next step is to issue a Notice of Intent, followed by a Fixed Penalty Notice.

The local authority has to set what it considers an appropriate level of fine for the local area. The legislation dictates that this fine must be not less than £175 and not more than £300. This is the amount payable per FPN, and an FPN can be issued for each offence witnessed by an officer.

As well as setting the fine, the local authority must also decide whether the fine is a flat rate per offence, is dependent on the seriousness of the offence, or whether the fine for subsequent offences should increase. Three options are set out below by way of an example:

| Options | First Offence | Subsequent Offences |
|---------|---------------|---------------------|
| 1       | £175.00       | £175.00             |
| 2       | £225.00       | £300.00             |
| 3       | £300.00       | £300.00             |

Enforcement will be reactive based on intelligence and complaints rather than proactive checks and will need to follow the Council's Enforcement Policy that encourages a reasonable and proportionate approach, there is the option to prosecute should FPNs fail to address the issue.