

Bath & North East Somerset Council

DECISION MAKER:	Cllr Sarah Warren, Cabinet Member for Climate Emergency and Sustainable Travel	
DECISION DATE:	On or after 27th February 2025	EXECUTIVE FORWARD PLAN REFERENCE:
		E 3603
TITLE:	Implementation of provisions introduced by the Environment Act 2021 to the Clean Air Act 1993 including Financial Penalty for emitting smoke in a Smoke Control Area	
WARD:	Bathwick, Combe Down, Kingsmead, Lambridge, Lansdown, Moorlands, Newbridge, Odd Down, Oldfield Park, Southdown, Twerton, Walcot, Westmoreland, Weston, Widcombe and Lyncombe.	
AN OPEN PUBLIC ITEM		
List of attachments to this report: Appendix 1 – Graphs showing 5-years of monitoring data for PM ₁₀ and PM _{2.5} Appendix 2 – Map of Smoke Control Areas within Bath. Appendix 3 – Smoke Boaters Leaflet		

1 THE ISSUE

- 1.1 Building upon the governments Clean Air Strategy in 2019, The Environment Act 2021 Part 4, Section 73 introduced new enforcement provisions that applies to buildings that emit smoke from a chimney within a Smoke Control Area. These include new legal notices, and financial penalties in accordance with Schedule 1A of the act. The financial penalties range from £175 to £300.

2 RECOMMENDATION

The Cabinet Member is asked to;

- 2.1 Support the introduction of Financial Penalties set at £175 for a first offence, and £300 for subsequent offences. There will no reduction in the amount of the fine, if paid early.
- 2.2 Authorise relevant team manager and/or service manager responsible for the function, the discretion to review and vary the amount of the financial penalty upon consideration of objections received to the 'Notice of Intent to issue a financial penalty'. For example, if it is a first offence and a financial penalty notice (FPN) has been issued (£175) the authorised officer could withdraw the FPN based on the objections received. Or, if FPNs have been issued for subsequent offences (£300) the authorised officer could reduce this to £175 upon reviewing the objections received.

- 2.3 Note that the recommendation is not to expand the Smoke Control Area district wide at this time. Further work is required to understand the benefits to health and the impacts that expansion may have on communities, particularly those that are rural. The air quality impacts also need to be further understood.
- 2.4 Note that the recommendation is to not expand the Smoke Control Area to include moored vessels (boaters) following engagement with stakeholders. Instead, we will continue to monitor the number of service requests and where necessary, undertake pollution monitoring at canal side locations.

3 THE REPORT

- 3.1 Within the UK, a small proportion of particulate matter (PM) concentrations come from naturally occurring sources such as pollen and sea salt. With one third of concentrations coming from overseas, the remaining concentrations are generated from anthropogenic sources within the UK, such as wood burning, fossil fuels, agriculture, and industrial processes¹.
- 3.2 Domestic combustion is a major source of particulate matter emissions within the UK and in 2021 it accounted for 16% of PM₁₀ emissions and 27% of PM_{2.5} emissions. Most emissions from this source are generated from households burning wood in closed stoves and open fires; domestic wood burning represented 21% of total PM_{2.5} emissions in 2021².
- 3.3 PM is formed of tiny particles that can get into the lungs and blood and be transported around the body, lodging in the heart, brain, and other organs. PM affects health in two ways: by being toxic or by providing a surface for transporting toxic compounds to where they can do harm. PM can have short-term health impacts over a single day when concentrations are elevated, and long-term impacts from lower-level exposure over the life course.
- 3.4 Effects are amplified in vulnerable groups including young children, the elderly, and those suffering from breathing problems like asthma. The Department of Health and Social Care's independent Committee on the Medical Effects of Air Pollutants (COMEAP) quantified the long-term impacts of UK PM concentrations in terms of mortality as equivalent to 340,000 life years lost¹.
- 3.5 Monitoring is undertaken for PM₁₀ in two locations within the district, Windsor Bridge and Bath A4 Roadside on London Road. The UK objective standard is 40 µg/m³ as an annual average and in 2023 Windsor Bridge monitored at 29 µg/m³ and Bath A4 Roadside monitored at 15 µg/m³. The results were slightly higher at Windsor Bridge in 2023 due to construction work next to the monitoring site. See Appendix 1 for the last 5-years of monitoring data.
- 3.6 Monitoring is undertaken for PM_{2.5} in one location within the district, this is located at Chelsea House on Snow Hill which measured 10 µg/m³ in 2023. The UK objective standard is 20 µg/m³ as an annual average, however, it is widely recognised that there is no safe level of exposure. The World Health Organisation guidelines set 5 µg/m³ as a standard to be aimed towards. See Appendix 1 for the last 5-years of monitoring data.

¹ Defra, 2019. Clean Air Strategy.

² Defra, 2023. Emissions of air pollutants in the UK- Particulate matter (PM₁₀ and PM_{2.5})

³ Bath and North East Somerset Council, 2024. Annual Status Report.

- 3.7 The Environment Act 2021 introduced new enforcement provisions that apply to buildings that emit smoke from a chimney within a Smoke Control Area. The City of Bath is a designated Smoke Control Area, meaning it is illegal to burn smoky fuels, such as wood and coal, in an open fireplace or in a non-approved wood burning or multi-fuel stove.
- 3.8 It is an offence to use an unauthorised fuel in a non-exempt appliance or to purchase an unauthorised fuel for this purpose. The Department for Environment, Food and Rural Affairs provide a list of authorised fuels that can be found via the following link: <https://smokecontrol.defra.gov.uk/fuels.php/>
- 3.9 As the Smoke Control Area designation only covers chimney smoke, bonfires are not included under this legislation. The Council encourage waste is disposed in line with your duty of care requirements, reuse or recycle rather than burning
- 3.10 If residents opt to burn their waste, the Council can take action, if a bonfire causes a statutory nuisance, enforcement action can be taken under the Environmental Protection Act 1990 or other measures could be considered under the Antisocial Behaviour, Crime and Policing Act 2014
- 3.11 Additionally, it is illegal to produce and release dark or black smoke from industrial or trade premises under the Clean Air Act 1993. Under the Environmental Protection Act 1990, there is also a duty on all businesses to dispose of their controlled waste in a manner as not to cause environmental pollution or harm to human health.
- 3.12 The new enforcement provisions introduced under the Environment Act 2021 enable officers to adopt a staged approach to enforcement that is consistent with the Enforcement Policy. See Appendix 2 for a map of Smoke Control Areas with Bath, or alternately, via the following link: <https://www.bathnes.gov.uk/indoor-fires-and-wood-burning#:~:text=The%20City%20of%20Bath%20is,unauthorised%20fuel%20for%20this%20purpose>
- 3.13 A range of multiagency meetings have taken place between March 2022 and March 2023 attended by officers from the Environmental Protection team at B&NES, Canal Rivers Trust and Julian House. Following this collaboration, a leaflet, as seen in Appendix 3, was developed to inform boat dwellers of the Smoke Control Area within Bath, detailing the fuels that can be burnt, as well as the health implications of burning wood. Further information was provided on the financial assistance available to support the use of healthier fuels.

4 PROCEDURE

- 4.1 Upon initial observation of smoke by an officer or upon receiving a complaint from a member of the public regarding smoke emanating from a chimney, a warning letter/improvement notice will be sent to the occupier of the building. This notice will provide details, including Smoke Control Area restrictions, the time of smoke detection, lawful methods for burning solid fuels in a smoke control area, and the subsequent procedural steps.
- 4.2 In the event of a recurrence of smoke, a 'Notice of Intent' will be sent to the building occupier. This notice will inform them that there is sufficient evidence to establish that smoke originated from their chimney in a smoke control area. It will

include the time of smoke observation, express our intent to impose a financial penalty under Schedule 1A of the Clean Air Act 1993 (as amended by the Environment Act 2021), and specify the proposed penalty amount, ranging from £175 to £300. The occupier retains the right to formally object in writing to the proposed financial penalty within 28 days from the day following the notice being served, providing supporting evidence.

- 4.3 Should the building occupier choose not to object to the 'Notice of Intent'; or if the objection is not accepted, a 'Final Notice' will be issued. This 'Final Notice' will disclose the name of the person responsible, the reason for imposition, the financial penalty amount and how this can be paid, due within 28 days, and information regarding their right to appeal within 56 days.
- 4.4 The appeal is to a Tribunal service.
- 4.5 In terms of the amount of the financial penalty, the legislation states that this can be between £175 and £300. Statutory guidance states consideration ought to be given to how much to charge those responsible for smoke emissions, which may be based on how serious the offence is, and whether it is a repeat offence.
- 4.6 Given the public health effects of PM_{2.5}, and the principles of a stepped approach contained within the Public Protection Enforcement Policy, it is proposed that a financial penalty of £175 is applied to a first offence, escalating to £300 for each subsequent offence. There will be no reduction in the amount of the fine, if paid early.

5 STATUTORY CONSIDERATIONS

- 5.1 The authority could continue to deal with smoke emitting from chimneys using the Statutory Notice provisions of the Environmental Protection Act 1990. We will continue to use this provision.
- 5.2 This new provision of legislation will provide us with the tools for greater ease of applications and enforcement. This may lead to an increase in public dissatisfaction and public complaints due to enforcement, however, we will be undertaking educational awareness following our Public Protection Enforcement Policy. This provision will enable us to make improvements in air quality in line with statutory requirements.
- 5.3 The Environmental Protection Officers are already authorised to act under the Clean Air Act 1993. This includes any updates to the act such as these.
- 5.4 The Public Protection Service Enforcement Policy applies to this process.
- 5.5 Minimising particulates from domestic wood burning contributes to the reduction of environmental concentrations of PM₁₀ and PM_{2.5}, both of which lead to adverse public health conditions.

6 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

- 6.1 Officers from the Environmental Protection team will administer the new provisions. No additional capital expenditure is required and there is revenue funding for the posts.

7 RISK MANAGEMENT

7.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision-making risk management guidance.

(Separately document to this report)

8 EQUALITIES

8.1 An Equalities Impact Assessment has been carried out and discussed with the equalities team. This is included in the attachments.

9 CLIMATE CHANGE

9.1 Open fires and wood-burning stoves have risen in popularity over recent years, with this increase having an impact on air quality and climate change, however, not all forms of domestic burning are equally polluting.

10 OTHER OPTIONS CONSIDERED

10.1 One option is to expand the Smoke Control Area within Bath to include moored vessels (boaters). The effectiveness of this option in reducing particulate matter concentrations and delivering public health benefits would need to be further understood, as well as undertaking a public consultation. Therefore, at this time, the Environmental Protection team will continue to review this option following implementation of the act and associated financial penalties.

10.2 A second option is to review and expand the Smoke Control Areas across the whole district, including moored vessels (boaters). The effectiveness of this option in reducing particulate matter concentrations and delivering public health benefits across the district would need to be further understood, as well as undertaking a public consultation. Therefore, at this time, the Environmental Protection team will continue to review this option following implementation of the act and associated financial penalties.

11 CONSULTATION

The document has been approved by the Council Section 151 Finance Officer and Monitoring Officer.

This is no plan to undertake a formal consultation with other stakeholders.

Contact person	Michelle Tett – Environmental Protection Manager
Background papers	N/A
Please contact the report author if you need to access this report in an alternative format	

Appendix 1

Figure 1- Annual average PM₁₀ concentrations for the last 5-years.

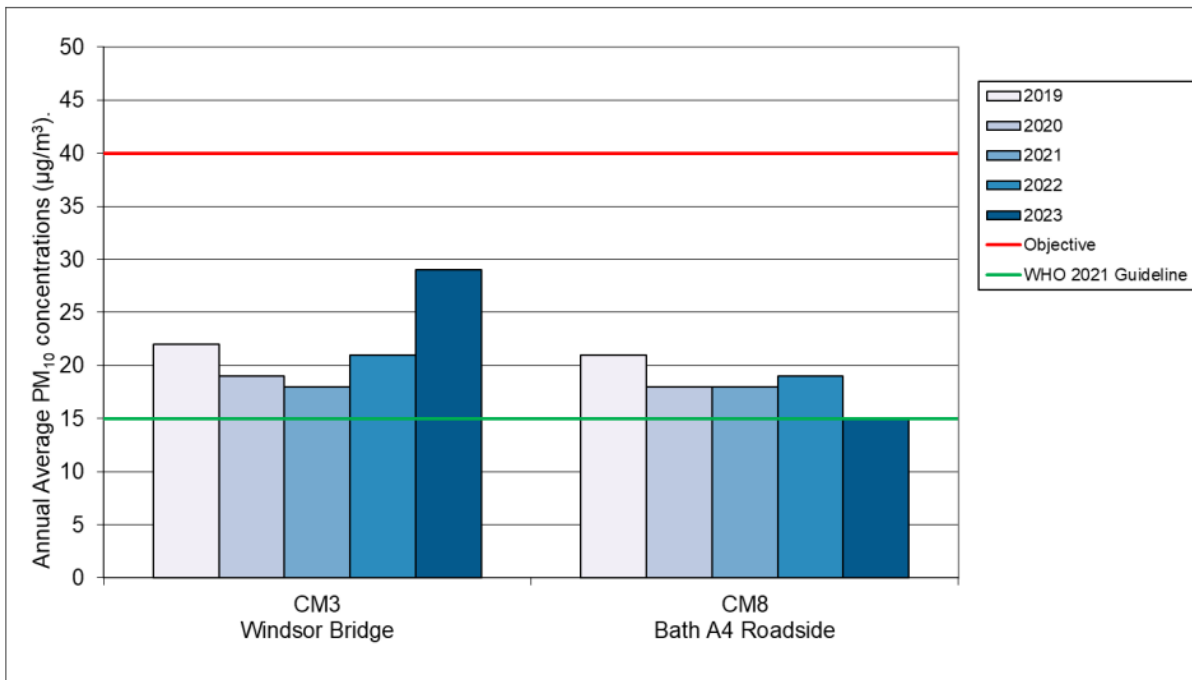
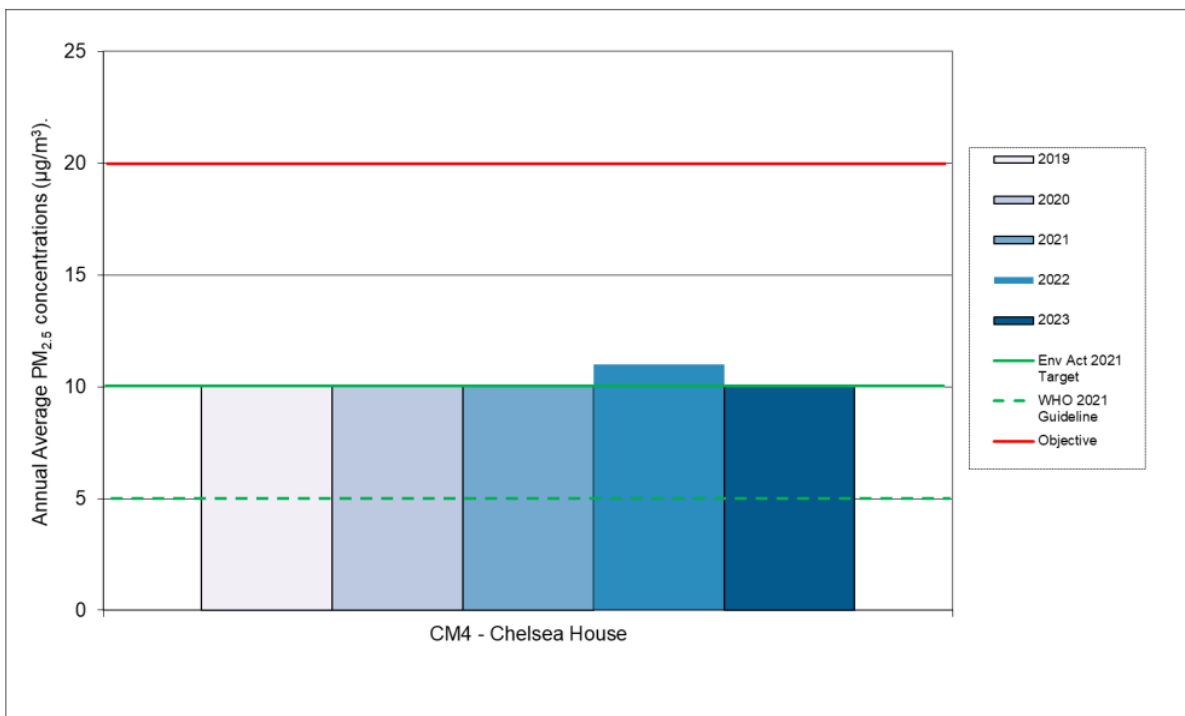


Figure 2- Annual average PM_{2.5} concentrations for the last 5-years.



Appendix 2

Figure 3 – Map of the Smoke Control Areas within Bath.

