

Traffic Management Act 2004

Enforcement Powers

Cabinet

Date: 13th June 2018

Author:	Cabinet Member for Highways and the Environment Head of Highways & Transport
Wards:	All
Parishes Affected:	All

1. Purpose and Reasons

- 1.1 Following a Motion at Council on 28 September 2017 Officers have been investigating options for tackling the issue of parking on pavements throughout the Borough.
- 1.2 Officers and Ward Members regularly receive complaints of vehicles obstructing pedestrian dropped kerbs and vehicle crossings. The Council has the option to take on additional powers under the Traffic Management Act (2004) to deal with this issue. The report seeks approval for a consultation to take place on the adoption of these additional powers contained within the Traffic Management Act (2004). These will prohibit the parking of vehicles across pedestrian dropped kerbs and vehicle crossings. They will also prohibit double parking.
- 1.3 Enforcement will be carried out by the Council's Civil Enforcement Officers. There will be no requirement for Traffic Regulation Orders or special signs. However, there will be a requirement for prior consultation with the community and clear notice being given to the public of the Council's intention to adopt these powers.

2. Recommendations

Cabinet is recommended to:

- 2.1 Note the Motion at Council on 28 September 2017 regarding obstructions of pavements by vehicles (Minute 35 2017/18 refers).
- 2.2 Authorise the Head of Highways and Transport, in consultation with the Cabinet Member for Highways and the Environment, to consult with the local community over proposals to enforce prohibitions of double parking and parking at dropped footways.
- 2.3 Authorise the Head of Highways and Transport, in consultation with the Cabinet Member for Highways and the Environment, to consider the consultation responses received, and if appropriate, to introduce enforcement powers permitted under sections 85 (prohibition of double parking) and 86 (prohibition of parking on dropped footway) of the Traffic Management Act 2004 in accordance with the delegated authority contained within the Scheme of Delegations

Further information on the subject of this report can be obtained from Philip Martlew, Direct Dial Telephone Number 01793 466369, pmartlew@swindon.gov.uk.

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(paragraph 143) subject to giving prior public notice of this intention and the date from which it will apply.

3. Detail

Background

- 3.1 At its meeting on 28 September 2017 Council considered the following motion proposed by Councillor Mary Martin and seconded by Councillor Matthew Courtliff.

“This Council notes the concerns raised by Ward Members on the nuisance caused to residents by obstructions on pavements and, particularly to those residents with pushchairs, mobility scooters and impaired vision. Council requests that the Cabinet Member for Communities and Place bring a report to Cabinet on how the Council can use the powers available to unitary authorities to tackle the obstruction of pavements in the areas where Ward Members think appropriate.

- 3.2 The Motion was carried (Council Minute 35 2017/18).

- 3.3 Parking on pavements, verges and dropped kerbs also featured as a concern at the September 2017 meeting of the Communities and Place Overview and Scrutiny Committee, which reviewed residents’ requests. Cabinet was asked to investigate ways of resolving these issues (Minute 10(1) 2017/18 refers).

- 3.4 Officers and Ward Members regularly receive complaints about vehicles obstructing pedestrian dropped kerbs and vehicle crossings either by parking across them on the road or by parking on top of them on the pavement. At present the only option available would be to introduce parking restrictions (double yellow lines). This would require a Traffic Regulation Order with the associated statutory process. The amount of double yellow lines involved would be only a few metres in each case. However, the time and costs involved make this impractical.

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- 3.5 The Traffic Management Act 2004 (TMA) does give local authorities with the power of the civil enforcement of parking contravention the right to enforce prohibitions of double parking (Section 85 of TMA) and parking at dropped footways (Section 86 of TMA) as if they had been introduced using a traffic regulation order (TRO). Therefore there would be no need to make a TRO.

- 3.6 As this is an amendment to the Council’s parking policy regarding the contraventions it enforces it is recommended that a degree of consultation takes

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place with the community. The outcome of consultation should be considered before a final decision is made to proceed with these powers.

- 3.7 The Department for Transport Guidance states that the public should be made aware of the new restrictions being enforced. In addition to wider communication through the press and media it would be prudent to publish a notice giving details of the new restrictions and the start date for enforcement.
- 3.8 There is no requirement to place and maintain traffic signs to indicate the effect of sections 85 and 86 on roads.
- 3.9 In some residential areas parking spaces are at a premium and vehicles are often parked in less than ideal locations – including at, on and across pedestrian dropped kerbs. Enforcement of restrictions on parking across pedestrian dropped kerbs may therefore reduce the available parking space in such areas. However these dropped kerbs will have been provided in order to provide a suitable crossing point for pedestrians and their needs need to be balanced against the desire of car owners to park their vehicles. As the pedestrians most likely to be adversely impacted by a blockage of a dropped kerb are likely to be disabled or elderly or users of pushchairs the balance should be in their favour as vulnerable users of the highway.
- 3.10 No additional enforcement resources are being proposed and it will therefore be necessary to accommodate these new powers within existing resource levels amongst the Civil Enforcement Officers and associated Representations Team. It is anticipated that enforcement will be reactive to complaints that are received from the public or local Councillors and will not involve additional pro-active patrols to seek out these offences.
- 3.11 In relation to the original Motion at Council these powers will not have an impact on issues of pavement parking away from pedestrian dropped kerbs and vehicle crossings. Officers will continue to investigate options for tackling obstruction of pavements by vehicles beyond those powers that already exist to introduce Traffic Regulation Orders.

4. Alternative Options

- 4.1 The alternative to taking on these enforcement powers is to leave the situation as it exists at present. However this would not address the concerns raised by pedestrians (particularly pushchair users, those with mobility scooters and those with impaired vision). This option is available to the Council under existing legislation and it would appear sensible to make full use of the powers that have been made available to highway authorities to control indiscriminate and anti-social parking behaviour.

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- 4.2 The use of Traffic Regulation Orders to create parking restrictions (double yellow lines) at individual dropped kerbs across the Borough would not be a cost effective option nor practical in terms of officer resources.

5. Implications, Diversity Impact Assessment and Risk Management

Financial and Procurement Implications

- 5.1 Enforcement would be carried out within the existing establishment of Civil Enforcement Officers as part of their normal duties. There would therefore be no additional resource implications.
- 5.2 It is not anticipated that there will be significant additional revenue raised as a result of Penalty Charge Notices being issued as a result of enforcement of these offences. It is anticipated that most vehicles will be moved by their owners once the Civil Enforcement Officer is on site – and prior to a Penalty Charge Notice being issued.
- 5.3 There will be no Procurement Implications as the existing equipment used to issue Penalty Charge Notices can be used for these offences. The existing “back office” systems will also be unchanged.

Legal and Human Rights Implications

- 5.4 The content of this report will not have a direct implication on human rights issues and it is believed to be compatible with Convention Rights.
- 5.5 There are no direct legal issues arising from the report. The Traffic Management Act 2004 does give local authorities with the power of the civil enforcement of parking contravention the right to enforce prohibitions of double parking (Section 85 of TMA) and parking at dropped footways (Section 86 of TMA) as if they had been introduced using a traffic regulation order.

All Other Implications (including Staff, Sustainability, Health, Rural, Crime and Disorder)

- 5.6 No other implications have been identified.

Diversity Impact Assessment

- 5.7 A Diversity Impact Assessment (DIA) was completed for the overarching LTP Strategy in 2011. The DIA was reviewed and updated for 2015. This included a detailed analysis of the 2011 Census data. The conclusions were that:

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- 5.7.1 Some equality groups have significantly lower levels of car ownership than the population generally and will therefore have different transport issues (e.g. more reliance on public transport, walking and cycling),
 - 5.7.2 Caution should be used in applying “Swindon-wide” average figures for equality groups on a local basis, and
 - 5.7.3 The concentration of certain groups into distinct parts of Swindon will mean that transport issues unique to those communities (e.g. non car ownership, reliance on public transport, concern over safety on-street at night) will be particularly emphasised in those areas
- 5.8 This DIA is available from the report author.
- 5.9 The pedestrians who are most disadvantaged by the obstruction of dropped kerbs are often those who would fall into one of the groups that have protected characteristics as defined by the Equalities Act 2010 (e.g. disabled, elderly). Action to prevent obstruction of dropped kerbs is therefore an issue that would be appropriate for the Borough Council to carry out in furtherance of its Public Sector Equality Duty which requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities.

Risk Management

- 5.10 There are no direct risks arising from this report.

6. Consultees

- 6.1 The Director of Finance (Section 151 Officer) and Director of Law and Democratic Services (Monitoring Officer) are consulted in respect of all reports.

7. Background Papers

- 7.1 None

8. Appendices

- 8.1 None

9. Key Decision/Decision in Cabinet Work Programme

- 9.1 This is a Key Decision and is included in the Cabinet Work Programme for June 2018.