

**Public Document Pack  
SOUTHEND-ON-SEA BOROUGH COUNCIL**

**Cabinet Committee**

**Date: Tuesday, 4th January, 2022**

**Time: 6.30 pm**

**Place: Committee Room 1 - Civic Suite**

**Contact: Tim Row - Principal Democratic Services Officer**

**Email: [committeesection@southend.gov.uk](mailto:committeesection@southend.gov.uk)**

**A G E N D A**

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- 2 Declarations of Interest**
- 3 Minutes of the Meeting held on Monday 13th September 2021 (Pages 1 - 6)**
- 4 Minutes of the Meeting held on Tuesday, 21st September, 2021 (Pages 7 - 8)**
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Reference back of Minute 323 of Cabinet Committee regarding Thorpe Bay Gardens (Minute 477 of Council held on Thursday 25th November 2021 refers).
- 8 Crosby Road (Pages 37 - 44)**  
Reference back of Minute 323 of Cabinet Committee regarding Crosby Road (Minute 477 of Council held on Thursday 25th November 2021 refers)

**Chair & Members:**

Cllr R Woodley (Chair), Cllr P Collins (Vice-Chair) and Cllr C Nevin

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**Public Document Pack**  
**SOUTHEND-ON-SEA BOROUGH COUNCIL**

**Meeting of Cabinet Committee**

**Date: Monday, 13th September, 2021**  
**Place: Council Chamber - Civic Suite**

**3**

**Present:** Councillor R Woodley (Chair)  
Councillors P Collins (Vice-Chair) and C Nevin

**In Attendance:** Councillors M Berry, K Buck, D Cowan, T Cox, N Folkard, D Garston,  
S Habermel, B Hooper, J Moyies, S Wakefield and C Walker  
S Harrington, T Row and D Woska

**Start/End Time:** 6.30 pm - 8.50 pm

**320 Apologies for Absence**

There were no apologies for absence.

**321 Declarations of Interest**

The following interests were declared at the meeting:

- (i) Councillor Buck – Minute No. 324 (Update on Outstanding Schemes – No. 335 Highwood Close – Non-pecuniary interest: Lives in the road;
- (ii) Councillor Cox – Minute No. 324 (Update on Outstanding Schemes – No. 215 Radar Close – Non-pecuniary interest: Colleague lives in the road;
- (iii) Councillor Folkard – Minute No. 323 (Traffic Regulation Order Objection Report - Junction protection in Hayes Barton) – Non-pecuniary interest: Lives in the road;
- (iv) Councillor Habermel – Minute No. 323 (Traffic Regulation Order Objection Report – Thorpe Bay Gardens) – Disqualifying Non-pecuniary interest: Family member lives in the section of road affected (withdrew);
- (v) Councillor Hooper – Minute No. 323 – (Traffic Regulation Order Objection Report - Junction Protection in Eaton Road: Lives in the road;
- (vi) Councillor Moyies – Minute No. 323 (Traffic Regulation Order Objection Report - Junction protection in Malmsmead) – Non-pecuniary interest: Lives in the road;
- (vii) Councillor Nevin – Minute No. 323 (Traffic Regulation Order Objection report - Junction protection in Flemming Crescent) – Non-pecuniary interest: Lives in the road; and
- (viii) Councillor Woodley – Minute No. 323 (Traffic Regulation Order Objection Report – Thorpe Bay Gardens) – Non-pecuniary interest: Resident of the Burges Estate.

**322 Minutes of the Meeting held on Monday, 26th July, 2021**

Resolved:-

That the Minutes of the meeting held on Monday, 26<sup>th</sup> July 2021 be received, confirmed as a correct record and signed.

**323 Traffic Regulation Order Objection Report**

The Cabinet Committee received a report of the Executive Director (Neighbourhoods and Environment) that presented the representations that had been received in response to the statutory consultation for traffic regulation orders for the introduction of waiting restrictions in the sections of road set out in the Appendices to the submitted report.

The report sought the Cabinet Committee's approval on the way forward in respect of these proposals, after having considered the views of the Traffic Regulations Working Party, following consideration of all the representations that had been received in writing and at the meeting.

The Cabinet Committee noted that whilst the extent of the proposed waiting restrictions in the form of junction protection was not specified, the default length for junction protection was 10 metres. The Cabinet Committee, however, noted the views of the Traffic Regulations Working Party that there may be instances where the length of the junction protection could be reduced to reduce the impact on parking availability whilst maintaining clear and safe sight lines and visibility. On such location was Walker Drive at its junction with Henry Drive, where it was felt that the length of restriction in Walker Drive should be reduced to 5 metres rather than 10 metres.

The Cabinet Committee also noted the views of the Traffic Regulations Working Party in relation to the proposed waiting restriction in Crosby Road. It felt that the restrictions set out in the advertised draft traffic regulation order would retain some parking availability whilst maintaining the safe and efficient use of the highway.

With reference to the proposals for Thorpe Bay Gardens, the Cabinet Committee was reminded that issue relating to the Covenant, as explained at its meeting on 10<sup>th</sup> June 2021 (Minute 49 refers), was not relevant when determining highway waiting restrictions. The Council should act only in its capacity as Highways Authority in accordance with its powers to regulate the use of the highway in accordance with the Highways Act 1980 and the Road Traffic Regulation Act 1984, and not in its capacity as landowner.

Having considered the views of the Traffic Regulations Working Party it was:-

Resolved:-

1. That final confirmation of the draft traffic regulation order PTO1009 introducing waiting restrictions in the form of junction protection at various locations within the Borough be delegated to the Executive Director (Neighbourhoods and Environment) in consultation with the Cabinet Member for Transport, Asset management and Inward Investment, following discussion with the relevant Ward

Members on the extent of the junction protection to be implemented at each location. The default length of the restrictions is a maximum length of 10 metres. The length of waiting restrictions in Walker Drive shall be reduced to 5 metres each side of Henry Drive.

2. That, as specified in Appendix A to the submitted report, a further review of the proposals be undertaken where alternative proposals have been suggested by residents and revised options be submitted to a future meeting of the Traffic Regulation Working Party and Cabinet Committee where appropriate.

3. That Traffic Regulation Order PTO1010 introducing no waiting restrictions from 1.00 p.m. to 3.00 p.m. Mondays to Fridays in the sections of Crosby Road specified in Appendix B to the submitted report be confirmed as advertised and that a review of the effect of the scheme be undertaken 6 months after implementation.

4. That, in relation to Traffic Regulation Order PTO1011 introducing various waiting restrictions at various locations within the Borough, the following be approved:

(i) The following proposals be implemented as advertised:

- Ringwood Drive – no waiting at any time on both sides on the bend outside no. 26-28;
- Barnstable Close – no waiting both sides Mondays to Fridays between 2.00 p.m. to 3.00 p.m. ; and
- Thames Close – no waiting at any time both sides along its entire length.

(ii) That the following proposals not be progressed:

- Seaview Road;
- Thames Close – one hour restrictions; and
- Bunters Avenue.

(iii) That the following scheme proposals be reviewed and reported to a future meeting of the Traffic Regulations Working Party and Cabinet Committee, as appropriate:

- Scarborough Drive - opposite No.10;
- London Road – north-side between Scarborough Drive and Madeira Drive;
- London Road – both sides between the Synagogue on the north and No. 817 (Gainsborough Carpets);
- Scarborough Drive – replacement of bay opposite the side of Fortune Gardens takeaway;
- London Road – outside No. 1163;
- Seaview Road – on the whole west-side with the exception of outside No.24 Broadway and as junction protection on the east-side;
- Access Road of Alexandra Street behind Nos. 59-67;
- Rampart Street – south-side west of John Street; and
- Bunters Avenue turning head.

(iv) That the proposals relating to Sairard Gardens be reported to the next meeting of the Traffic Regulations Working Party and Cabinet Committee as appropriate, for the reasons detailed.

(v) That the proposals relating to Maya Close between Ness Road and Jena Close be deferred pending a review of the scheme and be considered in conjunction with the petition recently received requesting the introduction of a residents' parking scheme.

(vi) That the proposals for London Road/Scarborough Drive not be progressed at this time and that a revised scheme be prepared for consultation.

5. That Traffic Regulation Order PTO1012 Thorpe Bay Gardens Proposed Waiting Restrictions be confirmed as advertised and the proposals implemented.

Reasons for Decision

As set out in the submitted report

Other Options

As set out in the submitted report

Note: This is an Executive function

Cabinet Member: Councillor Woodley

**\*Called-in to Place Scrutiny Committee**

## **324 Update on Outstanding Schemes**

The Cabinet Committee received a report of the Executive Director (Neighbourhoods and Environment) that presented an update on the progression of traffic regulation order requests in respect of various proposed waiting restrictions and schemes by Ward.

In response to questions, the Council's Head of Traffic & Highways undertook to provide an update to Ward Councillors on the following schemes:

- the progress of scheme No. 216 regarding the reduction of waiting restrictions in Earls Hall Avenue; and
- scheme No. 263 regarding the introduction of waiting restrictions, the relocation of the parking bay for disabled persons and unrestricted parking bays in Lundy Close.

With reference to scheme No. 216 regarding the introduction of junction protection in Radar Close, the Council's Head of Traffic & Highways gave assurances that the junctions of other roads in the estate would be reviewed and included in tranche 3 of the scheme.

Resolved:-

That the report be noted and that any schemes missing from the list at Appendix 1 to the submitted report or any new schemes be forwarded to the relevant service area by email to [traffweb@southend.gov.uk](mailto:traffweb@southend.gov.uk)

Reason for Decision

As set out in the submitted report.

Other Options

As set out in the submitted report.

Note: This is an Executive function

Cabinet Member: Councillor Woodley

**Chair:** \_\_\_\_\_

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# **SOUTHEND-ON-SEA BOROUGH COUNCIL**

## **Meeting of Cabinet Committee**

**Date: Tuesday, 21st September, 2021**

**Place: Council Chamber - Civic Suite**

**4**

**Present:** Councillor R Woodley (Chair)  
Councillors P Collins (Vice-Chair) and C Nevin

**In Attendance:** Councillors B Beggs, M Berry, K Buck, D Cowan, T Cox,  
S Habermel, J Lamb and S Wakefield  
S Harrington and T Row

**Start/End Time:** 6.30 pm - 7.55 pm

### **352 Apologies for Absence**

There were no apologies for absence.

### **353 Declarations of Interest**

No interests were declared at the meeting.

### **354 Exclusion of the Public**

Resolved:-

That, under Section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting for the items of business set out below, on the grounds that they would involve the likely disclosure of exempt information as defined in Part 1 of Schedule 12A to the Act and that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

### **355 Permanent Vehicular Crossing (PVX) - Exceptional Circumstances Application(s)**

The Cabinet Committee received a report of Executive Director (Neighbourhoods and the Environment) presenting the exceptional circumstance applications for permanent vehicle crossings (PVX) as set out in Appendix 1 to the report. The Applicants or their representatives attended the meeting to present their respective applications.

Having considered the views of the Traffic Regulations Working Party, it was:

Resolved:-

1. That the following applications be refused on the grounds that no extenuating circumstances that would warrant an exception to the current established policy could be identified:

Application Reference No. 21/00192;  
Application Reference No. 21/00219(a); and  
Application Reference No. 21/000282.

2. That, in view of the extenuating factors in relation to the individual case, the PVX exceptional circumstance application ref no. 21/00181 be granted.

Reasons for Decision

As set out in the submitted report

Other Options

As set out in the submitted report

Note: This is an Executive function

Not eligible for call-in pursuant to Scrutiny Procedure Rule 15(e)(iv)

Cabinet Member: Cllr Woodley

**Chair:** \_\_\_\_\_

# Southend-on-Sea Borough Council

Agenda  
Item No.

5

Report of Executive Director  
(Neighbourhoods & Environment)

to

**Traffic Regulation Working Party  
and Cabinet Committee**

on

**4 January 2022**

Report prepared by Sharon Harrington,  
Head of Highways & Traffic Network

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**Petition Report**  
**Esplanade Gardens proposal to replace Paving Slabs with Tarmacadam**

**Cabinet Member : Councillor Woodley**  
**Part 1 Public Agenda Item**

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**1. Purpose of Report**

- 1.1 For the Traffic Regulation Working Party and the Cabinet Committee to receive a petition referred by Council on 25 November 2021.

**2. Recommendation**

- 2.1 **That the Traffic Regulation Working Party consider the request in line with current policy, and:-**

- a) Continue to implement the footway resurfacing programme in accordance with the current resurfacing policy;
- b) Not accept the petition request that footway resurfacing in Esplanade Gardens is in concrete slabs;
- c) Write to the lead petitioner advising them of the Councils decision.

**3. Background**

- 3.1 Cabinet at its meeting on the 25<sup>th</sup> February 2020 considered and approved a new footway resurfacing policy for the Borough. The report considered the difficulties with maintaining and repairing the existing concrete slab footways across the Borough and a cost analysis between slab and bitumen resurfacing. Many of the existing slab footways are in imperial sizes which are difficult to source and are more costly than modern bitumen materials to replace.

- 3.2 The existing slab footways are more susceptible to damage from vehicle overruns or lifting from the actions of tree roots. These can lead to trip hazards for pedestrians and insurance claims against the local authority including this location. By contrast bitumen footways are more resistant to vehicle overruns and the flexible nature of bitumen makes it less susceptible to tree root damage. It is also quicker and cheaper to install meaning that finite footway repair budgets can go further.
- 3.3 The new footway policy implements a change in footway materials where paving slabs will be replaced by bitumen surfacing at all locations. The only potential exception is in conservation areas where the retention of paving slabs is considered essential to the character of the area. Each location will be considered on a case-by-case basis and a decision reached only after discussion with conservation officers. The link to the adopted footway resurfacing policy report and the Cabinet decision can be found in the background section to this report.
- 3.2 Asphalt is more cost effective and has additional benefits:
- More of our defective footways within the given budgets
  - ASP paving is difficult to get hold of now in required quantities
  - There is a shortage of concrete products in the industry
  - Better health & safety for operative
  - Less issues with vehicle breakages (parking/vehicle crossovers)
  - Tree Root lift can happen overnight with slab
  - Easier maintenance for small repairs
  - Better fit around other assets, rather than concrete fillets which are prone to damage

#### **4. Petition - Esplanade Gardens**

- 4.1 A petition containing 26 signatures from 24 properties has been received requesting the Council to not use tarmacadam when undertaking highways improvement resurfacing work in Esplanade Gardens. 23 of the properties are located within Esplanade Gardens and 1 from Chalkwell Avenue. There are 6 properties within Esplanade Gardens who have not signed and no signatures from any property within Esplanade House (6 properties). A copy of the petition can be found in the Appendix to this report.
- 4.2 The petitioners make a case for retaining the existing slab footway on the basis that they believe it has cost savings, is environmentally more sustainable, longer lasting and more pleasing to the eye. The evidence submitted to Cabinet at the time the footway policy was adopted indicated that the bitumen replacement policy was more cost effective and longer lasting than slabs. The visual consideration of bitumen over slab construction was also taken into account at the time the policy was adopted and was not considered to be an issue (except and on a case-by-case basis in conservation areas). Esplanade Gardens is not in a conservation area and conservation officers have confirmed there are no plans to include Esplanade Gardens in a new conservation area.
- 4.3 The current 2021/22 resurfacing programme includes Esplanade Gardens and works were put on hold to enable the petition to be presented and its contents considered. The review of the contents of the petition does not find sufficient grounds to retain slab footways in the area and it is therefore recommended that

the petition is noted but the footway resurfacing will be in bitumen in accordance with the current footway resurfacing policy. It is also recommended that the decision not to allow the petition to change the current footway resurfacing policy and to resurface the footways in Esplanade Gardens is communicated to the lead petitioner.

## **5. Options Appraisal**

### **Do nothing – maintain current policy**

- 5.1 The current footway resurfacing policy was adopted in 2020 and was an essential tool in the delivery of the major footway resurfacing programme that is currently under way. Changing the policy so soon after its formal adoption has the potential to give the wrong message that Council policy is meaningless and can be changed at a whim.
- 5.2 Unless the new policy continues, the current footway resurfacing programme cannot be delivered without significant additional investment to enable like for like replacement or a reduction in the number of streets where footway resurfacing can occur.
- 5.3 If Members of the Traffic Regulations Working Party were minded to agree to the petition they would also need to agree:-
  - (a) how and where the additional cost of resurfacing Esplanade Gardens would be funded as without it, the additional cost would prevent the works commencing, or
  - (b) which streets in the current programme will be dropped to pay for the cost of resurfacing Esplanade Gardens, or
  - (c) remove Esplanade Gardens from the current programme of resurfacing until such time if/when monies are available to pay for slab replacement.

## **6. Reasons for Recommendations**

- 6.1 The current footway resurfacing policy was adopted in 2020 after careful consideration of the options to resurface with slabs or bitumen. The policy to resurface only in bitumen was considered and adopted as it offered 'best value' and was seen as being essential to enable the Council to meet its commitments to improve the safety and condition of footways in the Borough.
- 6.2 The only exception to the general policy is for a conservation area, not as a general all-encompassing exception but on a location-by-location basis. The decision to retain slab footways will only be reached where there is sufficient and overwhelming evidence that retaining slab footways is a significant factor of the conservation area itself.
- 6.3 Esplanade Gardens is not in a conservation area and there are no plans for it to become one. There is no technical or planning justification for changing the policy for Esplanade Gardens and to do so would set a precedent for other streets to request changes to Council adopted policy which would effectively make it unworkable. There is no budget to pay for the additional cost of retaining slab footways at this location.

## 7. Corporate Implications

### 7.1 Contribution to Council's Vision & Corporate Priorities.

**Safe and Well** – the footway resurfacing policy will reduce trips and hazards for pedestrians and help people feel safe and secure using the footway network in the Borough.

**Active and Involved** – more people have physically active lifestyles. Even and safe footways free from trips and hazards encourage people to choose to walk as part of a fitness regime rather than as an alternative to using other more polluting modes of transport.

**Connected and Smart** – people have a wide range of transport options including walking on safe and well maintained footways.

### 7.2 Financial Implications

The current estimate for the footway resurfacing of Esplanade Gardens is budgeted at £75,000 and is planned to be implemented in the 2021/22 financial year. The estimate for resurfacing Esplanade Gardens in slabs would increase the cost to around £100,000 and is currently unbudgeted. There is no surplus in the budget to cover the additional cost which would mean Members needing to agree additional funds to make up the difference or deleting other street(s) from the existing programme to make up the cost difference.

### 7.3 Legal Implications

None.

### 7.4 People Implications

Existing resources will be used to undertake assessments.

### 7.5 Property Implications

None.

### 7.6 Consultation

None.

### 7.7 Equalities and Diversity Implications

None.

### 7.8 Risk Assessment

Assessments form the basis for any risk assessments and if progressed for future works, Road Safety Audits are undertaken using independent auditors at the design and implementation stages.

## 7.9 *Value for Money*

The adoption of the existing footway resurfacing policy was based on a best value for money assessment and it is for this reason that the recommendation not to allow the petition to change the policy is made. The additional cost of slabs does not represent value for money and over time is likely to involve additional maintenance costs when slabs are broken.

## 6.10 *Community Safety Implications*

The existing slab footway has reached the end of its life. The surface is uneven and presents a trip hazard to the disabled and pedestrians where vehicles have overrun the slabs. Not resurfacing the footway would result in safety issues for the public and may result in insurance claims against the Council.

Resurfacing the footways in bitumen will remove the trip hazard and provide the best value for money solution.

## 6.11 *Environmental Impact*

None.

## 7. **Background Papers**

[\(Public Pack\)Supplementary Pack 2: Items 4, 6 and 10 Agenda Supplement for Cabinet, 25/02/2020 14:00 \(southend.gov.uk\)](#)

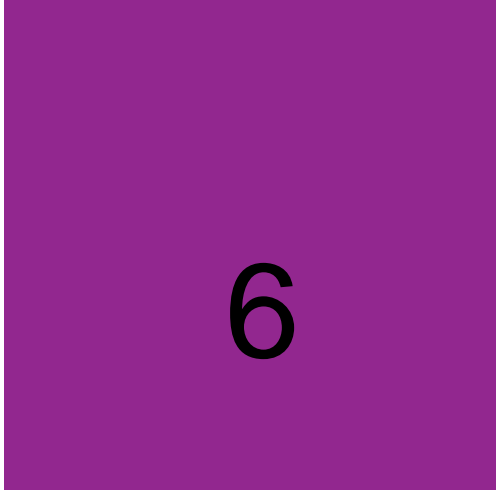
[Agenda Template \(southend.gov.uk\)](#)

## 8. **Appendices**

[Petition - Esplanade Gardens Replace Paving Slabs with Tarmacadam.pdf](#)

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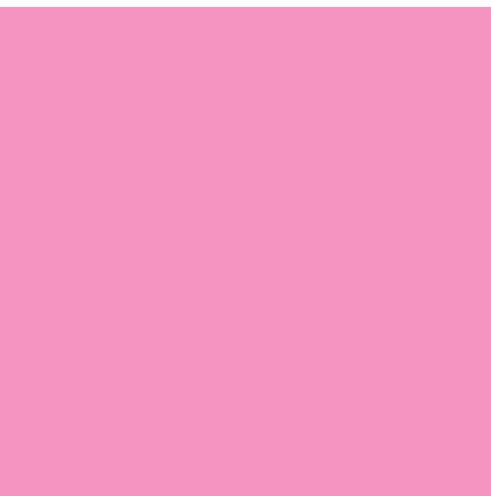
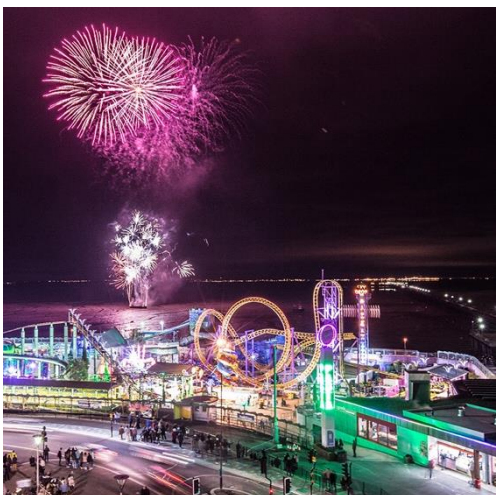




6

# 2021 Constitutional Changes

## Traffic & Highways



Internal  
Publication

October 2021

# 2021 Constitutional Changes

Version	Date	Author	Rationale
1.0	20/10/21	Ali	Application of Constitutional Changes

Next review	Date
1	2022/23

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# 1. Introduction

Southend-on-Sea Borough Council's shared ambition to transform the borough by 2050 is aligned to five themes, with related desired outcomes: -

- **Pride & joy** - By 2050 Southenders are fiercely proud of, and go out of their way, to champion what our city has to offer;
- **Safe & well** - By 2050 people in Southend-on-Sea feel safe in all aspects of their lives and are well enough to live fulfilling lives;
- **Active & involved** - By 2050 we have a thriving, active, and involved community that feel invested in our city;
- **Opportunity & prosperity** - By 2050 Southend-on-Sea is a successful city and we share our prosperity amongst all of our people;
- **Connected & smart** - By 2050 people can easily get in, out, and around our city and we have world class digital infrastructure.

This document supports the more specific desired outcomes for each theme by simplifying and streamlining the approval and implementation of schemes on the highway.

## 2. Constitutional Changes

### Background

Cabinet on the 27<sup>th</sup> July 2021 agreed a report to amend the Terms of Reference for the Traffic Regulations Working Party and Scheme of (Officer) Delegations.

[Agenda for Cabinet on Tuesday, 27th July, 2021, 2.00 pm \(southend.gov.uk\)](#)

This was ratified by the Full Council at its meeting on the 9<sup>th</sup> September 2021 with immediate effect.

[Agenda for The Council on Thursday, 9th September, 2021, 6.30 pm \(southend.gov.uk\)](#)

The new procedures result from benchmarking with other Traffic Authorities and is a culmination and implementation of best practice. The delegated operational decision making to officers will save money and provide a much improved and more efficient service to members of the public.

It is legally compliant, and ensures the engagement of elected Councillors, at appropriate junctures in the process.

# 3. Delegation to Officers

## Delegation to the Executive Director (Neighbourhoods & the Environment), and/or the Head of Traffic & Highways

**To discharge all of the Council's functions in relation to highway, traffic, and parking matters (including the management and enforcement of utility works) with the exception of the following:**

- Approval of statutory plans and policy matters (which are generally for Cabinet);
- The agreement of major highway/transport schemes (which are generally for Cabinet);
- Those elements dealing with Traffic Regulation Orders (TROs) that fall with the jurisdiction or remit of the Traffic Regulations Working Party and Cabinet Committee or the new panel to determine appeals on Domestic Vehicle Crossings.

That, without prejudice to the delegations set out above (including but not limited to determining all consents, permissions, and licences, and taking enforcement action) in relation to the following functions:

- The statutory advertisement of TROs and, where no representations are received, to confirm the TROs;
- The implementations of Emergency TROs where required;
- The consolidation of existing amendment TROs into a single new Order; the revocation of existing TROs and re-enactment without material change to the measures into a new TRO;
- Be responsible for enforcement action and all highways related matters on behalf of the Council in relation to traffic & highways;
- Be responsible for the Council's functions under the New Roads and Street Works Act 1991;
- To either act as the Traffic Manager for purposes of Section 17 (2) of the Traffic Manager Act 2004 or to appoint a person to exercise the Network Management Duty under Section 16 of the Act;

- The functions of the Council under the Highways Act 1980;
- The functions of the Council as road traffic authority including its powers under the Road Traffic Regulation Act 1984;
- The Council's functions under New Roads and Street Works Act 1991;
- To sign the official traffic regulation orders (sealing is not required);
- To be responsible for the management of the Council's highways contracts and the delivery of an annual programme of works agreed in consultation with the relevant Cabinet Member.

## 4. Constitutional changes and the current work programme

**Minor schemes** that have not commenced will need Delegated Authority (DA) report approval by the Executive Director.

**Major schemes** that have been approved by Cabinet will be progressed under the DA process.

**Individual schemes** that have already been reported to an earlier TRWP for authorisation but have not been implemented will be progressed under the DA process unless there is further approval required to progress/complete a scheme.

The DA report template can be found in Appendix A



## 5. Constitutional changes and TROs

The Traffic Order process is delegated to Officers but will need Delegated Authority (DA) report approval by the Executive Director to commence/progress a TRO.

The DA report needs to include the approval of the Statement of Reasons for advertising which must be based on the legal reasons for making an Order (see s.1 of the Road Traffic Regulation Act 1984).

Traffic Orders are now made by the signature of the Executive Director (Neighbourhoods & Environment) or the Head of Traffic and Highways.

The Traffic Regulations Working Party will only become involved where there are significant objections received and Officers professional view is that the scheme should be implemented unchanged rather than reviewed or abandoned.

**The DA report template can be found in Appendix A**

## 6. Constitutional changes and vehicle crossovers

The new vehicle crossover policy was adopted by Cabinet and will be the basis of all decision making on the policies it contains. Under the constitutional changes, an applicant who has been refused a vehicle crossover can only appeal that decision if they believe the Council has incorrectly applied its policies or if there are sufficient mitigating circumstances to allow a divergence from the Council policy and allow a crossover.

An appeal must be by email or in writing and clearly state the reasons why the appellant believes the original decision did not comply with the stated policy or process. Any additional mitigating circumstances must also be stated in writing. This will be submitted to the PVX Appeals Panel who will review the appeal and their decision will be final.

If an appeal is made and is not regarding incorrectly applied policies it will be rejected at its first point of contact and not reach the Appeals Panel.

### PVX Appeals Panel Membership

The Head of Traffic & Highways (or in their absence the Executive Director (Neighbourhoods and Environment)), a Council engineer independent of the original decision relating to the PVX in question, the relevant Ward Councillors. No substitutes are permitted.

# Appendix A

**Report**  
No. 2021/

## **Southend-on-Sea Borough Council** **Delegated Approval** **Title of report**

### **1. Background**

What is the basis of the report

This report seeks delegated approval to do what

### **2. Recommendation**

That the Executive Director (Neighbourhoods and Environment) in consultation with the Cabinet Member for Transport, Asset Management and Inward Investment approve the proposals to:

1. Do what?;
2. etc;

Details of the proposed works are outlined in the **Appendix**;

### **3. Scheme Details**

**Heading:**

**Text**

The following issues have been identified and will need to be addressed;

- this;
- that;
- something else.

Following a review, it is proposed to:-

carryout works as follows:

- a. this;
- b. that;
- c. something else.

Reason for doing so.

#### 4. Consultation

#### 5. Forward Programme

#### 6. Financial Implications

#### 7. Legal Implications

### Approvals

Engineer (drafting the report)		Signed:	Dated:
Service Manager		Signed:	Dated:
Head of Traffic and Highways	Sharon Harrington	Signed:	Dated:

**I approve the above recommendations:**

Executive Director, Neighbourhoods and Environment	Anna Eastgate	Signed:	Dated:
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# Southend-on-Sea Borough Council

Report of Executive Director (Neighbourhoods & Environment)

To  
**Traffic Regulations Working Party  
and Cabinet Committee**  
on

**04/01/2022**

Agenda  
Item No.

**7**

Report prepared by:  
Sharon Harrington, Head of Traffic & Highways

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## **Thorpe Bay Gardens**

**Cabinet Member: Councillor Ron Woodley**  
**Part 1 (Public Agenda Item)**

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### **1. Purpose of Report**

This report provides background information to the issues regarding the introduction of a parking restriction in Thorpe Bay Gardens, to enable appropriate and effective scrutiny of the matter.

### **2. Recommendation**

**2.1 That, the Traffic Regulations Working Party and Cabinet Committee reconsider its resolution that the draft TRO amending the waiting restrictions be confirmed as advertised and the proposals implemented for the reasons given in the report and either:**

**2.2 Resolve to accept the original Officer recommendation not to progress the proposals at this time; or,**

**2.3 Authorise the Head of Traffic and Highways to survey and research the extent of the alleged anti-social behaviour occurring in Thorpe Bay Gardens, and if established consult with the police and interested parties on measures to reduce the activity by means of a PSPO subject to funding being made available for the project.**

### **3. Background**

**3.1. The at its meeting on 13<sup>th</sup> September 2021, the Traffic Regulations Working Party and Cabinet Committee considered the representations to a draft traffic regulation order (TRO) amending the existing waiting restrictions in Thorpe Bay Gardens (Minute 323 refers). A copy of Minute 323 of Cabinet Committee is also attached at **Appendix 1**. A copy of the report is attached to this report at **Appendix 2**.**

- 3.2. This matter was called in for consideration by the Place Scrutiny Committee at its meeting on 4<sup>th</sup> October 2021. At that meeting there was concern that the matter, in connection with the decision relating to Thorpe Bay Gardens, could not be adequately scrutinised, as the relevant Cabinet Member was absent. Accordingly, the matter was referred back to the Cabinet Committee for reconsideration (and the decision then referred up under SO 39) (Minute 364 refers).
- 3.3. This report summarises the issues regarding the matter in relation to Thorpe Bay Gardens to assist Councillors in fulfilling their scrutiny role.

#### **4.0 History**

- 4.1 In 2019, complaints were received from residents regarding dangerous driving and speeding vehicles in Thorpe Bay Gardens. A multi-agency response, involving officers from the Council's Community Safety, Highways, Parking and Environmental Care Teams and the Police, sought to address the problems.
- 4.2 Initial involvement with residents identified two separate issues:
- Regular reported occurrences of dangerous high speeding vehicles along Thorpe Bay Gardens, mainly in the evenings. Residents reported that the road was being used as a 'racetrack' and that vehicles were estimated to be travelling up to 70mph.
  - Regular reported anti-social behaviour from groups of individuals meeting on the green open space, involving noise nuisance, alleged drug use, littering, illegal parking and general intimidation to residents in Thorpe Bay Gardens.
- 4.3 Anti-social behaviour reported by residents subsided as a result of the work undertaken, as well as likely seasonal influences. However, reports from residents of dangerous speeding continued.
- 4.4 In respect of speeding, the following work has been undertaken. Joint patrols of the area, involving Community Safety, Highways and Police officers were undertaken on certain days between 14<sup>th</sup> June and 22<sup>nd</sup> July 2020 up to 10pm. Council officers witnessed specific incidents involving vehicles speeding, believed to be well in excess of the 30-mph limit, on the following occasions:
- 30<sup>th</sup> May approx. 9pm (mopeds speeding and pulling wheelies)
  - 14<sup>th</sup> June approx. 7pm (white BMW)
  - 14<sup>th</sup> June approx. 7pm (Red Seat Leon)
- 4.5 Details of the speeding vehicles were provided to the Police for them to follow up although the Council is not aware of any action taken by the Police as a result.
- 4.6 Traffic monitoring to obtain speed data was undertaken by the Council's Highways Team between 21<sup>st</sup> June to 3<sup>rd</sup> July 2020. During that period, speeds



were recorded up to a maximum of 71mph. It must be noted that the high speeds were all captured after 7pm. This correlates with the reports received from residents.

- 4.7 Police created a specific operation, to respond to the issues reported by the residents of Thorpe Bay Gardens and liaised the Council's Community Safety and Highways officers throughout.
- 4.8 The matter was reported to the Traffic Regulations Working Party and Cabinet Committee at the meeting on Thursday 12th September 2019, where a request for the introduction of speed humps in Thorpe Bay Gardens was approved (Minute 386 refers). This was subsequently called-in for scrutiny and referred back for reconsideration at the meeting of Cabinet Committee on 4<sup>th</sup> November 2019. In the light of further information, the Cabinet Committee resolved to proceed with the introduction of the speed control measures (Minute 505 refers). The speed humps were installed in July 2020.
- 4.9 In January 2021, the Highways Team was informed that when Council acquired the freehold of the land to the south of Thorpe Bay Gardens in 1962, a covenant in was in place requiring the Council as the landowner to:

*“ensure as far as reasonably possible, that no parking of cars is permitted on the North side of Thorpe Bay Gardens, eastwards from its junction with St Augustine’s Avenue”.*

- 4.10 In the light of the above information and following consultation with the Cabinet Member, the Highways Team submitted a report for consideration by the Traffic Regulations Working Party and Cabinet Committee on 22<sup>nd</sup> February 2021 (Minute 848 refers) recommending the following to support the Covenant and reduce the risk of a legal challenge from residents:

- the replacement of the single yellow lines with double yellow lines on the north and south sides of Thorpe Bay Gardens, eastwards from its junction with St Augustine’s Avenue;
- the implementation of the double yellow line enforcement 12 months of the year; and
- the introduction of double yellow lines along Barrow Sands and Marcus Avenue to support further displacement of vehicles.

- 4.11 This matter was deferred for officers to obtain clarification of the legal implications of the covenant before implementing any further restrictions.
- 4.12 The advice received from Counsel was that whilst the Council was the Highways Authority when it obtained the land in 1962, the Covenant was not expressed to be given by the then County Borough Council in the exercise of any of its statutory functions as Highways Authority. Therefore, there was a clear distinction between what the responsibilities of the Council are as landowner and what they are as Highways Authority.

- 4.13 This was reported to the Traffic Regulations Working Party and Cabinet Committee on 10<sup>th</sup> June 2021, when it was recommended that the seasonal restrictions be extended to cover the 12-month and to keep the situation under review with a report to the first available committee meeting after January 2022. It was also recommended that further surveys and evidence gathering be carried out over the summer and winter months in nearby adjoining roads.
- 4.14 The Cabinet Committee considered the views of the Traffic Regulations Working Party in respect of this matter and, in view of the concerns expressed by residents, resolved to commence the statutory consultation for the revocation of the existing seasonal restrictions in Thorpe Bay Gardens from its junction with St Augustine's Avenue to its eastern extremity and the introduction of no waiting at any time restrictions daily between the hours of 8am and 10pm and that the situation in Thorpe Bay Gardens be monitored and kept under review and that a report be submitted to the meeting of the Traffic Regulations Working Party and Cabinet Committee within one year. (Minute 49 refers).
- 4.15 This decision was called in for consideration by the Place Scrutiny Committee at its meeting on 5<sup>th</sup> July 2021. The Place Scrutiny Committee noted the decision of Cabinet Committee, but the matter was referred to full Council for consideration under Standing Order 39 (Minute 105 refers). The Council noted the decision of Cabinet Committee and the draft TRO in respect of the proposals was subsequently advertised in accordance with the statutory requirements.
- 4.16 A number of representations were received during the statutory consultation period. These were reported to the Traffic Regulations Working Party and Cabinet Committee for consideration on 13<sup>th</sup> September 2021, where it was recommended that on the basis of the majority of responses not being in favour of the proposals they should not be progressed. It was resolved that the draft TRO amending the waiting restrictions be confirmed as advertised and the proposals implemented. (Minute 4 refers).
- 4.17 This was subsequently called-in to the Place Scrutiny Committee for consideration at its meeting on 4<sup>th</sup> October 2021.

## **5. Legal Position**

- 5.1 As stated in paragraph 4.12 above, whilst the Council was the Highway Authority when it obtained the land to the south of Thorpe Bay gardens in 1962, the Covenant was not expressed to be given by the then County Borough Council in the exercise of any of its statutory functions as Highway Authority. There is a clear distinction between the responsibilities of the Council as landowner and those as the Highway Authority.
- 5.2 This obligation contained in the covenant is therefore inconsistent with the proper exercise of the Highway Authority's statutory functions. It is considered that as the Covenant concerns the use of a highway, the Council should act only in its capacity as the Highway Authority and that such requests should be

considered in relation to the Council's statutory powers that regulate the use of the highway.

- 5.3 The Covenant appears to fetter the Council's power to control parking on the highway and as the Local Authority cannot fetter the exercise of a statutory discretion, the Covenant appears to be inconsistent with the proper exercise of the Highway Authority's discretion. When considering all of the possible options in relation to this matter the Council must act in its capacity as the Highway Authority only and not in the capacity as landowner.
- 5.5 In accordance with its powers under the Highways Act 1980 and the Road Traffic Regulation Act 1984 ("RTRA 1984"), the Council as Traffic/Highway Authority may introduce a TRO where it appears to the authority making the order that it is expedient to make it:
- (a) for avoiding danger to persons or other traffic using the road or any other road or for preventing the likelihood of any such danger arising, or
  - (b) for preventing damage to the road or to any building on or near the road, or
  - (c) for facilitating the passage on the road or any other road of any class of traffic (including pedestrians), or
  - (d) for preventing the use of the road by vehicular traffic of a kind which, or its use by vehicular traffic in a manner which, is unsuitable having regard to the existing character of the road or adjoining property, or
  - (e) (without prejudice to the generality of paragraph (d) above) for preserving the character of the road in a case where it is specially suitable for use by persons on horseback or on foot, or
  - (f) for preserving or improving the amenities of the area through which the road runs, or
  - (g) for any of the purposes specified in paragraphs (a) to (c) of subsection (1) of section 87 of the Environment Act 1995 (air quality).
- 5.6 The Council may potentially introduce waiting restrictions where consistent antisocial behaviour is directly linked to areas of parked vehicles where the vehicles are left unattended or where parked vehicles could potentially cause a hazard to other highway users.
- 5.7 There is a possibility that children may attempt to walk across the green from the seafront and up the slope between vehicles parked on the south side of Thorpe Bay Gardens during the winter period. The Highways Team has not, however, received any concerns or reports of any such incidents and has no real evidence regarding any parking or safety issues in this area.

## **6. Other Options**

- 6.1 Public Spaces Protection Orders (PSPO) is a relatively new power for local authorities granted under the Anti-social Behaviour, Crime and Policing Act 2014. A PSPO is intended to deal with anti-social behaviour in a local area that is detrimental to the community's quality of life. A PSPO imposes conditions on the use of that area. A breach of a PSPO is a criminal offence where an FPN can be issued by a police officer in uniform or authorised council official.

- 6.2 A PSPO can only be introduced with the agreement of the police and where consultation and local engagement to establish exactly the nature and extent of the anti-social behaviour has taken place. A PSPO can only be introduced for a maximum 3-year period.
- 6.3 There is a an existing PSPO covering the town centre, seafront and adjoining areas including Thorpe Bay Gardens. The provisions of the PSPO allow for the enforcement of anti-social behaviour and was introduced in July 2019 and will expire on 21<sup>st</sup> July 2022. A copy of the current PSPO is attached to this report at **Appendix 3**.
- 6.4 Work on a replacement PSPO will need to commence early in 2022 to ensure the control of anti-social behaviour can continue to be enforced. As part of this process there will need to be a review of enforcement activity and consideration of any issues or improvements that may need to be included in the new PSPO and/or the frequency of patrols.

## **7. Reasons for Recommendations**

- 7.1 The Council must act in its capacity as Highway/Traffic Authority in this matter and not in its capacity as landowner. Any reference to the Covenant is irrelevant.
- 7.2 A TRO can only be introduced in accordance with the powers granted under section 1 of the Road Traffic Regulation Act 1984. This does not include measure for the control of anti-social behaviour. There is a risk of the Council being subjected to legal challenge if the Traffic Regulations Working Party and Cabinet Committee continues with its decision of 13th September 2021 that the draft TRO amending the waiting restrictions be confirmed as advertised and the proposals implemented.
- 7.3 A PSPO granted under the Anti-social Behaviour, Crime and Policing Act 2014 is considered the more appropriate measure for the control of anti-social behaviour.

## **8. Corporate Implications**

### **8.1 Contribution to the Southend 2050 Road Map**

Roads that feel safe for the public, residents and visitors are part of the 2050 road map. The use of PSPOs to control anti-social behaviour are an essential tool to the delivery of this road map.

### **8.2 Financial Implications**

There are financial implications associated with the recommendations in this report insofar as there will be a need for police and community engagement to establish if a PSPO is a practical solution to the issues in Thorpe Bay Gardens.

Continuing with the decision to introduce a TRO is unlikely to resolve anti-social behaviour and has the risk of legal challenge and the associated costs in

preparing and presenting a legal case at the High Court. It will also deplete resources and delay work on other schemes that are high priority.

### **8.3 Legal Implications**

The statutory consultative process for Traffic Regulation Orders will be followed. Any objections received will be responded to by the service area.

Any issues relating to the Covenant concerning the use of the highway is irrelevant. The Covenant appears to fetter the Council's powers to control parking on the highway. The Council should act only in its capacity as the Highways Authority in accordance with its powers to regulate the use of the highway in accordance with the Highways Act 1980 and the Road Traffic Regulation Act 1984 ("RTRA 1984") and in particular, consideration of the prohibition of parking on the highway in accordance with Part 1 of the RTRA 1984.

The power to prohibit parking by way of a Traffic Regulation Order is not conferred upon the Council for the purpose of benefitting the successors in title of land (of the original seller in 1962). It must be exercised for the purposes set out in Part 1 of the RTRA 1984.

The Covenant is not expressed to be given by the County Borough Council in 1962 in the exercise of its statutory functions and is considered to impose an obligation that is inconsistent with the proper exercise of its functions under the RTRA 1984. 6.3.6 The Options being considered should be determined on public interest considerations of the RTRA 1984.

The Council, as the adjoining landowner, could be open to legal challenge for not complying with the terms of the Covenant. If such a challenge occurs, then such a challenge would be defended.

### **8.4 People Implications**

There is nothing to raise at this time.

### **8.5 Property implications**

There is nothing to raise at this time.

### **8.6 Consultation**

There is nothing to raise at this time.

### **8.7 Equalities and Diversity Implications**

There is nothing to raise at this time.

### **8.8 Risk Assessment**

Whilst there may be a risk of legal challenge to the Council in not upholding its responsibilities specified in the Covenant, the Council may only act in accordance with its powers as Highway Authority under the Highways Act 1980 and the Road Traffic Regulation Act 1984. The Council will therefore defend its position as appropriate.

There is also a risk of legal challenge to the Authority if the Council was to act outside of its powers as Highways Authority in relation to this matter.

#### **8.9 Value for Money**

There is nothing to raise at this time.

#### **8.10 Community Safety Implications**

The Council as Highway Authority may only act in accordance with its powers as Highway Authority under the Highways Act 1980 and the RTRA 1984. Issues relating to antisocial behaviour are matters for the police, or where so authorised such as through the PSPO, the Council's enforcement officers.

#### **8.11 Environmental Impact**

There is nothing to raise at this time.

### **9. Background Papers**

[Public spaces protection orders: guidance for councils \(local.gov.uk\)](https://www.local.gov.uk/public-spaces-protection-orders-guidance-for-councils)

### **10. Appendices**

Appendix 1 – Minutes of the meeting of Cabinet Committee held 13<sup>th</sup> September 2021 [Agenda Template \(southend.gov.uk\)](https://www.southend.gov.uk/agenda-template)

Appendix 2 – Report of Executive Director (Neighbourhoods and Environment) to Traffic Regulations Working Party and Cabinet Committee on 13<sup>th</sup> September 2021 [Public Pack\)Agenda Document for Traffic Regulations Working Party, 13/09/2021 18:30 \(southend.gov.uk\)](https://www.southend.gov.uk/public-pack/agenda-document-for-traffic-regulations-working-party-13-09-2021-18-30)

Appendix 3 – Public Spaces Protection Order (Southend Town Centre, Seafront and Adjoining Areas) No. 1 of 2019.

[public-spaces-protection-order-southend-town-centre-seafront-and-adjoining-areas-no-1-of-2019](https://www.southend.gov.uk/public-spaces-protection-order-southend-town-centre-seafront-and-adjoining-areas-no-1-of-2019)

# Southend-on-Sea Borough Council

Report of Executive Director (Neighbourhoods & Environment)

To  
**Traffic Regulations Working Party  
and Cabinet Committee**  
on

**04/01/2022**

Agenda  
Item No.

**8**

Report prepared by:  
Sharon Harrington, Head of Traffic & Highways

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## **Crosby Road**

**Cabinet Member: Councillor Ron Woodley**  
**Part 1 (Public Agenda Item)**

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### **1. Purpose of Report**

This report provides background information to the issues regarding the proposed introduction of part-time waiting restrictions in Crosby Road, to enable appropriate and effective scrutiny of the matter.

### **2. Recommendation**

**2.1 That, the Traffic Regulations Working Party and Cabinet Committee reconsider its resolution that the draft TRO introducing part-time waiting restrictions be confirmed as advertised and the proposals implemented for the reasons given in the report, and either:**

**2.2 Resolve to accept the original Officer recommendation not to progress the proposals at this time; or,**

**2.3 Authorise the Head of Traffic and Highways to survey and research the issues occurring in Crosby Road, and prepare proposals designed to combat them and carry out community consultation to establish the level of support subject to funding being made available for the project.**

### **3. Background**

**3.1. The Traffic Regulations Working Party and Cabinet Committee at its meeting on 13<sup>th</sup> September 2021, considered the representations to various draft traffic regulation orders (TRO) including one proposing the introduction of limited hours waiting restrictions in Crosby Road. A copy of the Minute is attached at **Appendix 1.** A copy of the report is attached to this report at **Appendix 2.****

- 3.2. The report was called in for consideration by the Place Scrutiny Committee at its meeting on 4<sup>th</sup> October 2021. At that meeting the main concern related to another part of the report where the decision could not be adequately scrutinised, as the relevant Cabinet Member was absent. Accordingly, the report was referred back to the Cabinet Committee for reconsideration (and the decision then referred up under SO 39) (Minute 364 refers).
- 3.3. This report summarises the issues regarding the matter in relation to Crosby Road to assist Councillors in fulfilling their scrutiny role.

#### **4.0 History**

- 4.1 In May 2018, Councillor Habermel (Chalkwell Ward) submitted a request for the introduction of waiting restrictions to tackle congestion on Crosby Road. The Traffic Regulations Working Party and Cabinet Committee considered this request at its meeting on 13<sup>th</sup> September 2018 (Item 6 of the agenda). Members agreed to the request as an exception to the agreed criteria (only to consider parking issues on an area wide basis) due to the congestion and potential emissions resulting from traffic having to give way, and that all agreed actions will be added to the existing work programme and progressed in order of approval unless Members have indicated higher priority.”
- 4.2 Proposals were drawn up for 2-hour waiting restrictions (1pm – 3pm) and draft traffic orders advertised in November 2019. The results of the statutory consultation were reported to 24<sup>th</sup> February 2020 Traffic Regulations Working Party and Cabinet Committee with the recommendation not to proceed with the measures. The Traffic Regulations Working Party and Cabinet Committee resolved to instruct the Executive Director to introduce ‘appropriate waiting restrictions’ under an experimental traffic regulation order. A copy of the Minutes is attached at **Appendix 3**. A copy of the report is attached at **Appendix 4**.
- 4.3 In November 2020, 1-hour (noon – 1pm) waiting restrictions were introduced to combat commuter parking under an experimental traffic regulation order. Shortly after the scheme was implemented there was a formal complaint about the validity of the scheme. After investigation and legal advice, it was recommended that the experimental order be revoked, and the waiting restrictions on the ground removed. The basis of the decision was that the Traffic Regulations Working Party and Cabinet Committee resolution on 24<sup>th</sup> February had failed to define the experimental aspect of the proposals which need to be stated when the experimental order is introduced. This omission made the Traffic Order invalid.
- 4.4 The Traffic Regulations Working Party and Cabinet Committee received a report on delayed schemes at its meeting on 22<sup>nd</sup> February 2021 (Item 8 of the agenda) with the recommendation to ‘readvertise the agreed scheme in May 2021 with Ward Councillor agreement’. The minutes of the meeting record the decision for item 8 was only to note the report. A copy of the Minutes is attached at **Appendix 5**. A copy of the report is attached at **Appendix 6**.



- 4.5 Draft traffic orders were advertised in May 2021 for a combination of one-hour waiting restrictions (Noon-1pm) and two-hour waiting restrictions (1pm-3pm) Monday to Friday.
- 4.6 The results of the statutory consultation were reported to 13<sup>th</sup> September 2021 Traffic Regulations Working Party and Cabinet Committee meeting. The analysis showed a significant 2/3 majority opposed to the proposals. The report recommendation was again not to proceed with the scheme for Crosby Road. The Traffic Regulations Working Party and Cabinet Committee resolved that the traffic order be confirmed and a review of the effect of the scheme be undertaken six months after implementation.
- 4.7 There was a formal complaint about the validity of the decision of the Traffic Regulations Working Party and Cabinet Committee. Investigation into the complaint resulted in a deep dive into the history and decision making for this scheme. The investigation highlighted issues with the scheme and the decision-making process. It concluded there was a significant risk of legal challenge and reputational damage if the scheme were implemented.
- 4.8 A briefing paper was produced, and the contents discussed with Ward Councillors, Portfolio Holder and Opposition Party leaders. The briefing made the recommendation to stop all work on the current measures, carry out a reappraisal of historic data for Crosby Road, carry out 'snap-shot' parking occupancy surveys at peak, inter-peak hours on a mid-week, evening and weekend days and report back to a future meeting.

## **5. Results of site investigation**

- 5.1 Crosby Road is a residential road running west-east from the signalised junction of Chalkwell Avenue/The Ridgeway in the west to Crowstone Avenue in the east. There is a junction with Chadwick Road on the north side of Crosby Road roughly midway along its length. Crosby Road is not a local distributor road and does not, appear to suffer from rat-running.
- 5.2 Most, but not all properties have off-street parking sufficient for the property needs. Other potential parking generators could be from visitors to the three clubs that have tennis courts located to the south of properties on Crosby Road (main access from Victory Path). Chalkwell Station is to the west (approximately 620m-920m) from Crosby Road. There are also local shops and businesses on The Ridgeway (approximately 280m-620m) from Crosby Road.
- 5.3 It is good practice when a request is received from a Councillor for an intervention on the highway that some site investigation is carried out to establish what is going on. It may be that congestion on a particular day is a one-off event rather than regular occurrence. Consideration also has to be given that Crosby Road is not a distributor road and what may be an

unacceptable delay on a local distributor road is acceptable or even desirable on a residential road as it keeps traffic speed within the 30mph limit.

- 5.4 It would be expected that as a minimum, parking occupancy surveys would be carried out at the start of a scheme to establish the locations when and where congestion is occurring. These may have been carried out at the time but there is no evidence on the Council's shared drive that the surveys were carried out. The engineers who originally worked up the scheme no longer work for the Council so cannot provide insight.
- 5.5 There is a record of speed monitoring surveys carried out in Crosby Road in August 2010 and again in August 2018. The August 2010 survey showed only 1 percent of vehicles were exceeding the 30mph speed limit. The 85<sup>th</sup> percentile speed defines the speed that 85 percent of drivers will drive at or below under free-flowing conditions. Most people don't drive according to the posted speed limit, but account for the visual aspects of the road and a 'feel' for the road. In August 2010 the 85<sup>th</sup> percentile speed on Crosby Road was 24mph.
- 5.6 The speed survey in August 2018 involving the recording of the speed of 13,000 vehicles over an 8-day period in Crosby Road. The results of the 2018 speed survey were:-
- 50 percent of all vehicles were exceeding the 30mph speed limit.
  - The 85<sup>th</sup> percentile speed was 37mph in both directions.
  - The 85<sup>th</sup> percentile speed was 37mph in both directions at peak traffic hours.
- 5.7 These results do not support that theory that congestion is a significant factor in Crosby Road. In congested streets vehicles would usually have to manoeuvre between and around parked vehicles. This involves an element of stop and start which would have an impact on overall speed of vehicles and should see speeds less than 30mph when congestion is present. These results show that parking and congestion is not the problem; speeding is the issue.
- 5.8 In November 2021, a snap-shot parking occupancy survey was carried out for a mid-week peak hour, off-peak hour, and early evening, and the same for a Saturday. Crosby Road is about 380m (1246 feet) long. The maximum number of parked vehicles recorded at any time was 7. It should be noted that this was recorded in a period when working from home was the advice and normal practice for many as a means of containing the spread of Covid-19. It is possible that in 2018 parking occupancy was greater but from the results of the speed survey carried out in 2018, speeding was the prevailing issue and not congestion or commuter parking.
- 5.9 Based on the actual evidence there is nothing to support the introduction of waiting restrictions to combat congestion or commuter parking on Crosby Road and to do so is likely to result in an increase in vehicle speed on a residential road to the detriment of residents and other highway users. It is recommended that all work on a scheme for the introduction of waiting restrictions on Crosby Road is stopped. It is also recommended that further speed monitoring is

carried out to ascertain if speed remains an issue and if that is the case, an options report be prepared for measures to tackle the issue for approval, subject to suitable funding being available.

## **Legal Position**

- 6.1 The Traffic Regulations Working Party and Cabinet Committee decision in September 2018 approved work on a scheme for congestion reducing measures in Crosby Road and for draft traffic orders to be advertised.
- 6.2 The results of the statutory consultation were reported to the Traffic Regulations Working Party and Cabinet Committee at its February 2020 meeting with the recommendation not to implement a scheme on Crosby Road. The Traffic Regulations Working Party and Cabinet Committee did not follow the recommendation but instead resolved to instruct the Executive Director to introduce 'appropriate waiting restrictions' under an experimental traffic regulation order.
- 6.3 In accordance with its powers under the Highways Act 1980 and section 1 of the Road Traffic Regulation Act 1984 ("RTRA 1984"), the Council as Traffic/Highway Authority may introduce a TRO where it appears to the authority making the order that it is expedient to make it:
  - (a) for avoiding danger to persons or other traffic using the road or any other road or for preventing the likelihood of any such danger arising, or
  - (b) for preventing damage to the road or to any building on or near the road, or
  - (c) for facilitating the passage on the road or any other road of any class of traffic (including pedestrians), or
  - (d) for preventing the use of the road by vehicular traffic of a kind which, or its use by vehicular traffic in a manner which, is unsuitable having regard to the existing character of the road or adjoining property, or
  - (e) (without prejudice to the generality of paragraph (d) above) for preserving the character of the road in a case where it is specially suitable for use by persons on horseback or on foot, or
  - (f) for preserving or improving the amenities of the area through which the road runs, or
  - (g) for any of the purposes specified in paragraphs (a) to (c) of subsection (1) of section 87 of the Environment Act 1995 (air quality).
- 6.4 A Traffic/Highway Authority outside of Greater London may introduce a TRO experimentally under section 9 of the RTRA1984 but in doing so it must also follow the requirements set out in The Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996 (the Procedure Regs). Schedule 2 of the Procedure Regs stipulates that a Traffic/Highway Authority must agree and publish "2(d) a statement setting out the reasons why the authority proposed to make the order including, in the case of an experimental order, the reasons for proceeding by way of experiment and a statement as to whether the authority intends to consider making an order having the same effect which is not an experimental order."

- 6.5 The Traffic Regulations Working Party and Cabinet Committee resolution to proceed under an experimental order failed to agree a statement setting out the reasons for using an experimental order. This omission left the implementation vulnerable to a potential legal challenge and when a formal complaint was received resulted in the legal advice to Officers that the only option to avoid legal challenge was to revoke the experimental order and remove the road markings from Crosby Road.
- 6.6 The report on delayed schemes to the February 2021 Traffic Regulations Working Party and Cabinet Committee included Crosby Road with a recommendation to 'readvertise the agreed scheme in May 2021 with Ward Councillor agreement'. The minutes of the meeting record the Traffic Regulations Working Party and Cabinet Committee resolution for item 8 was only to note the report.
- 6.7 A permanent traffic order was advertised in May 2021 based on the scheme implemented under the earlier experimental order. The results of the statutory consultation were a significant majority of respondents (75%) opposed to the latest proposals. The recommendation not to implement the scheme was on the basis that there was not support from the public for the scheme.
- 6.8 Two questions to Council were received from a resident of Crosby Road. They were:-
1. I can find no authorisation for a traffic scheme in Crosby Road or the authorisation to advertise a traffic scheme in Crosby Road. Can you provide the evidence that this authorisation has been given?
  2. If the appropriate authorisations have not been given then the decision of the September meeting is invalid. What is the Council going to do to rectify this?
- 6.9 In preparing the response it could be shown that the Traffic Regulations Working Party and Cabinet Committee approved a scheme to combat congestion at its meeting in September 2018. This was the basis of the original scheme advertised in November 2019. The Traffic Regulations Working Party and Cabinet Committee at its February 2020 meeting did not accept the recommendation not to proceed with this scheme. Instead, it resolved to introduce an experimental scheme which appears to have changed from a congestion reduction scheme to a commuter parking elimination scheme. There is no record of this change to the scheme objectives being formally approved. The is also the matter of the use of an experimental order for the introduction of this revised scheme is already covered in paragraphs 6.4 and 6.5.
- 6.10 The written response was that after investigation there did not appear to be a record of authorisation from the Traffic Regulations Working Party and Cabinet Committee for a commuter parking reduction scheme in 2020 nor was formal approval given to readvertise the scheme in February 2021. On the basis of these findings, the Council would agree to stop all work on the fulfilment of the resolution of the September 2021 Traffic Regulations Working Party and

Cabinet Committee. A preliminary review of the issues affecting Crosby Road would be carried out and a report brought to a future meeting of the Traffic Regulations Working Party and Cabinet Committee Cabinet Committee.

## **7. Other Options**

None.

## **8. Reasons for Recommendations**

- 8.1 The Council must act in its capacity as Highway/Traffic Authority in this matter and should only introduce measures where there is evidence of a genuine problem. It must also comply with the adopted decision-making procedures set out in the Council's Constitution.
- 7.2 A TRO can only be introduced in accordance with the powers granted under the Road Traffic Regulation Act 1984 and in accordance with the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996. There is a risk of the Council being subjected to legal challenge if these are not followed.
- 7.3 The past actions have resulted in this scheme becoming compromised. It is better to stop all current work, reassess the issues on Crosby Road and only proceed with a new scheme if there is engineering evidence for its need and sufficient funding for the design, public engagement, and implementation of appropriate measures.

## **8. Corporate Implications**

### **8.1 Contribution to the Southend 2050 Road Map**

Roads that feel safe not just for cars but especially for alternative modes of transport particularly walking and cycling. Residential side streets provide a safer alternative to cyclists using main distributor roads where speed and traffic numbers can be an additional hazard. Speed reduction measures whether formal or informal benefit local residents and highway users especially the more vulnerable (disabled, pedestrians and cyclists).

### **8.2 Financial Implications**

Continuing with the decision to introduce a TRO has the risk of legal challenge and the associated costs in preparing and presenting a legal case at the High Court. It will also deplete resources and delay work on other schemes that are a high priority.

### **8.3 Legal Implications**

These have been set out in section 6 above.

### **8.4 People Implications**

None

## **8.5 Property implications**

None

## **8.6 Consultation**

Ward Councillors have been consulted in the preparation of this report.

## **8.7 Equalities and Diversity Implications**

There is nothing to raise at this time.

## **8.8 Risk Assessment**

There may be a risk of legal challenge to the Council if it were to continue with current scheme. Stopping all work on the current scheme will minimise the risk.

## **8.9 Value for Money**

None.

## **8.10 Community Safety Implications**

The Council as Highway Authority may only act in accordance with its powers as Highway Authority under the Highways Act 1980 and the Road Traffic Regulation Act 1984.

## **8.11 Environmental Impact**

## **9. Background Papers**

Extract summary of 2018 speed monitoring for Crosby Road.

## **10. Appendices**

Appendix 1 – Minutes of the meeting of Cabinet Committee held 24<sup>th</sup> February 2020 [Agenda Template \(southend.gov.uk\)](https://www.southend.gov.uk/agenda-template).

Appendix 2 – Report of Executive Director (Neighbourhoods and Environment) to Traffic Regulations Working Party and Cabinet Committee on 24<sup>th</sup> February 2020 [Public Pack\)Agenda Document for Traffic Regulations Working Party, 24/02/2020 18:00 \(southend.gov.uk\)](https://www.southend.gov.uk/public-pack/agenda-document-for-traffic-regulations-working-party-24-02-2020-18-00)

Appendix 3 – Minutes of the meeting of Cabinet Committee held 22<sup>nd</sup> February 2020 [Agenda Template \(southend.gov.uk\)](https://www.southend.gov.uk/agenda-template)

Appendix 4 – Report of Executive Director (Neighbourhoods and Environment) to Traffic Regulations Working Party and Cabinet Committee on 22<sup>nd</sup> February 2020 [Public Pack\)Agenda Document for Traffic Regulations Working Party, 22/02/2021 18:30 \(southend.gov.uk\)](https://www.southend.gov.uk/public-pack/agenda-document-for-traffic-regulations-working-party-22-02-2021-18-30)

Appendix 5 – Minutes of the meeting of Cabinet Committee held 13<sup>th</sup> September 2021 [Agenda Template \(southend.gov.uk\)](https://www.southend.gov.uk/agenda-template)

Appendix 6 – Report of Executive Director (Neighbourhoods and Environment) to Traffic Regulations Working Party and Cabinet Committee on 13<sup>th</sup> September 2021 [Public Pack\)Agenda Document for Traffic Regulations Working Party, 13/09/2021 18:30 \(southend.gov.uk\)](https://www.southend.gov.uk/public-pack/agenda-document-for-traffic-regulations-working-party-13-09-2021-18-30)