

Southend-on-Sea Borough Council

Agenda
Item No.

Report of Deputy Chief Executive (Place)

To
CABINET

On
12 March 2019

Report prepared by: Peter Geraghty Director of Planning and
Transport, and Gary Smith Group Manager of Traffic
Management and Highways Network

Update of Policies Relating to Highway Inspection of the Civil Enforcement of Parking

Place Scrutiny Committee
Cabinet Member: Councillor Andrew Moring
Part 1 (Public Agenda Item)

1. Purpose of Report

- 1.1 To introduce and gain approval for updated Highways and Parking Policies.

2. Recommendations

2.1 That Cabinet agrees:

- a) The replacement of Highway Policy Note No.2 (1999) (Appendix A) with the updated Highway Safety Inspection Policy and Guidance (Appendix B).
- b) The replacement of Parking Policy (2015) (Appendix C) with the updated Civil Enforcement of Parking Policy and Protocol (Appendix D).
- c) The Director of Planning and Transport has delegated authority to replace contravention codes and descriptions in consultation with the Cabinet Member for Infrastructure when such codes and descriptions are updated by Government or a responsible Government Department.

3. Background

- 3.1 This report covers two policy documents that need to be updated in order for them to be compliant with national policy. The two policy documents are the Civil Enforcement of Parking Policy and Protocol (hereafter referred to as Civil Enforcement of Parking Policy) and the Highway Safety Inspection Policy.
- 3.2 The substantive changes to the Civil Enforcement of Parking Policy relate to updating of observation times before a PCN is issued (i.e. 5 minutes). This takes account of decisions on appeals to the Traffic Penalties Tribunal over the years and to include the current Standard Parking Contravention Codes issued in the latest Statutory Instrument from the Government (version v6.7.6) which are set out in appendices attached to the Policy.

- 3.3 The substantive changes to the Highway Inspection Policy relate to updating it in respect of a risk based approach to inspection and repair. Previously action was based on whether the defect was of a certain size or depth (intervention levels). In a risk based approach account is also taken of other factors such as location or the nature of the asset (i.e. heavily used footway). The other significant change is the policy includes reference to the Council's Highways Infrastructure Asset Management Plan (HIAMP) which has been adopted since the original policy was approved.
- 3.4 Southend-on-Sea Borough Council became a Unitary Authority on 1st April 1998. At this time it also became a Highway Authority and a Traffic Authority. Being a Highway Authority means that the Council must be fully compliant with the duties outlined in the Highways Act 1980. In 1999, the Council's Highway Policy Note No.2 was adopted and covered the statutory Highway Authority duties and detailed a prescriptive inspection regime. The introduction of the Well Managed Highway Infrastructure Code of Practice in 2016 means that the method of highway asset inspection has changed from being prescriptive to a risk-based approach. Therefore, the Highway Safety Inspection Policy must be updated to take account of this National Policy change.
- 3.5 Being a Traffic Authority means the Council has responsibilities under the Road Traffic Regulations Act 1984 and the Road Traffic Act 1991. The Road Traffic Regulation Act 1984 provides the Council with powers to make and amend traffic regulation orders, and the Road Traffic Act 1991 enables traffic authorities to apply for powers to undertake decriminalised parking enforcement.
- 3.6 The Council applied for decriminalised parking enforcement powers and these powers became operational across the whole Borough on 1st September 2001. The Traffic Management Act 2004 updated these powers, calling them civil parking enforcement. In 2015, the Council's Parking Policy was introduced to cover its enforcement and appeals process as Traffic Authority. Since the introduction of the Deregulation Act 2015 there has been new case law and updated contravention code descriptions. An updated Civil Enforcement Parking Policy is therefore required to reflect these changes.
- 3.7 The Traffic Management and Highways Network service area has recently undergone a Peer Review, the results of which are being evaluated and used to develop an Action Plan including updating all relevant policies. However, the two policies to Cabinet that this report relates to, need to be updated now, to reflect changes to national policy and case law. This needs immediate attention in advance of the implementation of any outcomes from the peer review.

3.8 **Legislative Background**

3.8.1 Highway Safety Inspection Legislation

- a) The Council as a Highway Authority, has a duty under Section 41 of the Highways Act 1980 (The Act) to ensure all its highway assets are fit for purpose and the Council can demonstrate they manage risks associated with highway assets

effectively and for the benefit of residents, visitors of Southend and those travelling through.

- b) Section 58 of The Act provides the Council with a defence against any alleged failure to maintain its highway assets as long as the Council has taken such care in all circumstances and is able to reasonably demonstrate that the highway is not dangerous for all forms of traffic.
- c) Part of the Council's defence under Section 58 of the Act is that there is a regime of highway asset inspections in place and is made up of highway safety inspections and other asset inspections purposely designed to monitor asset condition and identify any defects in highway assets and take appropriate rectification measures for defects found.
- d) Guidance known as the *Well Managed Highway Infrastructure*, published in October 2016, recommends that all highway asset inspections are not prescriptive, but based upon risk-based assessments and designed around the local highway network.
- e) An effective risk-based Asset Inspection Policy therefore is an essential element of good highway asset management and contributes to the delivery of this essential service. This report therefore covers the Council's risk-based Highway Safety and Asset Inspection Policy and Guidance.

3.8.2 Parking Legislation

- a) As a Traffic Authority, the Council has the responsibility for the enforcement of civil parking contraventions. The Traffic Management Act 2004 was introduced on the 31st March 2008, this altered the way in which penalty charge notices are issued to vehicles and introduced differential charging. The charge amount of the penalty charge is now dependant on whether the contravention is more serious or less serious, as follows:
 - More serious contraventions £70.00 Discounted £35.00 (within 14 days)
 - Less serious contraventions £50.00 Discounted £25.00 (within 14 days)
- b) From the 1st April 2015 the Deregulation Act 2015 requires a 'grace period' of 10 minutes to be applied on paid for time and free parking bays. The grace period only applies where the requirements of the bay have been satisfied first i.e. a parking session has been purchased, the vehicle holds the relevant permit, is carrying out an exempted activity etc. If these requirements have not been met the vehicle will be subject to normal enforcement. It is important to note that the grace period only applies to 'designated parking places'.
- c) A vehicle parked outside controlled hours is considered to have parked at a time when no restrictions are in force and therefore no requirements to satisfy. The 10 minute grace period will apply for the first 10 minutes of the next controlled parking period. For example, if the Controlled Parking Zone hours apply from 8.00am to 6.00pm and the vehicle was parked before

8.00am, the grace period would apply between 8.00am and 8.10am and no PCN should be issued until 8.11am.

- d) The Deregulation Act 2015 also restricts the use of enforcement to certain restrictions that could be enforced by an approved device (CCTV) and in these circumstances the PCN is sent by post to the registered keeper of the vehicle. PCN's will be issued by post if a vehicle is parked in contravention of the following restrictions:
- Parked on a bus stop clearway or bus stand clearway; and
 - Parked on a School Keep Clear Marking (zig zags).
- e) It should be noted that Contravention Code descriptions are updated regularly. These descriptions are to be used, except those that are contained in the Statutory Instrument 2007 No.3487 The Civil Enforcement of Parking Contraventions (Guidelines on Levels of Charges) (England) Order 2007.

3.9 Highway Safety Inspection Policy and Guidance

- 3.9.1 Highways asset management is a key service that the Council provides to its community and to the wider travelling public. Highways assets not only have the greatest monetary value of all assets, but where well managed the highway assets are essential in the day to day lives of residents, visitors and the businesses.
- 3.9.2 The Highway Safety Inspection Policy and Guidance includes the process to develop the risk assessed highway inspection policy and supporting guidance and includes the delivery of the formal highway safety inspections as well as inspections for the other highway assets to which the Council as a Highway Authority are the owners or have a duty to maintain.
- 3.9.3 This Highway Safety Inspection Policy has been developed as a risk assessed asset strategy and includes a risk matrix to help highway inspectors and asset specialists to manage all defects found and determine the appropriate action and timescales to complete those actions. This Policy also explains the different types of asset inspections and the importance of having an accurate record of the quantities and condition of all highway assets. Defect intervention levels and timescales to rectify are also set out together with an explanation on the different asset inspections.
- 3.9.4 The Highway Safety Inspection Policy and Guidance does not yet include the Asset Hierarchy, this is being developed currently, but as this is a risk-based policy the Asset Hierarchy should evolve in line with any risks. From these hierarchies the inspection frequencies for the different types of asset inspections are determined.
- 3.9.5 The importance of competent officers undertaking all highway asset inspections is also included. Whether these are Council staff or those of a service provider,

all must have the correct competencies for the asset inspection to be undertaken.

3.10 Parking Policy

3.10.1 The Traffic Management Act 2004, requires Councils with civil parking enforcement powers to ensure that both their enforcement and discretion are undertaken in a clear, transparent and consistent manner. This is covered by the parking policy which is split into two main sections, these are: Enforcement Protocol and Discretion.

3.10.2 The Enforcement Protocol is a guidance policy for the enforcement of Penalty Charge Notices. Policies set out in this document provide guidance only, the onus is on the Civil Enforcement Officer (CEO) to collect the appropriate evidence to enable them to decide whether a vehicle is in contravention of the parking and traffic regulations.

3.10.3 A discretion policy provides guidance policies for the enforcement and cancellation of Penalty Charge Notices. Policies set out in this document provide guidance only. Each case must be considered on its own merits, taking into account all of the evidence available and the exceptionality of the circumstances.

3.10.4 The parking policy must represent a foundation upon which fairness, openness, transparency and discretion can be applied. The importance of flexibility in these matters has been recognised by the courts and, as a consequence, decisions made by councils must not be fettered by being unduly formulaic.

3.10.5 The parking policy addresses the following:

- The statutory grounds upon which representations may be made;
- Mitigating circumstances; &
- The acceptance or rejection of representations.

3.10.6 The parking policy is intended to inform the public and provide guidance to Council staff or those of a service provider working in the enforcement of parking regulations. This is consistent with current best practice and aims to provide clarity, consistency and transparency within the enforcement process and compliance with the aspirations of the, Traffic Penalty Tribunal (TPT) and the Local Government Ombudsman.

3.10.7 It is important to recognise that each case will be considered on its own merits, matters of proportionality, objectivity, fairness and reasonableness should be paramount. These policies will be subject to ongoing review.

3.11 Southend 2050

3.11.1 The recent residents' survey identified the significance of the quality of the roads and parking in the Borough. The Highway Safety Inspection and Civil Enforcement of Parking Policies have clear links to the ambitions around the Southend 2050 work, particularly the theme: "connected and smart". The updates to these policies will support that theme and outcomes.

4. Other Options

- 4.1 Both of these policies have to be updated to ensure they are compliant with best practice, current legislation and statutory requirements.

5. Reasons for Recommendations

- 5.1 The Highway Safety Inspection Policy and Civil Enforcement of Parking Policies are a refresh of previous existing policies, updated in line with best practice, current legislation and statutory requirements thereby ensuring that the Council is fully compliant with its statutory duties.

6. Corporate Implications

- 6.1 The vision of the Council is set out in 'Southend 2050 – Ambitions, Themes and Outcomes' and 'Five Year Road Map'. This provides a context within which these updated policies will be applied by providing a clear focus for the safety inspections of highways, and the enforcement of parking regulations.

6.2 Financial Implications

- 6.2.1 The Highway Inspection and Civil Enforcement of Parking policies will provide an efficient inspection framework and a consistent, clear and transparent enforcement policy for civil contraventions. There may be implications from the Council's revenue and capital budgets. The data received during the use of these policies will be used when evaluating the Council's budget setting process. The process of how the policies will be applied in the context of financial implications and existing contracts will be decided as part of budget setting and the outcomes identified and agreed by the Council including Southend 2050.

6.3 Legal Implications

- 6.3.1 The Council, as both Highway Authority and Traffic Authority, has a legal duty to ensure that all of its policies and procedures are compliant with all primary and secondary legislation, as well as following best practice.

6.4 People Implications

- 6.4.1 The policies will have a positive impact for residents of all age groups and visitors to Southend. A well maintained highway and asset infrastructure and the proper application of a civil enforcement process will make the Borough safer for residents and visitors consistent with the outcomes of Southend 2050.

6.5 Property Implications

- 6.5.1 There are no property implications.

6.6 Consultation

- 6.6.1 Internal Council consultation has been undertaken with Officers in different departments.

6.7 Equalities and Diversity Implications

6.7.1 An equalities impact assessment has been undertaken the outcome of which are taken into account in the development of the policy.

6.8 Risk Assessment

6.8.1 The Highway Safety Inspection Policy and Guidance uses a risk-based approach using the guiding principles from the “Well Managed Highway Infrastructure” code of practice 2016.

6.9 Value for Money

6.9.1 The Highway Safety Inspection Policy and Guidance intervention levels have been benchmarked against the local authority members of the Eastern Highways Alliance, these are shown in the below table:

CATEGORY 1 CW DEFECTS - DIMENSIONS AND RESPONSE TIMES 17/18 - EHA BENCHMARKING

Local Authority	Cat 1 Defect minimum depth dimensions (mm)	Cat 1 Defect minimum width dimensions (mm)	Notes	Emergency Response times (hours)	Non-Emergency Response times (hours)
Bedford Borough Council	50	150	On highest CW hierarchies	2	48
Central Bedfordshire Council	50	150		2	120
Cambridgeshire County Council	40	75		2	36 Non-Potholes 120 Potholes
Essex County Council	50	75		2	48
Hertfordshire County Council	50	n/a		2	120
Luton Borough Council	50	150	On highest CW hierarchies	1	24
Norfolk County Council	40	n/a		2	96
Peterborough County Council	75	150		2	24
Southend-on-Sea Borough Council	40	n/a		2	24
Suffolk County Council	50	n/a		2	24
Thurrock Council	50	n/a		2	72

6.9.2 Officers have benchmarked against other policies and The Civil Enforcement of Parking Policy adopts a similar approach used by both the North and South Essex Parking Partnership.

6.9.3 Both the Highway Safety Inspection Policy and the Civil Enforcement of Parking Policy are considered good value for money in achieving the objectives of Southend 2050.

6.10 Community Safety Implications

6.10.1 A well maintained highway and asset infrastructure and the proper application of a civil enforcement process will make the Borough safer for residents and visitors.

6.11 Environmental Impact

6.11.1 The Highway Safety Inspection Policy and Civil Enforcement of Parking Policy will have a positive environmental impact.

6.11.2 The Highway Safety Inspection policy will contribute to the wellbeing and safety of residents and visitors to Southend.

6.11.3 Parking restrictions are in place throughout the Borough. These restrictions are put in place in order to enable the Council achieve its objectives set out in its Third Local Transport Plan:

- Tackling congestion to limit delays;
- Increasing accessibility to key services and facilities;
- Improving road safety and security;
- Enhancing the environment and quality of life; &
- Improving management and maintenance of our transport network.

7. Background Papers

- Southend-on-Sea Borough Council's Transport Asset Management Strategy 2016;
- Southend 2050 Ambition/Five Year Road Map;
- Southend-on-Sea's Third Local Transport Plan Strategy document, 2011-2026

8. Appendices

Appendix A – Highway Policy Note No 2 (1999)

Appendix B – Highway Safety Inspection Policy and Guidance (2019)

Appendix C – Parking Policy (2015)

Appendix D – Civil Enforcement of Parking Policy and Protocol (2019)