

Southend-on-Sea Borough Council

Report of Executive Director (Neighbourhoods and Environment)

To
Cabinet

on

27th July 2021

Report prepared by:
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Agenda
Item No.

Adoption of New Highways Policies and Reform of Traffic Regulation Order (TRO) Procedure

Cabinet Member: Councillor Ron Woodley
Deputy Leader (Cabinet Member for Transport, Asset Management & Inward Investment)
Eligible for call-in to: Place Scrutiny Committee
Part 1 (Public Agenda Item)

1. Purpose of Report

- 1.1 To recommend a new policy relating to Domestic Vehicle Crossovers and consequential amendments to the Council's decision-making process.
- 1.2 To recommend a new policy relating to Highway Enforcement and consequential amendments to the Council's Delegations to Officers Scheme in Part 3 Schedule 3 of the Council's Constitution.
- 1.3 To recommend new procedures for introducing TROs, in line with the outcome of a best practice review of other local authorities.
- 1.4 The proposed changes aim to:-
 - modernise and streamline decision making processes;
 - make decision making clear and transparent;
 - speed up the delivery of local requests from Councillors;
 - provide clearer scrutiny of the effectiveness of the service by enhancing the role of the Traffic Regulations Working Party;
 - deliver the Southend 2050 priorities.

2. Recommendations

- 2.1 That the new Domestic Vehicle Crossover Policy set out in Appendix 1 of this report be adopted.
- 2.2 That the new Highways Enforcement Policy set out in Appendix 2 of this report be adopted.
- 2.3 That new procedures for dealing with Traffic Regulation Orders set out in Section 6 of the report be approved.

2.4 That the Council be recommended to approve:

- (i) Amendments to the Terms of Reference of the Traffic Regulations Working Party and Cabinet Committee;**
- (ii) the establishment of a new panel to deal with appeals against a decision to refuse the installation of a domestic vehicular crossing; and**
- (iii) amendments to the Delegations to Officers (Part 3, Schedule 3 of the Council's Constitution).**

3. Background

- 3.1 The restructure of Traffic and Highways and the recruitment of staff is complete and the work on developing and updating policies and working practices is well progressed to improve processes and maximise efficiency. As part of this process, a best practice review with other local authorities was carried out to optimise decision making and scrutiny of the Traffic and Highways Service, and the services it delivers.
- 3.2 The Cabinet Committee, in conjunction with the Traffic Regulations Working Party (TRWP), generally deal with TROs and the review of decisions to reject vehicle crossover applications. It was also agreed by Cabinet at its meeting on 28 July 2020 (Minute 206, resolution 2 refers) that the TRWP undertakes a review of the decision-making process and assumes a more strategic role in the overview and direction of the Traffic and Highways Service. It will also allow for the proper scrutiny of the effectiveness of the service in the delivery of the Southend 2050 objectives.
- 3.3 A Local Government Ombudsman's report in November 2020 was critical of the Council's process for dealing with a vehicle crossover application and raised concerns about the lack of clarity on what constituted 'exceptional circumstances' how these are taken into account and the basis for reaching a decision.
- 3.4 In its current format, much of the operational decision-making relating to the progression of TROs and vehicle crossovers has to be agreed by the Cabinet Committee in conjunction with the TRWP, which is inefficient and causes delay and increased cost.
- 3.5 The best practice review referred to in paragraph 3.1 above highlighted the opportunity for Southend to change its current decision-making arrangements so that operational decision making is delegated to Officers, or Officers in conjunction with the relevant Cabinet Member. The positive impact of this will improve efficiency and service delivery but also free up the TRWP to assume a more strategic role in the overview and direction of the Traffic and Highway Service. It will also allow for the proper scrutiny of the effectiveness of the service in the delivery of the Southend 2050 objectives.
- 3.6 This report therefore proposes the adoption of a new Domestic Vehicle Crossover Policy and Highway Enforcement Policy, together with consequential changes to the Council's decision-making arrangements for implementing traffic regulation orders (TROs) and vehicle crossovers. The proposals, if approved have the following benefits and objectives:-
- 1) To agree a new Domestic Vehicle Crossover Policy as set out in **Appendix 1** of this report, including consequential amendments to the Council's decision-making arrangements. This includes a minimum size specification for a hardstanding based on the national minimum parking bay size of 2.4x4.8m. This accords with the

minimum size requirements of the most popular electric vehicles sold in the UK which are all electric powered versions of standard manufacturers models;

- 2) To agree a new Highway Enforcement Policy as set out in **Appendix 2** to this report, including consequential amendments to Delegations scheme in Part 3 Schedule 3 of the Constitution.
- 3) The creation of a new panel to deal with appeals against a decision to refuse the installation of a domestic vehicular crossing;
- 4) To adopt best practice in the drafting and preparing of Traffic Regulation Orders including the delegation of decision making to advertise and make traffic orders to the Executive Director (Neighbourhoods and Environment) in consultation with the Cabinet Member and Head of Traffic & Highways in consultation with the Cabinet Member.

The proposals are consistent with best practice and will retain Councillor involvement in the decision-making process.

4. Domestic Vehicle Crossover Policy

4.1 Southend's existing crossover policy is over 7 years' old and due a review. As mentioned in paragraph 3.3 above, the Local Government Ombudsman considered a case involving a vehicle crossover application and found fault with the Council over:

- 1) the lack of clarity of the existing policy;
- 2) the timeliness of the process
- 3) lack of clarity in its consideration of exceptional circumstances.

The Local Government Ombudsman recommended the "Council review and update its [vehicle crossings] policy". The Council accepted the findings and agreed to review and update its policy and processes.

4.2 The new Domestic Vehicle Crossover Policy (attached at **Appendix 1** of this report) builds on best practice and sets clear and consistent minimum requirements based on nationally adopted minimum standards which can be defended. It provides clarity to the applicant and is designed to ensure consistent decision making going forward.

4.3 There has been some discussion throughout consultation on this document about reducing the minimum parking bay size to accommodate very small electric vehicles (EV).

4.4 While the smallest Smart EV is significantly smaller than a standard parking bay size, these vehicles only make up a tiny percentage of EV purchased in the UK. The vast majority of EV purchases are EV versions of conventional vehicles and would not fit in a sub-standard parking bay.

4.5 Data from the Department for Transport (DFT - May 2021) shows that of the 260,000 EV registered. The most popular models are:-

- Mitsubishi Outlander - dimensions 4.7m x 1.81m (the most popular EV for the last 5 years)
- Nissan Leaf – dimensions 4.49m x 1.788m

- BMW 330e – dimensions 4.7m x 1.827m
- Tesla Model 3 – dimensions 4.69m x 1.849m

- 4.6 The new crossover policy includes a proposed change to the Council's decision-making process. This is necessary to reduce the time taken for decision making and to ensure clear and consistent decisions are reached in exceptional circumstances across the Borough.
- 4.8 Currently, if an application is rejected by officers, the appeals process allows for an appeal to be heard by the Traffic Regulations Working Party, which can overrule a decision, based on evidence presented by officers, and verbal or written evidence submitted by the applicant. This is not agile and, as mentioned above, the process was criticised by the Ombudsman for its slowness, inconsistency, and lack of clarity of process or the decision reached.
- 4.9 The proposed new procedures are set out in **Appendix 3**. It is now proposed that a new panel comprising the Head of Traffic & Highways, a Council engineer independent of the original decision and the relevant Ward Councillors should consider the written additional evidence from the applicant and decide if the Council has correctly applied its policies or if there are sufficient mitigating circumstances to allow a divergence from the Council policy and allow a crossover.

5. Highway Enforcement Policy

- 5.1 As a highway authority, the Council has statutory duties under the Highways Act 1980 to regulate activities that take place on the highway. Part of a highway authorities' statutory duty is the enforcement of activities that pose a hazard to highway users. A bench-marking exercise of other highway authority's highway enforcement policies has resulted in the drafting of the proposed Highway Enforcement Policy contained in **Appendix 2** of the report.
- 5.2 Where a defect (defined in this policy as meaning any encroachment, obstruction or interference with the highway) of the highway or damage (defined in this policy as meaning any damage to footways/highways from skips, building works, vehicles etc.) is identified (whether by a Council officer, contractor, Councillor, or resident) then the policy sets out what will happen.
- 5.3 The policy provides for an assessed approach when looking to enforce against those that have caused a defect or damage on the highway. Any enforcement action will be proportionate to the interference and/or, risk to the use of the Highway.
- 5.4 The Council's Highways Enforcement Team will consider all of its statutory powers in any combination. The action Southend will take may range from providing advice and guidance; issuing a formal letter; serving Notices; carrying out of default action; recovery of costs for carrying out default works from the owner/occupier; or prosecution. Education and liaison are preferred to formal action and that the Council's role therefore involves actively working to advise and assist with compliance. Where Highways Act provides for a notice to be served, it usually allows for the notice to be served either on the owner/occupier of the land adjoining the defect or any other person having control of it or on any person who caused the defect to occur. The Council will consider the circumstances of each case when deciding who should be served with a notice.

- 5.5 The aim of the policy is to explain how the Council's prioritises enforcement, and the actions that will be considered when undertaking enforcement. People should have the right to the safe use and enjoyment of the highway. The general approach will be to educate occupiers and landowners, developers, residents, and businesses to enable compliance. The desired outcome is always to ensure compliance through discussions and negotiations. Where it is not possible to make progress due to lack of willingness on the part of the landowner to work with the Council, enforcement action will be commenced in order to ensure that Highway users are not put at risk.
- 5.6 To enable to Highways Enforcement Team to undertake its duties; additional delegated powers are being recommended in **Appendix 3** to ensure action is taken in a fair, consistent and transparent manner that if challenged can be defended.

6. Traffic Regulation Orders

- 6.1 The Council as a traffic/highway authority has statutory duties in respect of the road network, and civil parking enforcement, set out in the Traffic Management Act 2004. In order to fulfil these duties, there is a need from time to time to regulate waiting, loading, and moving traffic on the public highway and parking in off-street car parks. This is achieved by means of traffic regulation orders (TRO) which are made using powers in the Road Traffic Regulation Act 1984 (the 1984 Act) and the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996 (the Procedure Regs).
- 6.2 When making, amending, or revoking a TRO, the Council must comply with the requirements set out in the Procedure Regulations and involves the publication of Notices (Notice of Proposal, Notice of Making) in the local press, the placement of street notices in affected streets and the consideration of written objections from statutory consultees and members of the public.
- 6.3 The Council currently permits oral presentation of representations against proposed TROs to the Traffic Regulations Working Party (as set out in section 6D of Standing Orders (Part 4(a) of the Council's Constitution)), even though this is not envisaged under the Procedure Regulations.
- 6.4 The current process is overly protracted. The new process set out in this report is the result of benchmarking with other Order Making Authorities and is a culmination and implementation of best practice. The results of the benchmarking exercise highlighted those local authorities that had delegated operational decision making to officers could implement highway safety restriction requests in 8 to 12 weeks, whereas it currently takes Southend well over 6 months to achieve the same objective. Implementing local requests from Ward Councillors was also significantly reduced where delegated decision making is in place. The proposed revisions will provide a much-improved efficient service to members of the public, is legally compliant, and ensures the engagement of elected Councillors, at appropriate junctures in the process as set out below.

Considering Objections and Representations

- 6.5 Where the current process requires several reports to the Traffic Regulations Working Party, this new process aims to provide a framework for Officers to deliver this function, in consultation with the relevant Ward Councillors, the relevant Cabinet Member and Head of Service.

- 6.6 The Council is required to produce a Statement of Reasons (SoR) for proposing the Order. This will include legal, safety, policy and other reasons for the proposals. Legislation requires that representations/objections must be made in writing and state the reason for objections. These are considered on their technical merit and assessed against the SoR.
- 6.7 The matter will still be reported to the Traffic Regulations Working Party where the majority of representations received are against a proposal, and the Council's professional view is that it should be implemented, rather than reviewed or abandoned. It is anticipated this process will reduce the current workload previously seen by the Working Party, whilst still providing a robust and transparent process and retaining Councillor involvement at the appropriate stages of the process.
- 6.8 Minor schemes, where there is demonstrable support, under this new process can be progressed much faster, and improve the service offered to those affected by adverse conditions on the road network, while still ensuring Councillor involvement.

Traffic order administrative/house-keeping procedures

- 6.9 There are some purely administrative or house-keeping processes that need to be carried out from time to time but which do not make any change to the physical restrictions on-street or in off-street car parks. It is proposed that Officers will deliver this function without the need for approval from the Working Party to do so. These include but are not limited to the consolidation of existing amendment Orders into a single new Order; the revocation of existing Orders and re-enactment without material change to the measures into a new Order.

The Council Seal

- 6.10 Currently, the official seal of the Council is applied to TROs. This is not a statutory requirement for the traffic order process. Most local authorities have dispensed with this process and make Orders by signature of an appointed Officer delegated to fulfil this task.
- 6.11 It is therefore proposed that going forward TROs are signed by the Executive Director (Neighbourhoods & Environment) and/or the relevant Head of Service or relevant Service Manager

7. Reasons for Recommendations

- 7.1 To improve the way the Council deals with TROs, Domestic Vehicle Crossovers and Highway Enforcement.
- 7.2 To protect damage to the highway and ensure our roads and pavements are safe for use;

8. Corporate Implications

- 8.1 **Contribution to the Southend 2050 Road Map and Administration priorities for 2021/22.**

8.2 Opportunity & Prosperity:

- 8.2.1 The proposals aim to deliver essential traffic order making processes more efficiently and with less cost to the Council.

8.3 Safe & Well:

- 8.3.1 Traffic Management Orders for the introduction of safety measures on the public highway can be delivered in a shorter time frame.

8.4 Connected & Smart:

- 8.4.1 N/A

8.5 Financial Implications:

- 8.5.1 None

9. Other Implications

9.1 Legal Implications

- 9.1.1 The revised arrangements for dealing with TROs as proposed in the report comply with statutory requirements.

The two new policies proposed meet legal requirements.

9.2 People Implications

- 9.2.1 It is anticipated delivery of the recommendations set out in this report can be achieved using existing resources. Once implemented, the Member time required to support the Working Party will be reduced, with the influence and impact enhanced.

9.3 Property Implications

- 9.3.1 There are no property implications arising from this report.

9.4 Consultation

- 9.4.1 Consultation will be carried out in accordance with the requirements of the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996.

9.5 Equalities and Diversity Implications

- 9.5.1 The Council has an established policy for considering the adverse or disproportionate impacts on protected groups. As part of any proposal, the Council will undertake an assessment to understand the risk of any adverse impact, and whether any mitigation is required. It is not anticipated there are any implications arising from these proposals, as set out in the assessment attached to this report.

9.6 Risk Assessment

- 9.6.1 As part of any proposal to change how the road network operates, a risk assessment is undertaken, generally in the form of a safety audit, an industry standard approach to

understanding the risks arising from any changes. These safety audits are undertaken by a qualified person, internal or external depending on the size and impact of a proposal, and form part of any recommendations.

9.7 Value for Money

9.7.1 The new processes set out in this report will allow the Council to be more agile and reduce the amount of officer resource required to take forward unnecessary reports, instead, resource will be focussed on delivering on the priorities of residents and elected members.

9.8 Community Safety Implications

9.8.1 The proposed changes will enable the Council to be more responsive to safety concerns about the use of the road network.

9.10 Environmental Impact

9.10.1 How the road network is used can have a significant impact on the environment, particularly where proposals risk affecting how traffic flows, for example slowing traffic could increase congestion and impact air quality. As part of the assessments undertaken in any scheme, the Council will consider the environmental impact, and whether any mitigations are required. It is anticipated there are no environmental impacts arising from this report.

10 **Background Papers**

10.1 None.

11 **Appendices**

- Appendix 1 – Domestic vehicle crossing policy.
- Appendix 2 – Highway Enforcement policy
- Appendix 3 – Amendments to the Terms of Reference of the Cabinet Committee, the Traffic Regulations Working Party, the Terms of Reference of the PVX Appeals Panel and the amendments to the Delegations to Officers