Southend-on-Sea Borough Council

Agenda Item No.

Report of Executive Director (Neighbourhoods & Environment)
To
Traffic Regulations Working Party and Cabinet Committee
on

04/01/2022

Report prepared by:
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Crosby Road

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

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 13th 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 4th 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 13th 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 24th 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 24th 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 22nd 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 13th 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 85th 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 85th 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 85th percentile speed was 37mph in both directions.
- The 85th 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 24th February 2020 Agenda Template (southend.gov.uk).

Appendix 2 – Report of Executive Director (Neighbourhoods and Environment) to Traffic Regulations Working Party and Cabinet Committee on 24th February 2020 (Public Pack)Agenda Document for Traffic Regulations Working Party, 24/02/2020 18:00 (southend.gov.uk)

Appendix 3 – Minutes of the meeting of Cabinet Committee held 22nd February 2020 Agenda Template (southend.gov.uk)

Appendix 4 – Report of Executive Director (Neighbourhoods and Environment) to Traffic Regulations Working Party and Cabinet Committee on 22nd February 2020 (Public Pack)Agenda Document for Traffic Regulations Working Party, 22/02/2021 18:30 (southend.gov.uk)

Appendix 5 – Minutes of the meeting of Cabinet Committee held 13th September 2021 Agenda Template (southend.gov.uk)

Appendix 6 – Report of Executive Director (Neighbourhoods and Environment) to Traffic Regulations Working Party and Cabinet Committee on 13th September 2021 (Public Pack)Agenda Document for Traffic Regulations Working Party, 13/09/2021 18:30 (southend.gov.uk)