

CHESHIRE EAST COUNCIL

Cabinet

Date of Meeting: 10 November 2009

Report of: Strategic Director Places

Subject/Title: Proposed Off Street Parking Places Order (to introduce Car Parking Control and Charging in the area of the former Borough of Congleton) - Consideration of outcome of statutory consultation periods

Portfolio Holder: Councillor David Brickhill

1.0 Report Summary

1.1 At its meeting on 8 September 2009, Cabinet resolved, subject to consultation, to approve the following modifications to the proposed off-street parking places order:

(a) to introduce a new tariff of 10p for 2 hours in relation to Parkway and London Road car parks, Holmes Chapel

(b) to remove the proposed free 30 minutes parking in relation to Fairview car park, Alsager

and that, in the event of there being no objections to the modifications that the Borough Solicitor be authorised to make the order as modified (subject to the removal of any legal impediments).

1.2 A further consultation period was necessary to gauge reaction to the proposed modifications. This period ended on 22 October 2009 and Cabinet is now asked to consider the representations received during that period.

1.3 Further, the decision taken on 8 September has been the subject of criticism on the basis that the Cabinet report was published before the end of the consultation period. Whilst, as confirmed by the Portfolio Holder (Environmental Services) all responses received up to and including 5 September 2009 were assessed, the report provides Cabinet with a further opportunity to consider all the representations made to the proposed off-street parking Order during the original consultation process. The report also highlights other legal issues that Cabinet needs to take into account before a final decision is made, namely, appropriation of land, the s122 duty within the Road Traffic Regulation Act 1984 and the discretion to hold a public inquiry.

2.0 Decision Requested

2.1 Cabinet is requested to consider the representations received in relation to the proposed modifications to the Order and resolve whether to approve the amendment of the Order so as to include:

(a) a tariff for Parkway and London Road car parks, Holmes Chapel of: Monday to Saturday - 8.00 am to 6.00 pm up to 2 hours maximum stay: 10p; Sundays – no charge; and

(b) the removal of the provision for a free first thirty minutes parking at Fairview car park, Alsager.

2.2 Cabinet is requested to consider whether to approve, subject to relevant consultation, any further modifications to the Order arising as a result of any of the consultation responses received throughout the two consultation periods.

2.3 Having taken into consideration all of the legal implications and information within the report, Cabinet is requested to approve the Order on the basis set out within Appendix A, subject to;

2.3.1 any modifications approved under 2.1 and, subject to any necessary consultation, any modifications approved under 2.2;

2.3.2 the Borough Solicitor taking such action as he deems necessary to remove any legal impediments affecting the car parks referred to at 9.1 of this Report; and

2.3.3 the Borough Solicitor providing the necessary statutory public notice of the intention to appropriate to car parking purposes the list of car parks within Appendix A insofar as it is land owned by the Council;

and in the event of there being no objections to any further modifications and no objections received to the public notice regarding the appropriation of the land, to authorise the appropriation of the said land to car parking purposes and to authorise the Borough Solicitor to make the Cheshire East Borough Council (Off Street Parking Places)(Congleton Area) Order 2009 PROVIDED THAT the Order shall not be made in respect of the car park(s) or parts thereof referred to at 9.1 of this Report if the legal impediments affecting the said car park(s) remain unresolved.

3.0 Reasons for Recommendations

3.1 The Local Authorities' Traffic Orders (Procedure)(England and Wales) Regulations 1996 provide that before a local authority makes an off-street parking places order it must consider all valid objections received during the consultation period which have not been withdrawn.

4.0 Wards Affected

4.1 Alsager

4.2 Congleton Rural

4.3 Congleton Town East

4.4 Congleton Town West

- 4.5 Middlewich
- 4.6 Sandbach
- 4.7 Sandbach East and Rhode

5.0 Local Ward Members

- 5.1 Alsager -
 - Rod Fletcher
 - Derek Hough
 - Shirley Jones

- Congleton Rural -
 - Les Gilbert
 - Andrew Kolker
 - John Wray

- Congleton Town East -
 - David Brown
 - Peter Mason
 - Andrew Thwaite

- Congleton Town West -
 - Gordon Baxendale
 - Roland Domleo
 - David Topping

- Middlewich -
 - Paul Edwards
 - Simon McGrory
 - Michael Parsons

- Sandbach
 - Stella Furlong
 - Gillian Merry
 - Barry Moran

- Sandbach East & Rhode -
 - Elsie Alcock
 - Rhoda Bailey
 - Andrew Barratt

6.0 Policy Implications including - Climate change - Health

- 6.1 In accordance with the Car Parking Strategy the introduction of controls on car parks is intended to encourage people to use more sustainable and healthy forms of travel, minimise vehicle use and help tackle the impact of congestion and vehicle emissions on air quality. Making better use of our available spaces particularly through the designation of long and short stay car parks will help reduce congestion at peak periods in central locations.

7.0 Financial Implications for Transition Costs (Authorised by the Borough Treasurer)

- 7.1 N/A

8.0 Financial Implications 2009/10 and beyond (Authorised by the Borough Treasurer)

- 8.1 Adoption of the Holmes Chapel tariff reduces forecast annual income from £15000 to £5500.
- 8.2 The financial implications are as set out in the previous report of 8th September 2009.

9.0 Legal Implications (Authorised by the Borough Solicitor)

- 9.1 Members will be aware of certain matters affecting the two car parks referred to at paragraphs 3.3 and 3.4 of the Part II Report of 16 June 2009 and which the Officers are seeking to resolve. In the event that these matters cannot be resolved to the satisfaction of the Borough Solicitor within an appropriate timescale it may be necessary to implement the order in part. This is permitted by the Regulations made under the Road Traffic Regulation Act 1984 (“the Act”) and the recommendation makes provision for the order not to be made in relation to the car park in the event that the impediment affecting that particular car park remains unresolved. In such circumstances, these car park(s) (or part thereof) would be deferred to a later date until the impediments have been resolved. Officers instructions are that the parking strategy objectives are unaffected should it be necessary to do so.

9.2 Appropriation

Before the order is made under Section 32 of the Act, it will be necessary to ensure that the car parks to be the subject of the order have been appropriated to car parking purposes. Given the number of car parks involved and historical records of any previous appropriation not being available, it is necessary for Cabinet to make a decision to appropriate all of the car parks listed in Appendix A to parking.

- 9.3 Appropriation of land to any purpose is governed by Section 122 of the Local Government Act 1972, which authorises councils to appropriate land to any purpose for which they are authorised to acquire land by agreement and which is no longer required for the purpose for which it was used immediately prior to the appropriation.
- 9.4 The council may not appropriate any land consisting of or forming a part of open space without first providing public notice for two consecutive weeks in a local newspaper and thereafter considering any objections received. According to instructions received, some of the car parks to be appropriated have occasionally held events such as festivals and therefore it is possible that the land may be viewed as open space for the purposes of s122 of the 1972 Act. It will be necessary, therefore, to provide public notice of the intention to appropriate. In the event that objections are received in response to the public notice, the matter will be returned to a future meeting of the Cabinet to enable it to consider the objections received. The decision requested, however, does allow for the order to be made without having to return to Cabinet if no objections are received. This does not affect the need to return to Cabinet in the event that

further modifications are made to the order and objections received as a result of those modifications.

9.5 **Amendments**

Should Cabinet's decision include an amendment to the order as a result of objections received, it may be necessary to reconsult on any such amendment. The Regulations provide that an authority may modify an order before it is made, but where such modification makes a 'substantial change' in the order the authority shall take such steps as appear appropriate for;

- (a) informing persons likely to be affected by the modifications;
- (b) giving those persons an opportunity of making representations;
- (c) ensuring that any such representations are duly considered by the authority.

Thus, any further amendments may require a further period of consultation and thereafter consideration of any further objections received and not withdrawn

9.6 **S122 duty**

Section 122 of the Act imposes a general duty on the local authority to have regard to certain factors when exercising its functions under the Act. The making of a car parking order is one of the functions under that Act and therefore the authority is required to consider the duty when making its decision. Section 122 states the following;

'It shall be the duty of every local authority upon whom functions are conferred by or under this Act, so to exercise the functions conferred on them by this Act as (so far as practicable having regard to the matters specified in subsection (2) below) to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians) and the provision of suitable and adequate parking facilities on and off the highway or, in Scotland, the road.'

9.7 The matters specified under s122(2) are as follows:

- 'a. the desirability of securing and maintaining reasonable access to premises;*
- b. the effect on the amenities of any locality affected and (without prejudice to the generality of this paragraph) the importance of regulating and restricting the use of roads by heavy commercial vehicles, so as to preserve or improve the amenities of the areas through which the roads run;*
- bb the strategy prepared under section 80 of the Environment Act 1995 (national air quality strategy);*
- c the importance of facilitating the passage of public service vehicles and of securing the safety and convenience of persons using or desiring to use such vehicles; and*
- d any other matters appearing to the local authority to be relevant.'*

9.8 There is differing case law on how to interpret section 122 and the courts have acknowledged that it is a difficult section to construe. Some previous decisions of the courts have presumed that the matters specified in s122(2) are subordinate to the main duty in s122(1), whereas other decisions have stated

that the words 'so far as practicable' qualify the main duty in s122(1), thus making the duty qualified rather than absolute. In a sense, the overall objectives must be 'to secure the expeditious, convenient and safe movement of vehicular and other traffic', and 'the provision of suitable and adequate parking facilities on and off the highway', but this is expressed to be 'so far as practicable', having regard to the matters specified in s122(2) of the Act. On a practical level, it requires the decision maker to achieve those twin objectives, so far as practicable, whilst having regard to the matters in s122(2) and then striking a balance between all of the various requirements within the Section.

9.9 Thus, in making a final decision, it is necessary for the Cabinet to consider the s122 duty in relation to the draft order before it. Members will find a full analysis of the s122 duty in relation to the proposed order at Appendix B to this Report.

9.10 **Public inquiry**

When considering whether to make an order under the Act, Members will be aware of the discretion it has to hold a public inquiry under Regulation 9 of the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996. Factors which Members ought to take into account in deciding whether or not an inquiry should be held are;

- the complexity of the proposals;
- the nature of the objections received;
- whether Members are able to take into account competing arguments and weigh them against each other;

9.11 Members' discretion as to whether to hold a public inquiry or not should be exercised according to rules of natural justice, i.e. fairly in all the circumstances. Any decision is not to be based on any self-imposed rule of policy or practice and therefore the decision must be made in relation to the present circumstances. It must not be based upon any previous presence or absence of an inquiry in similar proposals, nor must it be based upon a fear of setting a 'precedent'.

9.12 **Making of an order**

As soon as practicable after an order is made the authority is required to include a copy of the order within the documents held on deposit at the Council's offices and, within fourteen days of the making of the order publish a 'notice of making'; notify the making of the order to any person who has objected to the order; and take such steps as are considered appropriate to ensure adequate publicity is given to the making of the order.

10.0 **Risk Management**

10.1 Estimates of income from parking are based on assumptions about occupancy which are taken from experience elsewhere and are subject to variations in customer behaviour.

10.2 Legal risks are set out in section 9 above.

11.0 Background and Options

11.1. At its Meeting of 8 September, Cabinet considered the objections received during the statutory consultation period in relation to the implementation of an off-street parking places order for the Congleton area. The table at Appendix A sets out the original proposals in relation to the car parks to be covered by the Order, including the charging hours, the maximum period of stay and proposed tariffs. Having considered the representations, Cabinet determined to approve the Order subject to consultation on modifications relating to London Road and Parkway car parks in Holmes Chapel and Fairview car park, Alsager.

11.2 That decision to approve the Order, subject to the consultation on the modifications, made by Cabinet on 8th September, has been subject to criticism on the basis that the Cabinet report was published before the end of the consultation period. Whilst, as confirmed by the Portfolio Holder (Environmental Services) during the meeting, responses received up to and including 5th September 2009 were assessed, Cabinet are invited to consider all of the representations made during the original consultation process. All of the consultation responses are available for inspection by Cabinet Members and will be available at the meeting. Appendix C contains a summary of the representations made during the initial consultation period together with the response provided by officers within the 8th September Cabinet report.

11.3 Further analysis of the representations received between the date of publication of the original Cabinet report and the end of the consultation period has been undertaken. The representations made during this period raised issues which were responded to within the 8th September Cabinet report, however, the following points are highlighted for Members' assistance:

11.3.1 information to illustrate how the aims of the parking strategy are to be achieved – further supporting information to address this point is provided within Appendix B

11.3.2 the environmental impact of the proposals –this is dealt with within the Parking Strategy which, in line with national and local transport policy, states that one of the purposes of charging is to discourage unlimited vehicle use in town centres. This point is addressed further within the analysis of the section 122 duty at Appendix B.

11.3.3 permit schemes– in considering this point it may be noted that the Order as drafted makes provision for the issue of permits by the Council. The use of permit schemes will be addressed as a part of the tariff review to be considered by both Environment and Prosperity Scrutiny Committee and the Cabinet.

11.4 Summary of Key Grounds for Objections:

Over 100 separate responses were received in relation to the proposed modifications for Fairview car park, Alsager and London Road and Parkway car parks, Holmes Chapel, the vast majority relating to Fairview car park. The original responses are filed at Westfields and are available for inspection at the

Cabinet meeting). The grounds for comment, which reflect a number of issues similar to those raised within the original consultation exercise, are summarised as follows:

11.4.1 Economic Impact

Objectors felt that parking charges will have an adverse impact on town centre businesses by discouraging customers.

Response:

This was a concern that was identified by the report to Cabinet on 8th September and of which Members are aware. In response to the recent objections the following points are relevant. Effective control through charging will encourage the circulation and turnover of customers on short-stay 'shoppers' car parks and restrict long stay parking in the central locations. There is no clear evidence that the imposition of appropriate charges is the key factor in a customer's decision as to whether to visit a town. It is the retail offer itself which is the main determinant of a destination as well as other factors such as accessibility, convenience and security.

11.4.2 Alternative Tariffs

Specific objections are;

- If charges are to be applied, then Saturday and Sunday should be made totally free to compensate
- There should be a lower, initial tariff of 20p for the first hour as many people do not require 2 hours' parking.
- Replace the proposal with a small annual charge for regular users
- Objection to any charge in principle
- The small charge in Holmes Chapel will be insufficient to cover costs

Response:

Similar representations were considered by Cabinet on 8th September 2009 as a number of alternative tariff options have been put forward during both consultation exercises. Cabinet are aware that a complete review of the existing Tariff Bands will be undertaken this year under the auspices of the Environment & Scrutiny Committee in order to produce a borough-wide approach reflecting local pressures and needs in accordance with the agreed Car Parking Strategy.

In addition, the proposed Order does not seek to introduce charges on a Sunday. Permits will also be available for regular users.

11.4.3 Permits

Objectors raised concerns over the cost, coverage and flexibility of any permit scheme especially for Alsager Highfields CP School and the opportunities for abuse that are inherent in such schemes. A suggestion to use 'Disc Parking' was put forward for ease of customer use. Concerns were also raised about the anticipated 'free period' of 20 minutes for parents available through the issuing of permits.

Response:

Parking Services will process all applications, produce permits and administer the scheme at no cost to the school based on the information provided to them. Such passes or permits will be non-transferable. The use of the disc scheme for this specific car park and other areas will be considered as part of the tariff review mentioned above. Permit Schemes are already successfully in place in the former borough areas of Macclesfield and Crewe & Nantwich and we will extend this practice to the former Congleton Borough Council area.

The Car park Order does not specify the period for the school permit scheme. The 20 minute 'window' was based on the original request from the School in a letter dated 9th June 2009. However, subject to the Order being approved by Cabinet, Officers will then agree the full operational details of any permit scheme with the School in order that the requirements of parents can be taken into account.

11.4.4 Original 'first half-hour free' proposal

The change from the above proposal to the introduction of a school-user permit scheme is seen as detrimental to all other users

Response:

This proposal was originally considered by Cabinet as a direct result of representations from the Alsager Highfield School. Members have now proposed an alternative permit scheme to address this need.

11.4.5 Residents Parking Schemes

A number of responses to the Order asked that Residents' Parking Schemes should be introduced before the introduction of controls on car parks to avoid displacement problems due to imposition of charges. Also, there may be safety risks associated with any displacement.

Response:

Similar objections were previously considered by Cabinet on 8th September 2009. A Cheshire East Residents' Parking Policy is now being considered by Cabinet for adoption as part of the Council's overall framework for the effective management of both on and off-street parking across the borough. It is very difficult to accurately predict the level or impact of any displacement of vehicles resulting from introduction of charging. There is a risk of introducing residents' schemes at considerable cost where they are not actually needed or helpful. It is the responsibility of all drivers to park safely in accordance with existing regulations. The Council hopes to be granted on-street enforcement powers by the DfT early in 2010 and this will enable Civil Enforcement Officers to ensure people do park safely.

11.4.6 Use by Community Groups

Objectors were concerned about the impact on community groups such as the University of the Third Age (U3A).

Response:

Cabinet considered similar representations at their previous meeting on 8th September 2009. The response is that the position is similar for other facilities around the Borough, including hospitals, which are already served by charged for car parks. Charging control assists with the availability of spaces and the current proposal uses a low tariff option to minimise the impact on such users

11.4.7 Future Developments

Objectors again referred to 'imminent' development on car park sites which will affect any decision to charge for parking

Response:

The imposition of control through charging will assist with the management of our parking assets during major developments. Any loss of space due to development will be the subject of review and negotiation during the development proposal and planning application phases.

11.4.8 Strategic Considerations (including fit with overall strategy and environmental issues)

Objectors felt the introduction of charges did not align with the Car Parking Strategy objectives as set out and would negatively impact on the environment.

Response:

Cabinet considered the strategic 'fit' of the proposals at their meeting on 8th September 2009. Charging at point of use is in line with the Council's Parking Strategy and the Local Transport Plan as it is recognised as the most effective means of managing supply, accessibility and behaviour in support of a town's broader objectives. The impact on climate change and air quality is considerable given the issues surrounding traffic congestion. A key objective of the strategy is to encourage the use of more sustainable and healthy forms of travel.

11.5 Public Inquiry

In respect of whether a public inquiry should be held, the proposals are not considered to be complex and whilst a large volume of objections has been received during both consultation periods, they have been grouped according to their similar nature, so that Members are fully able to take into account of the competing arguments and weigh them against each other in order to reach a decision.

12.0 Overview of Year One and Term One Issues

N/A

13.0 Access to Information

Background Documents:

Consultation Files: containing all responses received during both statutory consultation periods.

Lodged at Westfields, in Members Room and available at Cabinet Meetings 8th September 2009 and 10th November 2009

Public Documents available at Westfields and on the Cheshire East Website.

Cabinet Report of June 16 2009 (Part I available to the public; Part II is confidential)

Environment and Scrutiny Committee Report of July 8th 2009

Cabinet Report of July 14th 2009

Cabinet Report of 8th September 2009

Enclosures: Appendix A – Schedule to Proposed Off Street Parking Places Order

Appendix B – Analysis of Section 122 Road Traffic Regulation Act 1984

Appendix C – Summary of original representations and responses

The background papers relating to this report can be inspected by contacting the report writer:

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