

CHESHIRE EAST COUNCIL

Cabinet Member For Environmental Services

Date of Meeting:	26 February 2010
Report of:	Strategic Director Places
Subject/Title:	Proposed Traffic Regulation Order and Off-Street Parking Places Order to Facilitate Civil Enforcement of Parking Contraventions in the Congleton area.

1.0 Report Summary

- 1.1 The report provides details of the proposed traffic regulation order and off-street parking places order which are required to take account of enforcement, in relation to on and off street parking respectively, under the provisions of the Traffic Management Act 2004.

2.0 Recommendations

- 2.1 The Cabinet Member for Environmental Services is requested:
 - 2.1.1 to authorise the Borough Solicitor, or his nominated officer, to advertise the intention to make a Traffic Regulation Order, pursuant to the Road Traffic Regulation Act 1984, to allow for consolidation of existing on-street Traffic Regulation Orders; civil enforcement of on-street parking contraventions under the Traffic Management Act 2004; and to reflect the agreed band of penalty charge referred to within 11.1 below; and
 - 2.1.2 in the event that no objections are received to the proposed order within the statutory consultation period of 21 days, to authorise the Borough Solicitor to make the order referred to within 2.1.1 above. In the event that objections are received for these to be referred back to the Cabinet Member for consideration at a future meeting;
 - 2.1.3 to authorise the Borough Solicitor, or his nominated officer, to advertise the intention to make an Order amending the Cheshire East Borough Council (Off Street Parking Places)(Congleton Area) Order 2010, pursuant to the Road Traffic Regulation Act 1984, to allow for civil enforcement of off-street parking contraventions under the Traffic Management Act 2004; and
 - 2.1.4 in the event that no objections are received to the proposed order within the statutory consultation period of 21 days, to authorise the Borough Solicitor to

make the order referred to in 2.1.3 above. In the event that objections are received for these to be referred back to the Cabinet Member for consideration at a future meeting.

3.0 Reasons for Recommendations

- 3.1 In order to allow for civil enforcement of parking contraventions a traffic regulation order is required to consolidate existing On Street Traffic Regulation Orders and to amend the enforcement provisions in relation to on-street parking contraventions to those under the Traffic Management Act 2004 ('the 2004 Act') and the Civil Enforcement of Parking Contraventions (England) General Regulations 2007. In addition, the Cheshire East Borough Council (Off Street Parking Places)(Congleton Area) Order 2010 ('the Original Order') needs to be amended to reflect the enforcement arrangements under the 2004 Act.

4.0 Wards Affected

- 4.1 Alsager, Congleton Rural, Congleton Town East, Congleton Town West, Middlewich, Sandbach, Sandbach East and Rhode.

5.0 Local Ward Members

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| 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 Paragraph 5.5 of the Council's Parking Strategy provides as follows:

Parking Enforcement

Policy: To ensure parking policy interventions are implemented effectively and contribute to the wider objectives of transport planning and economic development; within the provisions of the relevant legislation:...

Traffic Management Act 2004 (Civil Parking Enforcement)

Statutory duty on Local Authorities to reduce the cause of congestion and disruption by controlling parking and the road network as a whole.

Part 6 of the TMA provides a single framework to make regulations for the civil enforcement of parking and waiting restrictions, bus lanes and some moving traffic offences.

6.2 In accordance with the Car Parking Strategy, the enforcement of controls for on and off street parking 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.

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

7.1 None

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

8.1 There will be costs of approximately £3,000 associated with the publication of notices in connection with the advertisement of the Order; these costs shall be met within existing budgets.

8.2 Section 55 of the Road Traffic Regulation Act 1984 ('the 1984 Act') requires that on-street penalty charge income must be used for enforcement purposes and to improve road transport provision.

9.0 Legal Implications (Authorised by the Borough Solicitor)

9.1 Section 35 of the Road Traffic Regulation Act 1984 ('the 1984 Act') provides local authorities with the power to make orders which make provision for the use of parking places provided by it and the conditions on which such parking places may be used. The procedure to be adopted in making orders under section 35 is set out within Part III of Schedule 9 to the Act and the Local Authorities Traffic Orders (Procedure)(England and Wales) Regulations 1996

(the Regulations).

9.2 The Regulations prescribe that before making an order the local authority must publish a 'notice of proposals' in a newspaper circulating in the area in which any road or other place to which the order relates is situated and to place documents relating to the proposals on deposit for inspection by members of the public. The local authority is also required to consult with certain prescribed bodies, including the Chief Officer of Police, and is required to take into consideration any objections received within the 21 day consultation period. Failure to take account of any such representations would pose a risk to the decision. If any objections are received then these will be reported to the Cabinet Member for Environmental Services for consideration.

9.3 Section 122 of the 1984 Act imposes a general duty on local authorities to have regard to certain factors when exercising their functions under the Act. As the decision to make an off-street parking places order is a function under the Act, the Council is required to consider the duty when making the decision within paragraph 2.1; failure to do so would pose a risk to the decision. Section 122 states:

"It shall be the duty of every local authority upon whom functions are conferred by or under this Act, to exercise the functions conferred on them by this Act (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."

9.4 It is suggested that the conversion of the enforcement provisions to those under the 2004 Act is necessary in order to allow the Council to properly enforce the controls in relation to both on-street and the off-street parking order upon the implementation of civil enforcement. Effective enforcement of parking controls plays a fundamental part in ensuring the 'provision of suitable and adequate parking facilities on and off the highway.'

9.6 It is suggested that the conversion to enforcement under the 2004 Act have the following impacts in relation to the particular matters specified under section 122(2):

(a) the desirability of securing and maintaining reasonable access to premises;

The proposals assist such a matter in that effective enforcement will have an impact in increases in the availability of parking spaces both on and off street thereby increasing access to premises. Conversely, the proposals do not negatively affect any access to premises, in the sense of preventing or making access more difficult.

(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, and so as to preserve or improve the amenities of the areas through which the roads run;

The proposals have the positive effect, by allowing effective enforcement of the provisions which control parking both on and off street, of ensuring the availability of parking places which is of benefit to local amenities.

(bb) the strategy prepared under section 80 of the Environment Act 1995 (national air quality strategy);

The reduction in queuing/circulating vehicles resulting from effective enforcement reduces both engine running time and congestion and helps to reduce air pollutant emissions.

(c) the importance of facilitating the passenger of public service vehicles and of securing the safety and convenience of persons using or desiring to use such vehicles; and

The proposals are not expected to have any effect upon the passage of public service vehicles.

(d) any other matter appearing to the local authority

There are no other matters appearing to the Officers

- 9.7 When considering whether to make an order under the 1984 Act, the Council has the discretion it has to hold a public inquiry under Regulation 9 of the Regulations. Factors which would be taken 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;

It is suggested that a decision about whether to be discretion to hold a public inquiry or not will be considered if objections are received during the statutory consultation period.

- 9.8 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 Legal risks are set out in Section 9 above.

11.0 Background and Options

- 11.1 On 16th June 2009 Cabinet resolved to re-affirm the decision of the former Congleton Borough Council to make application to the Department of Transport for the adoption of civil enforcement powers under the Traffic Management Act 2004 and approved the adoption of Band 2 Penalty Charges for parking contraventions in the Congleton Area (i.e. £70 for higher level parking contraventions and £50 for all other parking contraventions), in accordance with the provisions of SI 2007 No. 3487 (The Civil Enforcement of Parking Contraventions (Guidelines on Levels of Charges) England Order 2007).
- 11.2 In addition, on 1st February 2010 Cabinet resolved to authorise the Borough Solicitor to make the Original Order. The Original Order, which was subsequently made on 4th February 2010 and came into force on 15th February 2010, makes provision for the enforcement of contraventions under the Road Traffic Regulation Act 1984 by way of prosecution proceedings in the Magistrates' Courts.
- 11.3 In order to allow for civil enforcement of off-street parking contraventions, the Original Order needs to be amended to reflect the enforcement arrangements under the 2004 Act and the Civil Enforcement of Parking Contraventions (England) General Regulations 2007.
- 11.4 In addition in order to allow for civil enforcement of parking contraventions a traffic regulation order is required to consolidate existing On Street Traffic Regulation Orders and to amend the enforcement provisions in relation to on-street parking and waiting contraventions to those under the Traffic Management Act 2004 ('the 2004 Act') and the Civil Enforcement of Parking Contraventions (England) General Regulations 2007.
- 11.5 The Civil Enforcement of Parking Contraventions Designation Order 2010 and The Bus Lane Contraventions (Approved Local Authorities) (England (Amendment) Order 2010 were made on 28th January 2010 and laid before Parliament on 4th February 2010. The latter confers upon the Council powers to introduce enforcement of bus lanes or other moving contraventions. The Council does not intend to introduce such powers at this stage, but should they be considered necessary at a future stage, the order referred to within 11.4 will require amendment, subject to prior statutory consultation taking place. In the meantime, offences regarding bus lane restrictions are not decriminalised by the aforementioned regulations and the contravention of a bus lane order will remain a criminal offence that can be dealt with by the police.

12.0 Overview of Year One and Term One Issues

- 12.1 Not applicable.

13.0 Access to Information

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

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