

LEADER OF THE COUNCIL	DATE 3 November 2020
TITLE Consultation regarding Traffic Management Orders on Council Housing Estates	WARD (S) All
CHIEF OFFICER Director of Housing and Safety Communities	CABINET MEMBER Housing
DECISION CLASSIFICATION -Key -Non-Exempt	FINAL DECISION To be made on the recommendations in this report.

1. **Decision required**

This report makes the following recommendations to the decision-maker:

- 1.1 To agree to carry out a consultation exercise with Royal Borough of Greenwich tenants and leaseholders regarding parking restrictions, enforcement and charges within their estates.

Agreed/Not Agreed:

Date:

Signed.....

Councillor Danny Thorpe, Leader of the Council

2. **Purpose of Report and Executive Summary**

- 2.1 Historically, the Council was able to enforce parking on its housing estate land using private contract law via its enforcement contractor Wing Security. However, legislation introduced in 2012 relating to parking enforcement, which banned wheel-clamping, led to many landowners switching to issuing non-statutory ‘parking notices’ and to using the powers given to them to request vehicle registered keeper details from the DVLA to pursue these notices. However, since 2014, local authorities have been put under further pressure by central government to stop using contract law to enforce parking restrictions on Council housing estates, and instead to use the statutory powers available to them under the Road Traffic Regulation Act 1984 via Traffic Management Orders which allow for the issue of statutory Penalty Charge Notices (PCNs) for non-compliant parking.

- 2.2 To encourage local authorities to comply, since 2016, the DVLA no longer provides registered keeper details of offending vehicles to enforcement companies operating on behalf of local authorities under contract law. In effect this means that if the Council does not hold the vehicle owner's details and Wings issues a PCN, the Council has no means of locating the vehicle owner and enforcing the penalty charge.
- 2.3 As a result of this, the issuing of non-statutory parking notices under contract law has ceased to be an effective method of parking enforcement, and the Council can no longer recover the penalty charges successfully. This is unsustainable for the Royal Borough of Greenwich when taking into account that ineffective parking enforcement and non-recovery of penalty fines applies to over 100 of its housing estates that have car parks which are currently managed under contract law.
- 2.4 Having considered a number of options, officers have concluded that the optimum method of enforcement is through the making of Traffic Management Orders, a legal process with an embedded statutory consultation period, which would allow the Council to once again be able to request vehicle owner details from the DLVA and enforce the penalty fines. Traffic Management Orders are in use on housing estates in at least 30% of London Boroughs. The remaining options are either ineffective (e.g. signs only) or are comparatively expensive (e.g. barrier-controlled car parks).
- 2.5 10 Council-owned housing estates in the borough have been surveyed with the conclusion that Traffic Management Orders are appropriate and can be delivered across all 100 car parks within 7 months, subject to internal approvals and the procuring of an enforcement agency (see paragraph 6.2 below).
- 2.6 The Council's current contract with Wings, to enforce parking infringements on Housing land, terminates in 2021, so a new solution for parking enforcement is needed and timely.
- 2.7 Before implementing Traffic Management Order the Housing Department is looking to carry out consultation with its tenants and leaseholders to gain their insights on how best to implement parking enforcement and any potential charges on their estates.

3. Introduction and Background

- 3.1 Historically, the Council's housing estate carparks have always been effectively treated as private land, with parking enforced under contract via its

enforcement contractor Wing Security. Where parking is enforced these car parks are used exclusively for council tenants, leaseholders and their visitors. A hard copy parking permit is provided, when applied for, and there is no cost for tenants parking on these estates. Permits are issued annually.

- 3.2 In 2014 the Parliamentary Under Secretary of State for Transport wrote to all authorities, informing them that the Government does not recognise use of contract law on non-highway land and that local authority car parks should be regulated in the same way as public highways, by means of Traffic Management Orders. From 2016 the DVLA started to refuse to provide registered keeper details of offending vehicles, making it increasingly difficult for Wing Security to enforce parking controls in the Council's housing estate car parks.
- 3.3 With the current traffic enforcement contract for housing estates due to terminate in 2021, the Council commissioned a report, to look at the options available for the future of enforcement on the Council's housing estates and provide recommendations for a way forward.

4. **Available Options**

- 4.1 There are a number of options that have been looked at with regards to enforcing traffic management on estates and these are documented below and will shape the consultation process:

Enforcement route

- 4.2 Three options have been considered with regards to enforcement on estates, these are:
- i) Signage only
 - ii) Signage and physical restrictions such as barriers
 - iii) Traffic Management Orders to enforce parking infringements.

Enforcing agency

- 4.3 Depending on which route is chosen for enforcement the rules will need to be enforced through Fixed Penalty Notices (FPNs). The options for this would be:
- i) Use the Council's current parking enforcement team
 - ii) Use a third party external enforcement agency

Permit charging

- 4.4 If Traffic Management Order are implemented then there is a question of whether parking permits will be charged for in line with on street parking. Options for this would be:

- i) Continue with a nil change for parking permits on estates
- ii) Bring in a minimal charge for parking permits
- iii) Bring in a change in line with on street parking for permits.

Traffic Management Orders

- 4.5 The outcome that the Council is looking to achieve is to implement Traffic Management Orders (“TMOs”) under the Road Traffic Regulation Act 1984 (RTRA 1984) which will introduce the required parking controls for each parking space and waiting restrictions. The TMOs will set out where parking is available, as well as hours of operation, the types of permits and charges, the requirements and conditions that need to be complied with for parking in the car parks, and any exemptions that may apply. Maps will also need to be prepared to support the TMOs, to illustrate the physical locations of the parking bays and yellow lines.
- 4.6 These TMOs will be specific to the Council’s 100 housing estate car parks and will be entirely separate from other TMOs which apply to the Council’s publicly maintainable highways. This means that permits to park in any of the Council’s housing estate car parks will not be valid for use on any of the Council’s publicly maintainable highways and in the same way, existing resident permit holders in the borough (for example in controlled parking zones) will not be entitled to park in any of the Council’s housing estate car parks.

Allocation of parking spaces

- 4.7 TMOs do not allow for parking spaces to be allocated to an individual resident or address. TMOs would operate through the issuing of permits to safeguard car parking spaces for the housing estate residents and visitors. This matches current practice where most tenants are not assigned an individual space. Since existing licence holders will be guaranteed a replacement TMO permit to park in their housing estate car park, the proposed regime is expected to have little practical effect on residents in relation to allocation of parking spaces. Where there is assessed to be more parking spaces than demand, then residents will be offered the opportunity to purchase more than one permit per household. If a charge is implemented for permits, then a second permit will attract a higher price.

Permit Charges

- 4.8 There is the opportunity as part of this consultation to look at whether Housing should start to implement a charge, in line with current on street

parking restrictions, for issuing a parking permits to park on Housing Estates. This will be explored as part of the consultation.

Consultation

- 4.9 Before making a Traffic Management Order, regulations require statutory consultation. This includes emergency services and various road traffic associations. Regulation 7 of the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996 also requires the publication of notices in the press and to:

“take such other steps as it may consider appropriate for ensuring that adequate publicity about the order is given to persons likely to be affected by its provisions and, without prejudice to the generality of this sub-paragraph, such other steps may include—

(i) in the case of an order to which sub-paragraph (b) does not apply, publication of a notice in the London Gazette;

(ii) the display of notices in roads or other places affected by the order; or

(iii) the delivery of notices or letters to premises, or premises occupied by persons, appearing to the authority to be likely to be affected by any provision in the order.”

- 4.10 The above statutory process would eventually be carried out with the public as part of the implementation of the Traffic Management Orders if agreed and is not a recommendation of this report. This report proposes a specific consultation group comprised of Council tenants and leaseholders. The consultation would set out options and answers to frequently asked questions, concerning the proposed parking restrictions, enforcement and potential charges within their estates.
- 4.11 Separate to the statutory consultation on Traffic Management Orders Councils have a legal obligation to consult their secure tenants on matters of housing management. This includes changes to the management, maintenance, improvement or demolition of houses let by them, and most pertinently, changes in the provision of amenities which, in the opinion of the landlord, represent a change in the practice or policy of the authority.
- 4.12 In order to fulfil the Council's obligation under the act, a consultation should be carried out with secure council tenants. Leaseholders should also be asked for their feedback and kept informed.

4.13 Before making any decision, the authority must consider any representations in accordance with those arrangements. The options would be presented to relevant decision maker ‘along with the comments received’ so a decision can be made on the preferred option.

4.14 It is expected that this consultation will include, but not be limited to:

- 1) Opinions regarding current management of parking on estates and whether it is effective.
- 2) Concerns over implantation of Traffic Management Orders on estates.
- 3) Issues that residents would like to see solved as part of the new solution.
- 4) If a charge for permits was implemented, then resident’s opinion and views over prices and process.
- 5) Opinions over a charging scheme for additional car permits (more than one car per household) and visitors permits
- 6) Suggested cost of Fixed Penalty Notices and appeal process.
- 7) Discounts for less polluting or electric cars.

5. **Preferred Option**

5.1 This report recommends carrying out a consultation exercise to discuss with Tenants and Leaseholders the implementation of Traffic Management Order on Housing Estates.

6. **Reasons for Recommendations**

6.1 To successfully implement Traffic Management Orders on Housing Estates, which will improve RBGs ability to enforce against parking infractions, it is important that the Housing Team listen to the opinion of our residents and gather their feedback before moving forward.

7. **Consultation**

7.1 The report addresses the issue of consultation.

8. **Cross-Cutting Issues and Implications**

Issue	Implications	Sign-off
Legal including Human Rights Act	This report seeks approval to carry out a consultation exercise with Council tenants and leaseholders, regarding parking restrictions, enforcement and charges within the Council’s housing	Eleanor Penn, Assistant Head of Legal Services 6 th October 2020

estates, with a view to the potential for introducing Traffic Management Orders (“TMOs”) on the housing estates in or around 2021.

The Council is empowered under the RTRA 1984 to make TMOs to impose parking controls on its housing estate land, by providing parking spaces which are restricted to use by residents of the estates who have purchased parking permits, and also by introducing yellow line waiting and loading restrictions. The decision on whether to introduce such TMOs will need to be the subject of a separate report in due course, and following consultation, including statutory public consultation in relation to each proposed TMO.

The Council has the power to control off-street parking within its housing estates under sections 32 and 33 of the RTRA 1984. It may charge for the use of those car parks (including by the issuing of permits) by making an order under section 35 of the RTRA 1984 and is empowered under section 33(7) of the RTRA 1984 to appoint third parties to manage the car parks and collect charges.

As the traffic authority the Council has power under section 6 of the RTRA 1984 to restrict parking on its estate roads which are highways or to which the public have access, and to provide parking spaces on those estate roads. It may charge for use of the parking spaces on its highways under section 45 and 46 of the RTRA 1984, and enforce and recover those charges under the Traffic Management Act 2004.

	<p>Under section 55 of the RTRA 1984, the purposes for which any surplus in the Council's parking account can be applied is restricted to highway improvements and other traffic related measures.</p> <p>Section 105 Housing Act 1985 provides that the Council must consult with those of its secure tenants who are likely to be substantially affected by a matter of "housing management". It is for the Council to determine what constitutes "housing management", which is defined to include changes to the management, maintenance, improvement or demolition of houses let by them, and also to changes in the provision of amenities available to tenants. It would be difficult to argue that proposals for to change arrangements for parking on estates did not amount to changes in the provision of amenities to meet that definition. The law requires consultation to be undertaken when proposals are still at the formative stage and sufficient time and reasons are given to those being consulted to enable them to provide a meaningful response and for those responses to be considered as part of the decision making.</p> <p>There is no equivalent duty to consult with leaseholders but it would be good practice and reasonable to do so in the circumstances.</p> <p>Part 3 of the Councils Constitution Responsibility for Functions provides that the Leader or Cabinet Member has delegated authority to "Initiate consultation on draft new service policies and strategies and amendments to existing ones". The Leader can therefore make decision required.</p>	
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<p>Finance and other resources including procurement implications</p>	<p>This report makes the following recommendations to the decision maker: To agree to carry out a consultation exercise with the Royal Borough of Greenwich’s tenants and leaseholders regarding parking restrictions, enforcements and charges within their estates. Due to legislation, since 2016 the issuing of non-statutory parking notices under contract law has ceased to be an effective method of parking enforcement and the Council can no longer recover penalty charges successfully. A number of options have been considered and the outcome that the council is looking to achieve is to implement traffic management Traffic Management Orders (“TMOs”) under the Road Traffic Regulation Act 1984 (RTRA 1984) which will introduce the required parking controls for each parking space and waiting restrictions. These TMOs will be specific to the Council’s 100 housing estate car parks and will be entirely separate from other TMOs which apply to the Council’s publicly maintainable highways. This report recommends carrying out a consultation exercise to discuss with Tenants and Leaseholders the implementation of Traffic Management Order on Housing Estates.</p> <p>The report constitutes a key decision.</p>	<p>Akosua Boachie Accountancy Business Change Manager 30th September 2020</p>
<p>Equalities</p>	<p>A EQIA will be completed as part of the project.</p>	<p>Richard Parkin – AD Housing Services</p>

9. **Report Appendices**

9.1 None

10. **Background Papers**

10.1 None

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