

5 November 2020**Agenda Item:7****REPORT OF THE CORPORATE DIRECTOR, PLACE****PAVEMENT PARKING: OPTIONS FOR CHANGE – CONSULTATION****Purpose of the Report**

1. To consider the Council's response to the 'Pavement Parking: Options for Change' open consultation, which seeks opinions on proposals to reduce the problems caused by parking on pavements. This report provides a summary of the key proposals contained in the consultation document. The Council's draft response is attached at Appendix A.

Information

2. Although the 'pavement' is defined as the 'footway' in legislation, the more commonly used term 'pavement' is used in the consultation process to mean the part of a highway which shares its border with the carriageway ('road') on which there is a public right of way on foot. This is distinct from a 'footpath', which does not border a road.
3. The consultation period began on 31 August and will run until November 2020. Full details can be viewed at <https://www.gov.uk/government/consultations/managing-pavement-parking/pavement-parking-options-for-change>
4. Addressing the issue of pavement parking fits into the government's '**Inclusive Transport Strategy: achieving equal access for disabled people**', published in July 2018, which aims to create a transport system that provides equal access for disabled people by 2030, with assistance if physical infrastructure remains a barrier. Disabled people will be able to travel confidently, easily and without extra cost. Progress continues to be made in delivering our commitments in the strategy, including on pavement parking.
5. Irrespective of whether pavement parking is deemed to have become necessary in some locations, there are inherent dangers for all pedestrians; being forced onto the carriageway and into the flow of traffic. This is particularly difficult for people with sight or mobility impairments, and those with prams or buggies. While resulting damage to the pavement and verges is, uppermost, a trip hazard, maintenance and personal injury claims are also a cost to the authority.
6. However, it is also important to recognise that just as many roads within the county were not designed to accommodate today's high traffic levels, many older homes were not built with today's high level of car ownership in. As such at some locations, especially in residential areas with narrow roads and no driveways, drivers consider that the pavement is the only place to park without obstructing the carriageway.

7. In England (except for Greater London) parking on pavements and verges is generally tolerated unless specifically prohibited by a local authority (either street-by-street or zonally); the prohibition requiring a formal Traffic Regulation Order (TRO). The DfT is currently running a project looking at how the TRO legislative framework can be improved, to make TROs easier to implement, including for pavement parking.
8. To further develop its understanding of the pavement parking problem, the DfT is seeking views on:
- whether its ongoing work (Option 1), explained in more detail below, to improve the TRO process, under which local authorities can already prohibit pavement parking, is sufficient and proportionate to tackle pavement parking where it is a problem; or if not:
 - which of 2 specific options are preferred. These were identified in the department's review of the pavement parking problem, and echoed by the Transport Committee; are aimed at providing better tools for local authorities. These options, explained in more detail in this consultation document, are:
 - legislative change to allow local authorities with civil parking enforcement (CPE) powers to enforce against 'unnecessary obstruction of the pavement' (**Option 2**), or:
 - legislative change to introduce a London-style pavement parking prohibition throughout England (**Option 3**).
 - any alternative proposals you may have for managing pavement parking
9. The DfT recognises that there are pros and cons for each of the options, and responses on each will inform how this issue should be addressed.

Current Parking Laws

10. The [Traffic Management Act 2004 \(TMA\)](#) places a network management duty on local authorities to manage their road network to reduce congestion and disruption. The TMA also provides specific powers for parking enforcement to be undertaken by local authorities rather than the police. Local authorities have powers under Part I of the [Road Traffic Regulation Act 1984 \(RTRA\)](#) to set restrictions or exemptions relating to parking within specific areas via the use of TROs.
11. Local authorities can use a TRO to create local road traffic measures; for example, yellow line parking restrictions, 'no entry', 'no left turn' / 'no right turn' on roads for which they are responsible for managing. These measures can be applied to specific locations or larger areas. They can apply at all times or during specific time periods and can exempt certain classes of traffic. Under RTRA Sections 4 and 6, the conditions of a TRO are indicated to the road user by traffic signs and/or road markings, either prescribed by regulations (currently the [Traffic Signs Regulations and General Directions 2016 as amended](#)) or specially authorised by the Secretary of State.

Civil Parking Enforcement

12. Part 6 of the TMA allows most types of parking contraventions to be enforced by local authorities as a civil matter, instead of as a criminal matter by the police. Local authorities are not forced to do so, but they may choose to take on these CPE powers by applying to the Secretary of State for the power to enforce parking restrictions within geographical local areas.

NCC were granted such CPE powers in May 2008. Parking offences are no longer criminal in such areas and so:

- enforcement ceases to be the responsibility of the police and becomes the responsibility of the local authority
- Civil Enforcement Officers (CEOs) instead of 'traffic wardens' place Penalty Charge Notices (PCNs) on offending vehicles
- the penalty charges are civil debts, due to the local authority and enforceable through a streamlined version of the normal civil debt recovery processes
- motorists wishing to contest the validity of a PCN may make representations to the local authority. If rejected, they may then appeal to independent adjudicators, whose decision is final (meaning there is no right of further appeal through the courts)
- the local authority retains the proceeds from the penalty charges, which are used to finance the enforcement and adjudication systems. Any surpluses must be used for limited prescribed purposes only.

13. Endorsable parking offences, like those involving dangerous parking (where a driver's licence can be endorsed with penalty points), remain criminal and can only be enforced by the police. Stopping offences at pedestrian crossings may be enforced by the police or the local authority, but police action takes precedence.

14. Currently, 96% of local authorities in England have acquired CPE powers. Elsewhere, all parking offences remain subject to criminal law and enforceable by the police. Furthermore, on trunk roads and motorways, the police are responsible for enforcing traffic regulations, so illegal parking on these roads is a criminal offence.

Current Powers to Tackle Pavement Parking

15. Local authorities in England (outside London) can issue a FPN to enforce pavement parking only where:

- vehicles are parked in contravention of existing waiting restrictions (for example yellow lines, which also apply to the verge and the pavement)
- a designated prohibition has been implemented through a TRO and prescribed, or authorised, traffic signs and bay markings; or
- the vehicle parked is a 'heavy commercial vehicle' with an operating weight of over 7.5 tonnes

Unnecessary Obstruction of the Highway

16. The offence of unnecessary obstruction of the highway, which includes the road as well as the pavement, already exists and has not been decriminalised. There are existing statutes and regulations which allow proceedings to be brought by the police under criminal law for situations where parking on the pavement, in such a way as to cause obstruction, is deemed to be avoidable. These include:

- section 137 of the [Highways Act 1980](#), as amended; for wilfully obstructing the free passage along a highway

- regulation 103 of the [Road Vehicles \(Construction and Use\) Regulations 1986](#) as amended; for causing or permitting a motor vehicle or trailer to stand on a road so as to cause any unnecessary obstruction of the road
- section 72 of the Highway Act 1835, as amended, for wilfully driving or riding upon the footway

17. Local authorities are currently unable to enforce against obstruction using their civil parking enforcement powers.

Revenue Raised from Parking Enforcement

18. Parking schemes should be self-financing, and the law does not allow local authorities to use parking enforcement schemes for the purpose of raising revenue. Section 55 of the RTRA (as amended) requires that any surplus made on parking enforcement operations is directed towards the costs, incurred by the local authority, of other schemes to improve local transport and environment, including:

- local public transport schemes
- highway or road improvement projects
- improvement measures to reduce environmental pollution

Options Considered in the Consultation

19. **Option 1:** to rely on improvements to the existing TRO system.

- TROs allow local authorities the freedom to decide if and how they wish to restrict or prohibit pavement parking in their local area. The combination of a TRO with the necessary traffic signs and road markings creates a pavement parking restriction, which local authorities with CPE powers can enforce against by issuing PCNs.
- The DfT announced in August 2019 that it would be reviewing the legislation associated with TROs. The first stage of this review involved the department developing proposals for legislative change in partnership with a broad range of stakeholders
- These recommendations will be subject to further consultation in 2020; and the scope of legislative change, and whether change will require primary and/or secondary legislation, will require careful consideration in light of the consultation findings.

20. **Option 2:** to allow local authorities with Civil Parking Enforcement powers to enforce against 'unnecessary obstruction of the pavement'

- The offence of unnecessary obstruction of the highway, i.e. the road, verges, pavement, bridleways, and so on, already exists; although this is only enforceable by the police as a criminal matter.
- Option 2 proposes to allow local authorities with CPE powers to enforce unnecessary obstructions as a civil matter, by issuing Penalty Charge Notices to vehicles found to be causing an 'unnecessary obstruction of the pavement'. This would enable Civil Enforcement Officers to address instances of unnecessarily obstructive pavement parking as and when they find it, without the need to prohibit it nationally. The

guidelines contained in the [Civil Enforcement of Parking Contraventions \(Guidelines on Levels of Charges\) \(England\) Order 2007](#) provide for the higher PCN charge level of £70 for pavement parking.

- This option would include exceptions, for example, breakdown or emergency service vehicles; highway maintenance vehicles; utility maintenance vehicles; or where it can be proved that a vehicle had been used for loading and unloading goods (for up to 20 minutes or longer if the authority permits it). (Refer to Annex B for the full list of exempted vehicles).
- Whilst the DfT stated that it is considered necessary to include exemptions for emergencies, and to maintain free-flowing traffic and sustainability for delivery firms, it is not proposed by them to exempt Blue Badge holders, or any businesses not concerned with deliveries. The aim of the policy is stated as being to keep the pavement free of obstruction as far as possible; and the DfT considers that other exemptions may defeat this objective.
- It is acknowledged by the DfT that the concept of ‘unnecessary obstruction’ is inherently vague. To help mitigate this, the DfT suggest that it could be recommended in guidance to local authorities that their schemes provide for the use of warning notices on the first occasion an individual vehicle is identified as causing an obstruction.

21. Option 2 Advantages

- Would enable local authorities to issue PCNs to vehicles which are deemed to be causing an unnecessary obstruction of the pavement, without the need to prohibit pavement parking nationally.
- The secondary legislation required could be implemented relatively quickly. Pavement parking would not become an offence in all cases, so local authorities would not need to carry out costly and time-consuming audits of their road networks; nor would it be necessary to place traffic signs and bay markings to indicate where pavement parking would still be permitted.
- Enforcement against this offence would be more targeted than a general prohibition of pavement parking. Local authorities would be able to penalise pavement parking where the pavement has clearly been blocked unnecessarily.

22. Option 2 Disadvantages

- ‘Unnecessary obstruction’ is difficult to define, potentially vulnerable to misinterpretation and would require detailed assessment in each case.
- Unlike most other parking offences, there would be no traffic signs or bay markings informing motorists of local regulations: ‘obstruction’ is a general offence that may occur anywhere so it cannot be indicated by traffic signs or bay markings.
- If this option was pursued, secondary legislation and/or guidance would be needed to clarify the definition of an ‘unnecessary obstruction of the pavement’ in order to prevent inappropriate and inconsistent enforcement.

23. **Option 3:** a national pavement parking prohibition

- This option would require changes to primary legislation and **would prohibit pavement parking by default**, except at locations where local authorities decide to allow it.
- Local authorities would be expected to decide where pavement parking remained necessary and to introduce the necessary exemptions and to place traffic signs and bay markings to indicate where pavement parking is permitted.
- The legislation would include exceptions to the prohibition for certain vehicles including breakdown or emergency service vehicles; highway maintenance vehicles; utility maintenance vehicles; or where it can be proved that a vehicle had been used for loading and unloading goods. There would be no exemptions for Blue Badge holders.

24. **Option 3 Advantages**

- This option would establish a general rule against pavement parking except where there is specific permission for it. It is proposed that this would mirror the London pavement prohibition; with exemptions in place at many locations.
- Motorists would benefit from a consistent rule: 'you must not park on a pavement except where signs permit'. Traffic signs and bay markings would show drivers where pavement parking was still allowed.
- Local authorities could introduce exemptions to permit pavement parking by the simpler means of administrative resolution instead of promoting TROs to prohibit pavement parking. This is because the default position is an enforceable pavement parking prohibition whereas the exemption is a simple 'permission' that requires signing but no enforcement.
- This approach would foster active management of pavement space. It would require local authorities to decide where vehicles should have priority over pedestrians and vice versa.

25. **Option 3 Disadvantages**

- A national pavement parking prohibition would be the most significant change to English parking law in several decades, and the authority would need to undertake a substantial amount of work to prepare for it.
- In many areas some element of pavement parking is currently considered essential, so the DfT acknowledge that it should continue to be allowed where this is the case. Therefore, the authority would need to survey their road network, identify areas where pavement parking is routine, determine where it remains necessary, pass resolutions to permit it, and place traffic signs and bay markings to inform drivers where pavement parking is still permitted.
- It is likely that the introduction of a national prohibition would need a significant implementation period. This process of identifying and implementing exemptions could be time consuming and expensive. Local authorities have indicated to the DfT that the

scale of this task should not be underestimated. It is not known how many streets would need to be exempted from a national prohibition, nor how many streets may need to be exempted in any single town or city. One authority has estimated the cost at around **£670,000**. Some authorities the DfT talked to stated that they depend on pavement parking to preserve traffic flow in terraced areas and believe they would need to exempt large residential areas from the prohibition.

- Currently, pavement parking is partly self-regulating and fluctuates in response to spikes of parking demand, such as community events, local festivals, etc. By restricting pavement parking only to those areas indicated by traffic signs and bay markings, this option would fix the provision of pavement parking at a relatively static level. The local authority may authorise enough pavement parking bays for residents, but not enough to accommodate an unknown level of visitors.
- A national prohibition might be inappropriate in rural areas, such as country roads where pavement parking may be safer. It would be difficult to comprehensively assess all rural settings and may be disproportionate to direct resources to place traffic signs on quiet country roads. There is also a greater dependence on private transport in rural areas. Suburban areas may also face specific challenges.
- The implementation of a national prohibition would also be particularly difficult in environmentally sensitive areas, such as historic towns and villages, where there is likely to be strong resistance to placing of traffic signs and bay markings to indicate where parking is permitted. Moreover, reducing traffic sign clutter was a key aim of the DfT's traffic signs policy review, and a major update to the regulations² governing the appearance and use of traffic signs included a number of changes to facilitate this.

Summary: Preferred Option

26. Officers consider that **Option 2** is the preferred option for the following reasons;

- It would grant the authority additional powers to enforce against unnecessary obstruction of the pavement.
- It would allow the authority the flexibility to target specific areas rather than having to enforce across the whole road network.
- The legislation required could be implemented quickly.
- Unlike Option 3, it would not require the authority to audit its entire road network and to place signs and markings where pavement parking is permitted.

Other Options Considered

27. Not to respond to the consultation. The Council would not have the opportunity to comment on proposals that would affect the delivery of its services.

Reason/s for Recommendation/s

28. In order that a response to the consultation is made on behalf of the Council and has been approved by Members.

Statutory and Policy Implications

29. This report has been compiled after consideration of implications in respect of crime and disorder, data protection and information governance finance, human resources, human rights, the NHS Constitution (public health services), the public sector equality duty, safeguarding of children and adults at risk, service users, smarter working, sustainability and the environment and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

RECOMMENDATION/S

- 1) That the response to the Pavement Parking Consultation as set out in Appendix A be approved.

Derek Highton
Service Director, Place and Communities

For any enquiries about this report please contact: Gary Wood, Group Manager Highways & Transport, Nottinghamshire County Council, T: 0115 9774270, E: gary.wood@nottscc.gov.uk

Constitutional Comments (SJE 25/09/2020)

30. This decision falls within the Terms of Reference of the Communities & Place Committee to whom responsibility for the approval of consultation responses regarding the Authority's functions relating to traffic management has been delegated.

Financial Comments (RWK 28/09/2020)

31. There are no specific financial implications arising directly from the report. Any financial implications that arise as a consequence of changes in pavement parking policy and enforcement following the consultation will be the subject of future reports to committee.

Background Papers and Published Documents

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

- None

Electoral Division(s) and Member(s) Affected

- All