

9 January 2014**Agenda Item:****REPORT OF SERVICE DIRECTOR, HIGHWAYS****BUS LANE ENFORCEMENT – NUTHALL BUS GATE****Purpose of the Report**

1. The purpose of this report is to approve the commencement of bus lane enforcement at Nuthall Bus Gate.

Information and Advice

2. The bus gate consists of a short section of road which provides direct access to the Nuthall roundabout from the junction of Nottingham Road and Roland Avenue at the edge of the Horsendale residential area. During the hours of 4pm to 6.30pm Monday to Friday use of this section in a westbound direction by vehicles other than buses and pedal cycles is prohibited.
3. The Nuthall Bus Gate was introduced in 2003, by way of a 12 month Experimental Traffic Regulation Order, to prevent peak period “rat running” through the residential area and to provide priority for westbound buses at the A610 Nuthall roundabout during weekday evening peak periods improving journey times and enabling some services, which had been diverted due to the congestion, to become viable once more.
4. A number of comments and objections were received following the experiment. While it was recognised that the scheme would bring much benefit to the residential area, it was also recognised that there could be some impact on residents in terms of additional journey times during the two and a half hours of operation, and an exemption for residents of the Horsendale Estate was requested. This was considered, but it was concluded that it would fatally undermine the effectiveness of the bus gate. The Council proposed some physical measures to address the potential impact on residents, however, and determined to make the Traffic Regulation Order (TRO) permanent in the same form as the experiment. Accordingly, an additional traffic signal junction was introduced on the A610 Nottingham Road junction, between Jungletastic and The Nuthall public house at a cost in excess of £75,000, to assist residents of the Horsendale Estate in exiting the area with minimum delays.
5. Bus operators welcomed the bus gate but for many years have reported significant delays due to a large number of vehicles contravening the restriction

and have consistently requested that enforcement be undertaken to ensure the bus gate operates as per the TRO, approved by the Council. Responsibility for enforcement previously rested solely with the police but contraventions have continued and bus operators therefore requested that the County Council make use of its powers to undertake enforcement using cameras.

6. On 8 February 2012 the Council approved the Local Transport Plan programme for 2012/13 including modification of the bus gate at Nottingham Road, Nuthall and installation of an enforcement camera. In early 2013, in preparation for camera enforcement, the restriction was made more conspicuous by the introduction of a mini-roundabout at the Nottingham Road / Roland Avenue junction and the renewal of all associated signs.
7. As part of the scheme's implementation, on 21 March, 2013, the Transport and Highways Committee approved the use of the enforcement camera at Nuthall, set the penalty charge for bus lane contraventions and recommended that Full Council approve participation in the joint arrangements for adjudication services (which is a legal requirement for authorities undertaking civil enforcement). Full Council approved that on 25 April, 2013 but also resolved that "the existing TRO be referred to the Transport & Highways Committee with a recommendation for residents of the Horsendale Estate to be an exempted class under the Order and to action this accordingly, subject to the necessary external approvals". This recommendation was discussed at Transport & Highways Committee on 6 June 2013, where the report was then withdrawn to enable further feasibility work to be undertaken. Accordingly, officers have therefore been investigating whether "residents of the Horsendale Estate" can, in fact, legally be approved as exempted from the TRO as well as exploring the practical implications.

Legal & Statutory Framework

8. The law on traffic regulation is tightly prescribed and specialist legal advice has been sought. The advice received is that vehicles (other than buses) which are permitted to use a bus lane are identified as being a class of vehicular traffic "... *defined or described by reference to any characteristics of the vehicles or traffic or to any other circumstances whatsoever*" which means that those classes are not limited to the characteristics of the vehicle but can be extended to include activities for which the vehicle may be being used e.g. loading / unloading. However, this widening of the definition of the class extends only to activities, and not to the usual 'home' / address of a vehicle.
9. To exempt "residents of the Horsendale Estate" it is necessary to precisely define the geographical area of the "Horsendale Estate". However, this term refers to a historic area which it is somewhat difficult to define in modern terms. While it would be possible to define it by specifically listing streets and house numbers, it is a heavily built-up urban area, and so there are significant risks of one person being within the 'exempted zone' but not their neighbour.
10. In general terms it is estimated that any exemption "for residents of the Horsendale Estate" would need to cover at least 1,500 vehicles. As well as defining this 'class' within the TRO, it would be necessary for the exemption to be

described and signposted in accordance with the Traffic Signs Regulations and statutory guidance.

11. The Council is required to obtain authorisation for any traffic signs used where they are not in a form already prescribed in the Traffic Signs Regulations. While a response from the Department for Transport (DfT) on whether they could give authorisation for wording referring to a residents' exemption is awaited, it is clear that wording such as "Authorised Vehicles" has historically been the only form of wording approved by DfT. This is because the framework on bus lanes/gates and their signage relates to use by buses and pedal cycles only and permitted variations are currently limited to the exemption of taxis and motor cycles.
12. Furthermore, the DfT's Statutory Guidance (Provisional Guidance on Bus Lane (including Tramway) Enforcement in England outside London) states, in paragraph 2.7, that:

"Regulations banning some or all motorised road users from bus lane [sic] should be clear, well-signed and easy to understand. Without these measures the resentment felt by some motorised members of the public towards bus lanes may increase and the policy fail to win public support."

13. Allowing a very large number of vehicles through the bus gate would be contrary to this as the exemption for residents would not be likely to have wider public support. Not only do these factors defeat the purpose of the restriction but they are likely to lead to a large number of appeals against any Penalty Charge Notices (PCNs) issued.

Practical Implications

14. At present, a list of exempt vehicles is easily created for buses as they are readily identified from the images generated by the camera, especially as bus operators typically use the same bus on the same route every day; the Vehicle Registration Mark of which is then recorded, manually added to the list, and ignored by the system thereafter. This process works equally efficiently in relation to taxis and private hire vehicles (where these are also exempt) since they are readily identifiable from the image.
15. For the estimated minimum 1,500 vehicles which would fall into the relevant exemption, the above methodology wouldn't work. It is therefore envisaged that the list would need to be created by use of either 1) a permit system relating to pre-registered vehicles or 2) by means of data matching potentially contravening vehicles with information held by the Driver and Vehicle Licensing Agency (DVLA). While from a technological point of view either method might be feasible, they are subject to the following issues.
16. Under a permit system, it would be necessary to have a list of all vehicles owned / used by residents of the 'Horsendale Estate' and this list would need to be monitored and maintained throughout the lifetime of the TRO, perhaps by way of a time limited registration system (such as a 12 month permit) in order to manage

a turnover in vehicles. Each application would need to be processed and the details checked.

17. The second method would require each vehicle identified by the system as a potential contravention to be processed by making enquiries of DVLA (at a small cost for each enquiry) with additional staff costs for checking each apparent contravention. Exempted 'Horsendale Estate' vehicles would be disregarded and contravening vehicles issued PCNs.
18. It is evident that neither mechanism could sufficiently cover the sale of vehicles, residents moving, company vehicles, courtesy cars, borrowed vehicles and visitors to residents, and these factors would likely lead to a large number of appeals. In response to enquiry, the Traffic Penalty Tribunal declined to comment or provide an opinion on the proposed exemption and the level of risk cannot be accurately predicted in advance. However, the consequences could fatally undermine the entire scheme.
19. Recently, the DVLA has stated that they will not supply details of registered owners unless legal action **is** to be taken against that owner. To seek to use this data to determine *whether* action should be taken actually creates a 'catch-22' situation whereby no enforcement could take place as the authorised / exempted could not be distinguished from the contravening.
20. Regardless of the sign and wording used, the visual effect of a large number of private vehicles using the bus gate during its times of operation would mask authorised use and be likely to prompt unauthorised vehicles to use it too. This, it is considered, would prompt a substantial amount of traffic to use the bus gate precisely when the restriction is needed most.
21. Bus lane offences are not decriminalised in the same way as parking offences and may also be enforced by the police as a criminal offence as well as through the Council's civil procedure. Whilst the methods referred to above could assist the Authority in identifying exempt vehicles, they wouldn't prevent wasted-resource implications for the police. As such, the police have referred to many of the issues identified in this report and advised that they would be unable to support an exemption for Horsendale residents as they consider that it would make the bus gate unworkable and unenforceable.

Resourcing

22. The DfT's Statutory Guidance also states, in paragraph 4.3, that the bus gate should be effective, efficient and economical (largely self-financing):

"Each local authority operating bus lane enforcement will need to ensure that the operations are not only effective, in that they help to deliver transport objectives, but are carried out efficiently and economically."

23. The current system, where residents' vehicles are not excluded, will be largely self-enforcing and relatively efficient to enforce too. However, an exemption for

residents would have substantial resource implications as the level of traffic flow through the bus gate during its times of operation directly affects the levels of monitoring and also the number of appeals against enforcement. While expenditure can be recouped from enforcement / charging for permits, it is envisaged that the additional cost of managing the exemptions would be in excess of £5,000 per annum.

24. Should it be the will of the Committee to provide an exemption for residents, it is also important to note that in order to do so it would be necessary to create a new TRO by means of the statutory process. This would take 3 to 6 months due to the legally prescribed advertising and consultation periods and the need to consider and report on any further objections which would be submitted. This would involve an additional cost of the order of £5,000.
25. In addition, the implementation of an exemption would require the renewal of bus lane signs at an additional estimated cost of £3,000, and could only be done if DfT approval for such signing to reflect the novel exemption could be obtained. In considering such an unprecedented exemption, DfT would have regard to their own guidance on enforceability of bus lanes. It is not possible to quantify the implications in advance, but if the Traffic Penalty Tribunal did not uphold the Penalty Charge Notices (as the sight of a large number of unmarked private vehicles using the bus gate could be viewed as suggesting to other road users that they could use the bus gate too) then the scheme (i.e. improving traffic flows and facilitating an efficient and effective public transport service while ensuring minimum disruption for other highway users) would be rendered redundant and the aims of the scheme not achieved.
26. It is acknowledged that, despite the TRO already being in force, commencing enforcement action will require people to change their driving habits. Accordingly, should Committee approve the Recommendation below, it is proposed that warning letters be sent to any parties appearing to contravene the traffic restriction for the first three months following the decision of Committee.

Other Options Considered

27. Exemptions for residents were considered when the bus gate was introduced but this was discounted and an additional signal controlled junction was provided as part of the overall package of measures, to address residents' concerns.

Reason/s for Recommendation/s

28. Effective implementation of bus priority measures is integral to and supports the Council's transport and highways objectives. Any vehicle irrespective of its origin can cause delay to buses causing bus services to be cancelled / diverted away from areas where they are needed due to congestion.
29. It is imperative that arrangements are highly robust and that enforcement is not only done successfully, but is also subject to public support and high visibility, rather than ambiguity, in order to ensure that the bus gate is able to fulfil its objectives.

30. It is intended that bus gates should be cost-neutral in terms of enforcement. A simpler traffic restriction is clearer and less susceptible to accidental contravention than a more complicated system of exemptions. The Recommendation should result in greater certainty for drivers and less PCNs being issued.
31. While it is recognised that there may be some inconvenience to residents this has to be offset against the overall benefits and in the context of the mitigation measures that have already been provided.
32. Exemption for residents was considered as part of the original scheme development and although this was discounted the Horsendale residents were provided with an additional junction to minimise any inconvenience caused during the operational hours of the bus gate.
33. Investigation into the necessary external approvals indicates that residents of the Horsendale estate cannot be an exempted class under the Traffic Regulation Order as:-
- a. An exemption of the nature described appears contrary to both the governing legislation and statutory guidance.
 - b. An exemption of the nature required would add to operational complexity and costs.
 - c. All options would add administrative complexity and cost to what is otherwise a straightforward enforcement operation.
 - d. PCNs issued would be subject to high levels of challenge and appeal.
 - e. Nottinghamshire Police have indicated that they would be unable to support such an exemption.

Introduction of an exemption would further delay the commencement of enforcement to the detriment of public transport and the residential area and at additional cost.

Statutory and Policy Implications

34. This report has been compiled after consideration of implications in respect of finance, the public sector equality duty, human resources, crime and disorder, human rights, the safeguarding of children, sustainability and the environment and those using the service and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

Implications for Service Users

The implementation of enforcement will enhance bus services using priority measures by improving bus journey time reliability and assist in the promotion of bus travel.

Financial Implications

The business case indicates that enforcement will be self-financing within the first year but does not consider the additional costs that would be necessary to implement an exemption.

RECOMMENDATION/S

Bus lane enforcement shall be commenced at Nuthall Bus Gate, as soon as possible, without an exemption for residents, for the reasons set out in the report, with warning letters to be sent in relation to apparent contraventions up to and including 7 April 2014 and Penalty Charge Notices issued for any apparent contraventions thereafter.

Andrew Warrington
Service Director (Highways)

For any enquiries about this report please contact:
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Constitutional Comments (SJE – 10/12/2013)

35. This decision falls within the terms of reference of the Transport & Highways Committee to whom the exercise of the Authority's powers relating to transport and highways functions has been delegated and is pursuant to Full Council Resolution 2013/22

Financial Comments (TMR – 10/12/2013)

36. The financial implications are as set out in the report

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.

Report to Cabinet Member for Environment - 6 November 2002
Report to Cabinet Member for Environment - 22 April 2004
Report to Transport & Highways Committee - 21 March 2013
Report to Full Council - 25 April 2013
Full Council Minutes - 25 April 2013
Report to Transport & Highways Committee - 6 June 2013

Electoral Division(s) and Member(s) Affected

Nuthall – Cllr Philip Owen