

Information briefing

Report from:

Assistant Director (Highways and Infrastructure)

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Prohibition of Footway and Verge Parking – Summary of current legal position

Summary

The purpose of this Briefing Note is to summarise:

- The legal powers available to the City to enable enforcement of footway and verge parking
- Current provisions for enforcement and scheme costs associated with implementing such schemes.

Background

In February 2011 the Department for Transport gave all councils in England permission to use signs to indicate a local pavement parking ban. Local authorities with civil parking enforcement powers can enforce this ban following the introduction of a Traffic Regulation Order (TRO). As a result of this new tool, to combat pavement and verge parking, Birmingham City Council introduced a TRO and pilot scheme on Brownfield Road, Shard End. The success of that pilot scheme resulted in the introduction of 5 further schemes across the City. Although successful, these measures only target specific localised areas and rely upon additional traffic signing to enable enforcement to take place.

In 2015 the UK Government looked into the issue of pavement parking in England. It ran consultations and roundtables and held internal reviews, but this did not lead to any changes to enforcement powers at that time.

In 2019 the Department for Transport concluded a review which looked at the problems caused by pavement parking, the effectiveness of legislation, and the case for reform. It found that pavement parking was problematic for 95% of respondents who are visually impaired and 98% of wheelchair users. The Transport Select Committee also recently conducted an inquiry into the issue, with the commitment to consult on proposals forming a key part of the government's response to its findings.

In March 2020 new proposals to tackle pavement parking and make streets safer for parents and disabled people were set out by Transport Secretary Grant Shapps. The government is set to consult on proposals in the summer designed to improve the lives of people with mobility or sight impairments, as well as parents with prams who may be forced into the road to get around parked cars. The 12-week consultation will include options such as allowing local authorities with civil parking enforcement powers to crack down on unnecessary obstruction of the pavement. Currently, outside London, only police have this power. It will also consider how a nationwide ban on pavement parking enforced by local authorities might work, allowing for any necessary exceptions or designated spots for pavement parking where needed, and how a tailored approach may be required in rural and suburban areas which face very different challenges.

Legal

The limitations of legal powers when considering a BCC wide blanket prohibition on footway and verge parking throughout Birmingham are summarised below.

1. City wide TRO

There does not appear to be any legal reason why this would not be possible, which seems to be confirmed in a House of Commons Transport Committee's report, but complying with the full statutory process for a city wide TRO is likely to be complex and onerous.

Furthermore, the legislation specifies that the signing for such a restriction must be 'adequate' in terms of notifying drivers of the restriction. Although this is subjective, when considering guidance on other area wide schemes and the need for repeater signs, **it is unlikely that signing on entry to the city alone will be deemed to be adequate under any challenge. Consequently, it would be much safer to rely on localised signage rather than signing on entry into the City, given the size of the area that you would be covering.** It is rather different to something like the Clean Air Zone (CAZ), which is using signs as entry points, given that the area in that case is much smaller and also much more clearly defined by the ring road.

2. Introduction of a bye law

Nationally, the position regarding byelaws remains the same and is still governed by the Local Government Act 1972. Any proposed byelaw would need Secretary of State approval and would be subject to advertising and consultation. More importantly, byelaws are regarded as measures of last resort after a council has tried to address the issue through other available means. **A byelaw cannot be made where alternative legislative measures already exist that could be used to address the problem. Therefore, the available option of a city-wide TRO would potentially result in a request for a new byelaw being declined by the Secretary of State.** Even if a byelaw could be introduced, the council would still be left with the issue/problem of how to enforce it city wide, as responsibility for enforcement would fall back on the local authority.

One other consideration was the West Midlands County Council Act 1980 but this only makes it an offence to 'drive' over a grass verge, it does not extend to 'parking' on the verge/footway. It is accepted that a vehicle must have been driven there to be parked in the first place, but it would not be a solution to the city-wide problem.

3. Powers similar to those in Greater London

The statutory power applicable in London is section 15 of the Greater London Council (General Powers) Act 1974. The legislation creates a blanket prohibition which then requires councils to create exemptions to 'disapply' it. There is no equivalent legislation applicable to other parts of the country. In order to benefit from similar legislation, local authorities outside London would need to lobby government in the hope that they agree to legislate on the issue. **As the government is planning to consult nationally on introducing such powers outside London, this nationwide approach is likely to be the quickest way such powers would be made available.**

Current provisions for enforcement in Birmingham and scheme costs

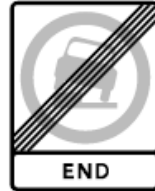
In Birmingham, 6 specific areas were chosen following set screening criteria and are covered by localised signing to inform drivers of the overarching TRO. All approaches to these areas have entry signs and further repeater signs are located within the area. Drivers are also notified on exiting the area (as shown below).



Entry Sign example



Repeater Sign examples



Exit Sign examples

The national guidance for traffic signs states that those 'repeater signs should be provided within the zone or along a road as considered necessary by the traffic authority to remind drivers of the prohibition. These might be placed at road junctions within a zone and where drivers might be tempted to park'.

Consequently, in order to comply with this guidance and to satisfy the statutory requirement for the signing to be 'adequate' a considerable amount of signing was required for targeted areas to be enforceable. **Typically, costs for introducing such localised schemes in Birmingham have ranged from £7K to £26K. Consequently, the cost and sign clutter associated with upscaling this approach across Birmingham is likely to be difficult to justify.**

It is reasonable to conclude, only via the provision of powers similar to those in London, that a City-wide scheme could be introduced and effectively enforced without the introduction of extensive signing.

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