

Birmingham City Council

Report to Cabinet

26th April 2022



Subject: BCC Street Works Permit Scheme

Report of: Robert James, Managing Director, City Operations

Relevant Cabinet Member: Councillor Waseem Zaffar, Transport and Environment
Councillor Tristan Chatfield, Finance and Resources

Relevant O&S Chair(s): Councillor Liz Clements, Sustainability and Transport
Councillor Mohammed Aikhlaq, Resources

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| Are specific wards affected? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No – All wards affected |
| If yes, name(s) of ward(s): | | |
| Is this a key decision? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| If relevant, add Forward Plan Reference: | | |
| Is the decision eligible for call-in? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| Does the report contain confidential or exempt information? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| If relevant, state which appendix is exempt, and provide exempt information paragraph number or reason if confidential: | | |

1 Executive Summary

- 1.1 This report outlines the existing arrangements in place for the control and regulation of roadworks on the public highway, how these are proposed to be changed to comply with the requirements of the Secretary of State for Transport with respect to implementing a Street Works Permit Scheme, and details the operational, financial, and legislative implications of the required change.

2 Recommendations

That Cabinet:

- 2.1 Approves the implementation of the Birmingham City Council Street Works Permit Scheme and associated proposed permit fees as set out in the Permit Fee Matrix, Incentives and Discounts document (Appendix B).
- 2.2 Approves the preparation and sealing of the necessary Traffic Management Act 2004 Permit Scheme Order.
- 2.3 Authorises the City Solicitor to prepare, negotiate, execute, and complete all relevant legal documentation to give effect to the above.

3 Background

- 3.1 As a consequence of the City's economic growth, regeneration and transformation there has been a significant increase in street works activity on our highway network. It is anticipated that there will be further major utility works, new developments, and transportation projects over the coming years in order to accommodate future growth.

Noticing of Street Works

- 3.2 With respect to the management and co-ordination of these street works, the City Council currently operates a Noticing Scheme, as part of our Network Management Duty under the Traffic Management Act 2004. Under this system works promoters (e.g. gas, water, and electricity providers) advise the Council that they intend to work on the highway. The City Council has limited powers to direct and coordinate works under this noticing regime.
- 3.3 Whilst there is no approval/rejection process under a noticing regime, the Council has the ability to challenge works promoters on duration/time and the option to retrospectively penalise works promoters who do not cooperate, however this form of redress is time and cost prohibitive for marginal benefit.

Street Works Permits

- 3.4 The alternative statutory mechanism to noticing is a Street works Permit Scheme. Permit schemes have been steadily introduced by authorities over recent years and evidence from those authorities has demonstrated that operating a Permit Scheme is a more effective way of managing street works. The benefits are identified as;
 - a greater level of network control
 - reduced disruption to the network and
 - better protection for highway assets, resulting in fewer maintenance interventions.
- 3.5 There is a formal approval/rejection process included within the Permit Scheme enabling easier redress for non-compliance than in 3.3 above.

- 3.6 Another key element of Permit Schemes that helps derive these benefits is that permits allow authorities to impose conditions on works promoters relating to traffic management, diversions and working hours.
- 3.7 The proposed BCC Permit Scheme (Appendix A) has been developed in consultation with several comparable Local Authorities who are already operating permit schemes. The summary of this consultation can be found in the Permit Scheme Consultation document (Appendix F).
- 3.8 The associated permit fee (paid by works promoters) would provide a mechanism to fund an expanded street works service which would include additional staff resources to approve permit applications and increased numbers of inspection and enforcement officers, focussed on street works activity.
- 3.9 A performance management and monitoring system will be introduced to measure these benefits and a comparison with the existing Noticing System undertaken in the first year of operation. Additionally, a periodic review of the Cost Benefit Analysis (described in Appendix D) will be undertaken to demonstrate the ongoing benefits of the Permit Scheme. The monitoring system will use nationally established Key Performance Indicators to directly compare Birmingham's experience with the rest of the UK.

4 Options Considered and Recommended Proposal.

Option 1:

- 4.1 Do Nothing - Remain with the current Noticing Scheme
- 4.1.1 The Noticing System has limitations as described in 3.2 and 3.3 above. In addition, the Department for Transport (DfT) is strongly encouraging all authorities to move from noticing systems to permit schemes. Whilst currently both options are valid, there is a concern that retaining a noticing system in preference to Permits could be viewed as evidence that the City Council is failing to carry out its statutory highways Network Management Duty.

Option 2:

- 4.2 Adopt a Permit Scheme – (Recommended)
- 4.2.1 The recommendation based on industry best practice, DfT guidance, financial implications and justification which can be found in the DfT Evaluation of Street Works Permit Schemes (Published June 2018) is to pursue the adoption and implementation of a Street Works Permit Scheme.

5 Consultation

- 5.1 Statutory consultation with all key stakeholders was undertaken on two occasions (Sept 2016 and Sept 2020) in accordance with the requirements of Regulation 3 of the Traffic Management Permit Scheme (England) Regulations 2007. These consultations included all major Utility Providers, adjacent local authorities, public transport operators and Transport for West Midlands.

5.2 All feedback was considered and used to shape the proposed Permit Scheme within legislative constraints. All feedback and correspondence relating to the consultation can be found in Appendix F.

5.3 Following the making of the Order to introduce the Permit Scheme, there is also a requirement to provide notice of such an order to all interested parties at least four weeks before the order comes into effect. In addition, it is intended to further consult and engage with all works promoters with respect to the confirmed implementation of the Permit Scheme to ensure a smooth transition from noticing to permits.

6 Risk Management

6.1 A full risk register of delivery risks can be viewed in Appendix E. The risk register will be monitored regularly and reviewed as part of internal project governance to ensure the delivery of the Street Works Permits Scheme which is currently anticipated for implementation by the end of 2022.

6.2 Although financial analysis anticipates that the Permit Scheme will operate at cost neutral, there is a risk that income from permit fees will be insufficient to cover the additional cost of operating the Permit Scheme. However, the proposed permit fees as outlined in the scheme document have been calculated to be sufficient to cover the full cost of providing the service. Should those fees prove to be insufficient, there is still scope to increase them within the legislative cap. Therefore, the overall risk is considered to be minimal.

7 Compliance Issues: How are the recommended decisions consistent with the City Council's priorities, plans and strategies?

7.1 The Council has adopted the *Council Plan 2018 to 2022*. This identifies five outcomes for the city, the first of which is "*Birmingham is an entrepreneurial city to learn, work and invest in.*" Priority 4 under this outcome is that "*We will develop our transport infrastructure, keep the city moving through walking, cycling and improved public transport.*"

7.2 This decision will enable better management of works on the highway network, allowing the city to keep moving by walking, cycling and use of highway infrastructure.

8 Legal Implications

8.1 The Deregulation Act 2015 removes, in England, the requirement for Permit Schemes to be approved by the Secretary of State and given effect by Statutory Instrument. The 2015 Act amends the Traffic Management Act 2004 enabling authorities (local highway authorities or strategic highway companies) to make their own Permit Schemes and to vary or revoke existing schemes.

8.2 The Permit Scheme must comply with the Traffic Management Permit Scheme (England) Regulations 2007; and the Traffic Management Permit Scheme (England) (Amendment) Regulations 2015. Authorities must also comply with the

Statutory Guidance published by the Secretary of State for Transport. This legislation and guidance requires that implementation and operation of the Permit Scheme for public utility permit applications is required to operate on a cost recovery basis.

- 8.3 There is a legislative requirement to undertake consultation prior to introducing the scheme by way of an Order made by the authority, which must be notified to all interested parties at least four weeks before the order comes into effect.

9 Financial Implications

- 9.1 The implementation and operation of the Permit Scheme for public utility permit applications is required to operate on a cost recovery basis. All figures have been calculated in accordance with legislative requirements for implementation of Permit Schemes. The Permit Fee has been calculated by inputting anticipated operating costs into the Department for Transport Fees Matrix which is the industry standard for calculating permit fee charges, monitoring costs and income.
- 9.2 Noticing activity over the last 3 years, 2018-2020, has been evaluated to provide a suitably robust forecast of the number of permit applications likely in the first year of the scheme. A detailed analysis of forecast permit activity and a breakdown of the forecast permit fee income based on 2020 Noticing works activity is shown in Appendix D.
- 9.3 The legislation requires the permit fee income and operating costs to be monitored annually with any decision to adjust permit fees recommended after 3 years of operation have been completed. Any surplus or loss accrued over this 3-year period can be offset and recovered in subsequent years following an adjustment to fees charged.
- 9.4 The Financial Plan 2022/23 includes saving of £0.1m from aligning expenditure with the Permit Scheme.

Ring Fencing of Generated Income

- 9.5 The 'Statutory Guide for Permit Schemes' stipulates that fee income must be applied towards the costs of operating the Permit Scheme which are prescribed costs. This is defined as the costs of the scheme relating to the activities of statutory undertakers. In the event that there is a surplus in a given year, the surplus will be applied towards the costs of the scheme in the next year and the fee levels adjusted accordingly.
- 9.6 The costs of enforcement incurred in carrying out the inspections of street works, will be funded through the payment of inspection fees. The Street Works Inspection Fees Legislation stipulates that the fee is not a source of revenue for the authority but allows them to recover their costs in carrying out the inspections. Therefore, no surplus income is anticipated to be generated.

- 9.7 At the end of each financial year, the City Council is required to provide the Department for Transport an annual report of the costs and revenues, and the allocation of the revenue generated.

10 Procurement Implications

- 10.1 There will be future implications for procurement of equipment, vehicles or services to support the administration of the Permit Scheme. The full extent of these implications will not be fully known until the scheme is fully operational but will extend to generic activities and requirements associated with many other similar operational services across the Council. These include IT applications, software and hardware, the delivery of specialist training packages, the supply of agency staff and the provision of vehicles to undertake the additional inspection activity.
- 10.2 It is anticipated that these requirements can be delivered through existing corporate procurement arrangements and established framework contracts that are available to the City Council.

11 Human Resources Implications

- 11.1 The working assumptions, in advance of formal due diligence, are that there will be a TUPE transfer of approximately 10 staff from the Highways PFI service provider who currently carry out some of the activities that are intended to be delivered within the proposed City Council Street Works Permit Team. In addition, the existing staff from the BCC Highways and Transportation service areas, who are currently supporting street works noticing activity, will be transferred to the proposed Street Works Permit Team.
- 11.2 The operation of the Permit Scheme will also require additional staff resources to supplement existing and TUPE staff. With respect to vacant posts (i.e. those posts which will not be aligned to existing BCC staff and TUPE transferees) in the draft structure, standard BCC recruitment processes will be adhered to. The delivery of this staff structure will also be supported by an extensive training programme.
- 11.3 A proposed draft structure for the Street Works Permit Team is shown in Appendix H and will subject to consultation and engagement with Trades Unions.

12 Public Sector Equality Duty

- 12.1 An Equality Analysis was carried out (Report ref. EQUA712) and is attached in Appendix C. This found that the policy does not have any adverse impact on the protected groups and characteristics under the Equality Act 2010 and there is no requirement for a full assessment.

13 Appendices

- A.** Proposed Birmingham City Council Permit Scheme
- B.** Permit Fee Matrix, Incentives and Discounts

- C. Equality Assessment EQUA 712
- D. Updated Cost Benefit Analysis Report (CBA)
- E. Project Risk Register
- F. Permit Scheme Consultation
- G. Environment and Sustainability Assessment
- H. Draft Street Works Permit Team Structure

14 Background Documents

- Statutory Guidance for Highway Authority Permit Schemes
- Evaluation of Street Works Permit Schemes
- Benefits of a Permit Scheme