

# Birmingham City Council

## Report to Cabinet

13<sup>th</sup> December 2022



---

**Subject:** Application for Moving Traffic Enforcement Powers

**Report of:** Strategic Director, City Operations and Strategic Director Place, Prosperity and Sustainability

**Relevant Cabinet Member(s):** Councillor Liz Clements – Transport  
Councillor Yvonne Mosquito – Finance and Resources

**Relevant O & S Chair(s):** Councillor Chaman Lal – Sustainability and Transport  
Councillor Akhlaq Ahmed – Resources

**Report authors:** Phil Edwards – Assistant Director Transport and Connectivity -  
Tel: 07557 203167 Email: philip.edwards@birmingham.gov.uk

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: 010811/2022		
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

## 1 Executive Summary

- 1.1 In February 2022, the DfT enabled Local Authorities to apply for Moving Traffic Enforcement (MTE) powers, under Part 6 of the Traffic Management Act (2004).
- 1.2 This report sets out the process for application, and a recommended approach for Birmingham City Council to apply for MTE powers.

## 2 Recommendations

- 2.1 It is recommended that the Cabinet:
  - 2.1.1 Delegates authority to the Assistant Director for Highways and the Assistant Director for Transport and Connectivity in consultation with the Cabinet

Member for Transport to authorise the making of an application to the Department for Transport (DfT) for powers to enforce moving traffic contraventions across the City Council's jurisdiction, in accordance with Part 6 of the Traffic Management Act 2004, following consideration of all objections raised through the public consultation and taking such steps that are considered reasonable to resolve any disputes.

- 2.1.2 Delegates the management of operational policy regarding camera site selection and operation to the Assistant Director for Highways in consultation with the Assistant Director for Transport and Connectivity and the Cabinet Member for Transport;
- 2.1.3 Delegates the authority to approve future camera enforcement sites to the Assistant Director for Highways in consultation with the Cabinet Member for Transport and relevant divisional members;
- 2.1.4 Approves the setting of Penalty Charge Notices to be issued with MTE at the higher level of (£70) for moving traffic contraventions;
- 2.1.5 Agrees to receive annual reports on the effectiveness of MTE by the Cabinet Member for Transport;
- 2.1.6 Ensures that any surplus revenue arising from MTE is applied in line with legislative requirements and to delegate authority to make decisions about the use of any surplus revenue to the Assistant Director for Highways in consultation with the Assistant Director for Transport and Connectivity and the Cabinet Member for Transport; and
- 2.1.7 Authorises the City Solicitor to negotiate, execute and complete any necessary legal documentation to give effect to the above recommendations.

### **3 Background**

- 3.1 Part 6 of the Traffic Management Act (2004) made provision for Government to confer powers on Local Authorities to enforce moving traffic contraventions. A set of Regulations giving effect to these Part 6 powers came into effect in February 2022. Local Authorities wanting to take on these powers are required to apply to the Secretary of State for a Designation Order to obtain these MTE powers. These powers are in addition to existing powers to enforce Decriminalised Parking and Bus Lane Enforcement, which the City Council has been delivering successfully since September 2001 and July 2013, respectively.
- 3.2 Moving traffic contraventions are currently enforced by West Midlands Police in Birmingham. It is important to note that moving traffic offences are not being decriminalised, so West Midlands Police will still be able to enforce such offences. If Birmingham City Council chooses to apply for Part 6 powers, this enforcement will be complementary to existing Police enforcement activities.

- 3.3 A moving traffic contravention is a criminal offence where drivers do not comply with designated Traffic Regulation Orders, which have been implemented to ensure the safety of all road users. Examples include:
- Banned turns
  - One-way streets
  - Yellow box markings
  - Weight restrictions
  - Mandatory cycle and bus lanes
  - Restricted access
  - School 'Keep Clear' markings
  - Red routes
  - and may also include speeding enforcement, in future.
- 3.4 Applications for Part 6 powers under the Traffic Management Act may be made for the whole, or part of, a Local Authority area. Under the 2004 Act only areas within, or coextensive with, areas already designated as civil enforcement areas for parking contraventions may be designated as areas for MTE. In Birmingham City Council's case, the city is fully covered in this way, so any application to enforce moving traffic contraventions can be similarly universal. Given the number of Local Transport Authorities that are expected to apply for MTE powers, the DfT have asked Local Transport Authorities to bring forward their applications in tranches, to expedite the process. The first of these tranches was opened for applications and processed in June 2022.
- 3.5 The Government sees the Part 6 powers as a key tool in reducing congestion and improving air quality, while promoting the attractiveness of active travel by keeping vehicles out of cycle lanes. In addition, by keeping junctions clear the policy also aims to improve punctuality of bus services making travel easier for all, including disabled people. Increasing compliance through targeted enforcement at problem locations, will also bring benefits to lives of pedestrians including people with sensory impairments, older people, children, those looking after children, as well as carers.
- 3.6 MTE powers are intended for use only in defined problem locations, where contraventions cannot be avoided by delivery of improvements to the highway or traffic signing, and public consultation should be used to seek local views on these proposals.
- 3.7 As delivery of MTE is rolled out across specific 'problem locations' across the city where compliance with Traffic Regulation Orders is poor, this proposal will support enhanced wider compliance with existing traffic management arrangements, leading to a much safer, more regulated highway network for Birmingham. This outcome aligns directly with the vision, principles and objectives of the adopted Birmingham Transport Plan, in particular, the stated

objective to “reduce the negative impacts of transport on the environment to make Birmingham a great place to live, grow up, and age in.”

- 3.8 Once the City Council has applied for these powers, it will also be possible to consider implementing MTE in new schemes as a preventative measure, to ensure compliance is achieved from the outset to protect user safety. A number of written questions have already been submitted to the Council already calling for MTE to be implemented, so this proposal is likely to benefit from strong support.
- 3.9 The DfT has confirmed that any application for MTE powers, as set out in Part 6 of the Traffic Management Act (2004) will require the following measures to be completed in support of any application:
- Consulted the appropriate Chief Officer of Police;
  - Carried out a minimum six-week public consultation on the detail of planned civil enforcement of moving traffic contraventions. Consultations should include the types of restrictions to be enforced and the location(s) in question;
  - Considered all objections raised and has taken such steps the Council considers reasonable to resolve any disputes;
  - Carried out effective public communication and engagement as the Council considers appropriate, for example using local press and social media, and that this will continue up to the start of enforcement and for a reasonable period thereafter;
  - Ensured all moving traffic restrictions to be enforced will be underpinned by accurate Traffic Regulation Orders, and indicated by lawful traffic signs and road markings;
  - Ensured all the relevant equipment has been certified by the Vehicle Certification Agency specifically for moving traffic contraventions.
  - As part of ensuring that TROs and traffic signs are accurate and lawful, applicant local authorities are encouraged to take the opportunity to identify and remove any signs that are either obsolete or no longer necessary, whether or not relating directly to the restriction being enforced.
- 3.10 Six potential MTE sites have been selected for consideration in the City Council’s first batch, based upon a range of factors including appropriateness for camera enforcement, evidence of serious collisions, a history of user non-compliance and impacts on network performance:
- Newhall Street / Great Charles Queensway (A4400) (City Centre, Soho and Jewellery Quarter Ward) - Banned left and right turns;
  - Bristol Road (A38) / Priory Road (B4217) (Edgbaston, Edgbaston Ward) - Banned left and right turns;

- Kingsbury Road / Gravelly Hill (A5127) (Erdington, Gravelly Hill Ward) – Banned right turn;
- Corporation Street / James Watt Queensway (B4114) / (City Centre, Ladywood Ward) – Banned left turn;
- Rectory Road / Midland Drive (Sutton Coldfield, Trinity Ward) – No entry;
- Boldmere Road (B4142) / Cofield Road (Sutton Coldfield, Vesey Ward) – No entry.

- 3.11 All the proposed sites for enforcement have existing, implemented Traffic Regulation Orders which have been subject to public consultation as part of the formal delivery process. There are no proposals to deliver any additional restrictions at these locations as part of this initiative.
- 3.12 Once the legal Designation Order has been made by Government, it will be possible for the City Council to expand its programme of MTE locations without further reference to the DfT subject to the above process being followed for each new enforcement location.
- 3.13 The DfT has determined two bands for the level of penalty charge payable for moving traffic contraventions, in the same way that there are two bands for parking contraventions. Band 1 would see the charge at £60 (reduced to £30 if paid within 21 days) and Band 2 at £70 (reduced to £35 if paid within 21 days).
- 3.14 Representations can be made against a penalty charge notice to the enforcing council and there will be an adjudication service to arbitrate when there is a dispute, in a very similar way that bus lane enforcement and civil parking enforcement operates.
- 3.15 The business case for implementation of MTE in specific locations will need to consider a number of factors. Depending on the location and type of restriction to be enforced, traffic enforcement cameras can cost between £15,000 and £25,000 and up to £700 per month to operate and maintain. There are additional costs associated with dealing with representations against penalty charge notices and adjudication. Some types of restriction might also require more than one camera for effective enforcement.
- 3.16 Ideally, traffic enforcement cameras will be self-financing (i.e. the fines will cover the costs associated with operating them), but this will not always be the case. The Council will need to ensure that site selection considers the business case for installation and particularly, the financial implications involved. For example, at a site with very poor compliance levels, a camera could potentially be justified and is likely to cover its costs from the fines issued. In time, if compliance improved, the cameras could be moved elsewhere or rotated between different sites as necessary thereby reducing overall costs. In other cases, where a camera is considered necessary but unlikely to be self-financing, alternate funding will need to be secured. Should any surplus revenue arise as a result of MTE, by law, this must be applied towards specified purposes as set out in

legislation, following a similar approach to revenue arising from parking and bus lane enforcement.

## **4 Options Considered and Recommended Proposal**

### **4.1 The following options have been considered:**

#### ***Business As Usual (Do Nothing)***

- 4.1.1 Enforcement of Moving Traffic Offences would remain the sole responsibility of West Midlands Police. Given resource limitations, this would mean that existing constraints in the number of locations that can be enforced effectively would persist and may deteriorate as traffic volumes continue to rise, resulting in gradually worsening safety for all users of Birmingham's highway network.

#### ***Defer Application for Moving Traffic Enforcement Powers***

- 4.1.2 Under this arrangement, Birmingham City Council would prepare an application to take on enforcement of moving traffic offences by applying to the Government for powers under Part 6 of the Traffic Management Act (2004) in a later application round (Tranche 3 or 4). The City Council would then deliver a phased programme of enhanced enforcement at locations of concern across the city, leading to gradual improvement in compliance with existing Traffic Regulation Orders and enhanced user safety.
- 4.1.3 The Government has made clear that changes to the legislative landscape in the coming months are likely to mean that it will not be possible to make a Tranche 3 order later in 2023, as previously planned, so there may be a significant delay for Councils wishing to apply for MTE powers after Tranche 2 (13<sup>th</sup> January, 2023).

#### ***Apply for Moving Traffic Enforcement Powers Now***

- 4.1.4 Under this arrangement, Birmingham City Council would apply to take on enforcement of moving traffic offences by applying to the Government for powers under Part 6 of the Traffic Management Act (2004) in the next (Tranche 2) round of applications. The deadline for this is 13<sup>th</sup> January, 2023. The City Council would then deliver a phased programme of enhanced enforcement at locations of concern across the city, leading to gradual improvement in compliance with existing Traffic Regulation Orders and enhanced user safety.
- 4.2 It is recommended that the City Council applies for MTE powers now, in Tranche 2 to meet the deadline of 13<sup>th</sup> January, 2023, recognising that poor compliance with Traffic Regulation Orders in some parts of the city's highway network is causing significant deterioration in user safety. Application to take on these powers now would provide the City Council with an effective tool to tackle these areas of concern at the earliest possible opportunity.

## **5 Consultation**

- 5.1 In order to comply with the Department for Transport's application process for powers to enforce Moving Traffic Contraventions, Birmingham City Council is required to consult upon an initial batch of potential sites for enforcement, following a minimum six-week consultation period. This consultation is currently available on the City Council's BeHeard website, which commenced on 14<sup>th</sup> November, 2022 and will conclude on 26<sup>th</sup> December, 2022
- 5.2 Additionally, the City Council is required to consult formally with West Midlands Police's Chief Officer on these proposals. The Chief Officer has responded to the City Council in support of this proposed application.
- 5.3 The results of public consultation will be reported and published on the Birmingham BeHeard consultation website. Responses received so far indicate a high level of support. Following the conclusion of the consultation exercise all responses received will be taken into consideration by the authorised officers in consultation with the Cabinet Member before making a final decision to make an application to DfT.
- 5.4 The consultation responses will also be used to inform the development of a Full Business Case for MTE at these locations. Any subsequent proposals for MTE at other locations will be required to follow a similar approach.

## **6 Risk Management**

- 6.1 A risk register will be prepared, as part of business case development to accompany each batch of proposals for MTE delivered across the city. Key risks are likely to include:
- Securing stakeholder support for MTE proposals;
  - Ensuring Traffic Regulation Orders are fit for purpose and suitable for enforcement;
  - Physical implications (including safety and visibility issues) of installing camera enforcement equipment in identified locations.

## **7 Compliance Issues**

- 7.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?
- 7.1.1 Application for MTE powers will provide the City Council with a valuable tool to support a range of transport programmes and projects that contribute towards achieving the City Council's key policies and priorities as set out in the City Council Plan and Budget 2021-25, West Midlands Strategic Transport Plan, Birmingham Development Plan, Birmingham Transport Plan, Birmingham Cycling and Walking Strategy & Infrastructure Plan, Clean Air/Climate Change Emergency including the Route to Zero agenda.

- 7.1.2 In particular, the successful delivery of the Birmingham Transport Plan is key to the delivery of the City Council's priorities including Route to Zero, the East Birmingham Strategy and Our Future City Plan.

## 7.2 Legal Implications

- 7.2.1 The relevant primary legislation required to implement individual enforcement projects is contained within Part 6 of the Traffic Management Act (2004) supported by Regulations made in 2022. Additionally, these powers will also support Birmingham City Council to discharge its statutory duties under the following secondary legislation: Highways Act 1980; Road Traffic Regulation Act 1984; Road Traffic Act 1988; Transport Act 2000; Traffic Management Act 2004; Town and Country Planning Act 1990 and Planning and Compulsory Purchase Act 2004, together with related regulations and guidance. The 2022 Regulations are also directly relevant to this report in terms of the application of surplus revenues arising from MTE and bus lane enforcement, alongside the Ambient Air Quality and Cleaner Air for Europe Directive 2008 and the Air Quality Standards Regulations 2010 in relation to Clean Air Zone implementation.
- 7.2.2 Section 111 of the Local Government Act 1972 empowers Local Authorities to do anything (whether or not involving the borrowing, expenditure or lending of money or the acquisition or disposal of any of its property) which, is calculated to, or is conducive or incidental to the discharge of any of their functions.

## 7.3 Financial Implications

- 7.3.1 There are no financial implications in submitting the application for MTE powers, because the costs of this will be fully covered within existing Directorate budgets. TfWM have provided additional funded support via their 'Rules of the Road' project to undertake the technical aspects required to underpin this application.
- 7.3.2 For each location, or rollout phase (which could include a number of locations), a business case will need to be developed to examine the capital and revenue cost implications of enforcement and associated budget implications. This will include consideration of:
- Enforcement equipment required at each location (cameras, communications, infrastructure improvements etc.)
  - Penalty charges to be applied; and
  - Any amendments required to Traffic Regulation Orders.

## 7.4 Procurement Implications

- 7.4.1 There are no procurement implications with the recommendation of this report.



## **8 Public Sector Equality Duty**

- 8.1 An initial screening for an Equality Analysis (EA) has been undertaken for this and has concluded that a full EA is not required at this time, with no adverse impacts on the protected groups and characteristics under the Equality Act 2010. This position will be reviewed for each composite project and/or programme at OBC and FBC stage as necessary. The initial EA screening is provided as Appendix A to this report.

## **9 Appendices**

- 9.1 Appendix A - Equalities Assessment Initial Screening

## **10 Background Documents**

- Birmingham Transport Plan
- Traffic Management Act 2004 (Part 6)