

Shropshire Council Response to the Department for Transport National Pavement Parking Consultation

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1.0 Summary

- 1.1 This report collates feedback from Members and Officers in respect of the Department for Transport (DfT) National Pavement Parking consultation, and provides a recommended response for Cabinet to approve, prior to submitting Shropshire Council's response to the National Consultation. The Consultation closes on 22nd November 2020.
- 1.2 The Shropshire Association of Local Councils (SALC), has been briefed on the consultation and asked to inform their members that as Town Councils, they could respond directly to the National Consultation.
- 1.3 In accordance with Part 3 of the Council's Constitution, formal responses on behalf of the Council to consultation by other bodies on matters that affect the Council or have a widespread effect across the Council are the responsibility of Cabinet.
- 1.4 Shropshire Council (SC) has received requests, concerns and complaints regarding pavement parking and there is an opportunity to respond to a national consultation. It should be noted that in many rural areas there are no pavements at all, but grass verges may be impacted by parking creating an uneven surface for pedestrians.
- 1.5 The collective feedback received from officers and members received to date identifies that Option Two of the National Consultation, 'allowing legislative change to allow local authorities with Civil Parking Enforcement (CPE) powers to enforce against any unnecessary obstruction of the pavement' was the preferred option.
- 1.6 The DFT have committed to publishing a summary of responses within three months of the consultation closing.

2.0 Recommendations

- 2.1 **Cabinet approve the submission of Shropshire Council's response a to the DfT National Consultation in favour of Option Two, which is: -**

“Legislative change to allow local authorities with civil parking enforcement (CPE) powers to enforce against ‘unnecessary obstruction of the pavement...”

2.2 That Cabinet approve the full consultation response as per Appendix A.

3.0 Risk Assessment and Opportunities Appraisal.

3.1 This report recommends that Shropshire Council respond to a National Consultation and supports one of the options proposed by the DfT. The response will be considered by DfT and contribute to any possible revised guidance, practice or regulations that DfT may adopt or not.

3.2 Local community concerns have been raised on a regular basis about the current negative impacts for vulnerable groupings that arise due to pavement parking. As well as the visible impediments for groupings such as people in wheelchairs, families with buggies, people with visual impairments and people for whom road safety can be a difficult concept to grasp, loneliness issues can also arise, with people put off from venturing out of their dwellings. With respect to equality impacts, option 2 or option 3 would both provide a higher level of positive impacts for these vulnerable groupings, including action to address loneliness issues identified by the Transport Committee as being a negative impact of current pavement parking. We can evidence concern from communities and from councillors for more to be done.

3.3 An Equality and Social inclusion Impact Assessment (ESIIA) is not required as part of the response to the national consultation. However, it would be good practice to undertake one once the national consultation has concluded and decisions have been made about policy direction at national level, as this will then need to be implemented at local level, with appropriate community involvement, to maximise positive outcomes. This will also be consistent with practice in other service areas, where national legislation or guidance requires policy and practice changes at local level.

4.0 Financial Overview

4.1 At present there are no identified financial implications within this report. Any possible amendment, change or new requirement brought forward from the DfT will be subject to future Cabinet Reports once any future detail or impact is understood.

5.0 Climate Change Appraisal

5.1 It should be recognised that this report is a response to a national consultation, and that DfT have committed to responding within three months, then there will undoubtedly be a further process of further consultation on the preferred option and the necessary implications of this.

5.2 Considering the above, there is a possible potential impact and benefit that could be achieved, once DfT have informed us of their position. The issue of

pavement parking could support climate change issues in respect of its contribution to wider climate change work. This then raises considerations such as: -

- Once the DfT have confirmed their position or approach, this could impact upon electric charging of vehicles. We are aware of this at a national and local level and that car manufacturers are moving towards increased production of electric vehicles.
- Shropshire Council is currently part of a consortium that has secured major funding from the Department of Energy, Business and Industrial Strategy (BEIS) for an innovative new project called 'Agile Streets' which will see the installation of smart charging points for electric vehicles across the Shropshire Council area. This project will focus on providing on-street charging in residential areas across Shropshire for EV drivers who do not have driveways. The Agile Streets programme focuses upon providing on-street charging for local EV drivers who do not have driveways. The council is working hard to identify the most suitable locations across the county and installations will be funded by this grant, and any future policy direction by the DfT would have to be carefully considered.
- How the above could influence and impact upon air quality, could the implication of the national consultation begin to consider alternative sustainable travel, remove reliance on car ownership and the necessary redesign of public transport? In urban areas moves such as remodelling the Park and Ride Service could contribute but thought to more rural areas should be considered.
- The council or its wider partners may wish to consider how any implications from the DfT's response could be linked with supporting other transport modes, such as Active Travel where obstructions are removed, community car clubs, supporting residents with parking permits on council car parks.
- Other initiatives could enhance and support climate change, 20's plenty / school streets, low traffic neighbourhoods could all be part of a wider agenda.

Issues relating to climate change are interwoven with the DfT consultation, and until that position is clear, then how or if the above points could be brought forward is an open question, but nonetheless should be active considerations.

REPORT

6.0 Introduction

- 6.1 Although the 'pavement' is defined as the 'footway' in legislation, the more commonly used term 'pavement' is used to define 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.

6.2 Many towns and cities were not designed to accommodate today's high traffic levels; and at some locations, especially in residential areas with narrow roads and no driveways, the pavement is the only place to park without obstructing the carriageway. However, irrespective of whether pavement parking is deemed necessary, 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 local authorities. Notwithstanding the points made there is also an aesthetic element to the public realm continued with this agenda.

6.3 Since 1974, parking on pavements, with certain exceptions, has been prohibited in Greater London by the Greater London Council (General Powers) Act 1974. Exemptions at specific locations can be permitted through an administrative resolution and indicated by traffic signs. A national prohibition was enacted in Scotland in November 2019 but has yet to come into force. The reverse applies elsewhere in England, where parking on pavements and verges is permitted 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.

6.4 To further develop its understanding of the pavement parking problem, the DfT is seeking views on:

- whether its ongoing work (Option 1), to improve the TRO process, under which local authorities can already prohibit pavement parking, is enough and proportionate to tackle pavement parking where it is a problem;

or if not:

- which of 2 specific options you prefer. 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.

6.5 These options with supportive detail are explained in [Appendix B](#), 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).

or

- any alternative proposals you may have for managing pavement parking.

7.0 The options presented by DfT.

7.1 Option 1: Whether DfT's ongoing work to improve the Traffic Regulation Order (TRO) process, under which local authorities can already prohibit pavement parking, is enough and proportionate to tackle pavement parking where it is a problem; or if not which of 2 specific options you prefer:

7.2 It is considered that that it is not a practical or cost-effective option to pursue. Pavement parking can pose a significant issue to pedestrians anywhere, at any time. It could be unreasonable to expect a TRO to be implemented in every location where this might be a problem (as discussed below, defining a problem would be difficult) and there are wider considerations about the visual impact of any TROs and effectively urbanising parts of the county. It is also not desirable to clutter the county with the additional necessary lines and signs which would be required to enforce any TRO.

7.3 TRO's are time-consuming to implement due to the process of drafting, receiving any comments or objections and resolving those with the necessary engagement required. This approach across Shropshire would be a large administrative burden to consistently manage and meet customer expectations. There would therefore be a cost and staff resource issue associated with this approach which is unlikely to be met through any initial increase in penalty income.

7.4 Option 2: legislative change to allow local authorities with civil parking enforcement (CPE) powers to enforce against 'unnecessary obstruction of the pavement'

7.5 Currently, an obstruction of the highway can only be enforced by the Police, as a criminal matter. DfT would therefore be required to amend necessary regulations for obstruction on the pavement to be treated and dealt with as a civil matter by the Local Authority. This option would enable Local Authorities to issue PCN notices *without* resorting to allowing pavement parking to be implemented as proposed in Option 1 and 3 and the subsequent requirement to assess, identify, consult and introduce approved pavement parking areas which would be identified by requisite signs and lines and future maintenance costs.

7.6 With the potential for increased enforcement this could provide a consistent and clear understanding of the contravention. As ever there will always be issues of interpretation of obstruction. How an obstruction is defined and interpreted for implementation on the ground would have to be carefully considered to prevent challenges against any issued PCN. Without such clarity the council could potentially become the arbiter between those understandably wanting clear pavements for accessibility and those who live in narrow streets who have no choice than to park on the footway near their

homes or to receive deliveries and still allow the free flow of traffic on a case by case basis potentially leading to a further lack of clarity.

7.7 Therefore, whilst redefining responsibilities for enforcement could be welcomed in offering a joined-up approach to the end-user, necessary guidance providing clarification on definitions and enforcement protocols should be included within any new powers transferred to the local authority so that everyone can be clear on what constitutes a contravention. It is recommended that a request for such guidance is included within our response to the consultation if this option were to be selected by government.

7.8 Option 3: legislative change to introduce a London-style pavement parking prohibition throughout England

7.9 This option would make pavement parking a contravention by default, so it would be in the gift of the local authority where to allow pavement parking, this would require the necessary exemptions and introduction of additional signs and lines to demonstrate where pavement parking is permitted, with encroachment of the footway beyond the marked area deemed to be a contravention.

7.10 Whilst this approach may work effectively in a city/urban setting and would align with the council's wider aspirations for active travel, healthy streets and low traffic neighbourhoods, there is concern by many authorities across the country whether a similar approach would transpose into a county area based upon Market Towns with a consideration towards tourism, hospitality and visitor economy.

7.11 With people currently working from home and this seemingly probable for many into the long term, the issue of cars being stationary and suitable parking spaces being available could be an issue as there is no longer the daily turn-over of spaces. This may increase demand for road side parking which may only be able to be met by allowing pavement parking.

7.12 Many London authorities strengthen the footway, where pavement parking is allowed, to prevent the risk of damage to the footway, and any utility services running underneath, to prevent tripping hazards. This significantly increases the cost of applying pavement parking. The Council could take a similar approach or recognise that there may be additional maintenance costs associated with broken kerbs and footways from an endorsed pavement parking solution.

7.13 There is an issue in some towns with historical streetscape where the available pavement and road widths makes pavement parking impossible whilst still allowing full width accessibility and may displace large numbers of vehicles unless pavement parking allowed. The materials required to strengthen the footway and the additional signing and lining required to allow it may also be incongruous within conservation areas.

- 7.14 It's possible there may be unintended consequences with displaced parking and some disruption to some users where no nearby on-street parking is available. There may also be locations where on-street parking, off the kerb could cause obstruction to passing traffic. There is no direct evidence to support this, however in recognising the historical layout of our key towns it equally can't be confirmed with any certainty this wouldn't be the case.
- 7.15 Shropshire would be required to decide where pavement parking was required or necessary which would require assessment and local engagement, and then the necessary infrastructure of signs and road markings to denote where pavement parking is allowed. There is likely to be significant demand for such reviews from customers and as such would require a significant initial revenue cost to fund this work, with on-going maintenance costs needing to be available to ensure that the areas remain enforceable.
- 7.16 The necessary preparation for this work to determine where pavement parking was and wasn't allowed, would be a significant direct cost, one comparable local authority has estimated implementation costs of £670,000 and then the indirect, and opportunity costs of officer time.
- 7.17 There however would be a consistent message "You must not park on pavements, unless signs permit."
- 7.18 Whilst it is recognised that this is a clear framework for enforcement, option three appears to present several issues in respect of visual impact, impact upon our town's local economies and potential maintenance issues. It also potentially removes the flexibility from the authority to manage issues where narrow streets and footways may conflict with full accessibility but where there is currently a happy balance between these competing needs.
- 7.19 It is therefore not felt that Option 3 would be suited to a rural and historic county such as Shropshire

8.0 Civil Parking Enforcement

- 8.1 Part 6 of the Traffic Management Act (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. As the parking offences are no longer criminal in such areas:
- enforcement ceases to be the responsibility of the police and becomes the responsibility of the local authority via the existing Civil Enforcement Team.

- Shropshire Council existing 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 prescribed purposes only.

8.2 Shropshire Council has adopted these powers already and so would be able to enforce pavement parking.

9.0 Unnecessary Obstruction of the Highway

9.1 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 (currently a criminal offence).
- 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.

9.2 Local authorities are currently unable to enforce against obstruction using their civil parking enforcement power.

10.0 Revenue Raised from Parking Enforcement

10.1 Parking schemes should be self-financing, and the law does not allow local authorities to use parking enforcement schemes for raising revenue. Section 55 of the Road Traffic Regulation Act 1984 (RTRA) 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

10.2 Appendix A provides further details of the DFT consultation with the key points for each of the options.

11.0 Response to consultation

11.1 All Shropshire Councillors were emailed and asked for their views on this issue, and those responses have been collated, as have the views of key staff from Highways and Transport, Public Protection. Discussions with appropriate Portfolio Holders and Senior officers have concluded that option 2 is the most appropriate Shropshire option. This is due to option 2 being the most cost-effective measure to implement in respect of cost, officer time and public messaging and summarised below. The consultation response is set out in Appendix A, and answers the prescribed questions from the DFT.

- It does not require significant assessment, engagement, installation and maintenance of additional signs and lines and the necessary costs of this work, which have been identified to be significant. One local authority as estimated a cost if circa £670,000
- Pursuing the TRO route as described in this consultation is time consuming, requires significant administrative support, responses to any objections or comments derived from the TRO process with direct cost and redirection of officer time. Then, the necessary signs and lines would be required, which in turn would increase future maintenance costs, as well as raising concerns of additional street clutter.
- The layout of our market towns in respect of street scope / narrow footways and their historic materials, could detract from our visitor, hospitality and tourism-based economy if by exception parking on pavements was allowed.
- There could be the unintended consequences of displaced parking, if pavement parking was chosen, and this may lead to local community concern.
- Resources are not required to undertake assessments to enable required TRO`s to be drafted and implemented.
- If the option of pavement parking was chosen, the issues of mobility, people with prams and those with sight loss could be problematic.
- Pavement parking would undoubtedly increase future maintenance costs for repair of surfaces, kerbs, refreshing lines and signs etc.
- It does have to be stated that for option 2, would require further guidance from government to provide a clear definition of obstruction to enable authorities to enforce without a significant number of challenges.

- 11.2 Other issues that were raised from Members, that will be fed into the consultation response is:
- How will domestic electric charging points for vehicles where owners do not have a drive or parking space be considered, how will they be satisfied within a policy or will we end up with mixed messages?
 - We cannot set number of fines and now the cost of enforcing is often not covered by the fine, we need to be able to set these fines locally as part of the process.
 - Perhaps a far more holistic approach with how we negotiate and approve developments. For example, specifying enough parking provision or cycle paths or foot paths future planning and government should be advised as such.
- 11.3 An analysis of complaints, comments as logged via the Insight and Intelligence Team over the last two years, 1st October 2018 to 30th September 2020 has identified:
- 15 formal customer complaints / comments raised on this issue
 - This generated 6 formal investigations from a complaint perspective into the issues raised.
- 11.4 It is safe to assume that there are potentially many unreported concerns or comments relating to this issue.

12.0 Conclusion

- 12.1 The National Consultation provides an opportunity for Shropshire Council to respond to the DfT call for evidence and response.
- 12.2 Shropshire aware of an underlying community concern relating to pavement parking by Member and the wider community, and hence the opportunity to formally respond should be taken by this Council.
- 12.3 Option 2 of the consultation best meets the needs of Shropshire.

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information) - None
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Cabinet Member (Portfolio Holders): Steve Davenport – Highways and Transport / Gwilym Butler - Communities

Appendices: Appendix A - response to the DFT consultation based upon prescribed responses. Appendix B - Extract from the wider DFT parking consultation
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