

Meeting:	Cabinet member transport and regulatory services
Meeting date:	Thursday, 11 October 2018
Title of report:	Consideration of controls to restrict parking on grass verges and pathways
Report by:	Head of highways and community services

Classification

Open

Decision type

Non-key

Wards affected

(All Wards);

Purpose and summary

On 13 July 2018 the council resolved that: the executive be asked to consider putting in place suitable controls to restrict parking on grass verges and pathways, including the introduction of by-laws.

The purpose of this report is to determine the executive's response to the above resolution.

Having considered the provision afforded by relevant legislation:

- If the matter to be addressed relates to regular and sustained careless parking at particular locations, then the most appropriate means of control will be through the introduction of a Traffic Regulation Order (TRO), which can be enforced by the Council's Civil Enforcement officers.
- If the matter relates to occasional damage by a particular individual, or individuals, at a particular location, then the use of the provisions in the Highways Act 1980 may be the most appropriate means of control.
- Given the existence of the above provisions in law, it is considered unlikely that the Secretary of State will decide to take forward any application for a bylaw to address an issue with parking on verges and footways unless it can be demonstrated that such matters cannot be addressed through TROs or the existing provisions under the Highways Act 1980 or any other relevant legislation.

Recommendation(s)

That: all members be advised of the existing provisions for the introduction of Traffic Regulation Orders for the control of parking at particular locations, which provide the most efficient and lawful means by which any sustained parking issue associated with careless parking can be considered.

Alternative options

1. If the matter relates to occasional damage by a particular individual, or individuals, at a particular location, then the use of the provisions in the Highways Act 1980 may be the most appropriate means of control. Although the powers under the act remain open to the council use of them is not recommended because the penalties available when using these powers are insufficient to justify their use.
2. A county-wide, bylaw could be taken forward. This is not recommended because given the existing provisions in law, it is considered unlikely that the Secretary of State would decide to take forward any application for a bylaw to address an issue with parking on verges and footways in Herefordshire.
3. Bylaws could be taken forward for Hereford and/or each of the Market Towns. This is not recommended because given the existing provisions in law, it is considered unlikely that the Secretary of State would decide to take forward any application for a bylaw to address an issue with parking on verges and footways in Hereford or the Market Towns.

Key considerations

4. On 13 July, Council considered a motion to address the damage caused by vehicles being parked carelessly on grass verges and pathways is not only unsightly but can add to the costs of maintaining the verges and highways at a time when council resources are already stretched. In light of this largely unregulated activity and resolved that the executive be asked to consider putting in place suitable controls to restrict parking on grass verges and pathways, including the introduction of byelaws.
5. The Highways Act 1980 includes various provisions that can be used to address the damage caused by vehicles that are carelessly parked on grass verges and pathways that form part of the public highway. Similarly provision exists in this Act to address 'things' that are wilfully deposited on the highway so as to cause an obstruction or a danger, or a nuisance to highway users.
6. The exercise of such provision by the Highway Authority through its agents may provide appropriate sanction in certain circumstances, however the scale of any fine and the requirements to prove whom has actually caused damage can mean that the provisions in the Highway Act 1980 are not an effective means of regulating the damage or nuisance caused by vehicles that are parked irresponsibly.
7. Further, in most instances the damage or nuisance has to have happened to enact these provisions in the Highways Act 1980.
8. The Highway Act 1835 (section 72) makes it an offence to wilfully ride upon any footpath or causeway by the side of any road made or set apart for the use or accommodation of foot passengers. It follows that to have parked on any footway that an individual will have had to have driven upon that footway, so they are guilty of an offence.

9. Road Traffic Regulation Act 1984 enables a Local Traffic Authority to prohibit or restrict the waiting of vehicles or the loading and unloading of vehicles on a road, or of any part of the width of a road through a Traffic Regulation Order (TRO). TROs are subject to an order making process and once made must be properly designated by signs and road markings. Following the Road Traffic Act 1991 contraventions of such parking offences was decriminalised and the enforcement is now undertaken by civil enforcement officers/parking attendants for the local authority.
10. Byelaws are local laws made by a local council under an enabling power contained in a public general act or a local act requiring something to be done – or not done – in a specified area. They are accompanied by some sanction or penalty for their non-observance. Byelaws have the force of law within the areas to which they apply.
11. Generally byelaws are overseen by the relevant government department or confirming authority who has policy responsibility for the subject matter. Byelaws are enforced by the local authority through the magistrates' court and contravening a byelaw can result in a fine upon successful conviction.
12. Government guidance is that Byelaws are considered measures of last resort after a local council has tried to address the local issue the byelaw applies to through other means. A byelaw cannot be made where alternative legislative measures already exist that could be used to address the problem. Byelaws should always be proportionate and reasonable. Where a byelaw is no longer necessary, it should be revoked.
13. The Byelaws (Alternative Procedure) (England) Regulations 2016, which detail the alternative arrangements for making a byelaw. In summary the process of making a bylaw is a ten stage process (the timescale parameters set by the regulations are in parentheses) :
 - Step 1: draft proposed byelaw, assessment and consultation.
 - Step 2: submit application for approval (30 days)
 - Step 3: Secretary of State's decision.
 - Step 4: advertise and consult on the proposed byelaw (At least 28 days)
 - Step 5: consideration of representations
 - Step 6: deciding to make the byelaw (6 months)
 - Step 7: making the byelaw
 - Step 8: publicity after making the byelaw (at least 7 days)
 - Step 9: retaining copies of the byelaw
 - Step 10: the byelaws come into force (30 days)
14. The Hereford City Act 1985 gives the council enabling powers to adopt provisions towards making a byelaw. This Act has not been adopted and even were it to be adopted, as the name implies, this act can only cover any proposed byelaw in Hereford City.
15. Civil Enforcement Officers provide cover around the county seven days a week, including early mornings and late evenings so are able to enforce at times when an offence is most likely to occur. The action of enforcement should, over time, act as a deterrent against parking in a restricted area. In assessing the capacity to provide effective enforcement a number of factors need to be considered, primarily the location and extent of the area covered by a TRO.

16. It is therefore recommended that the executive do not seek to pursue a county wide byelaw, but provide ward members with a briefing on the options already open to them to pursue should there be a particular issue to be addressed within their ward.

Community impact

17. As stated in the council's resolution, the damage caused by vehicles being parked carelessly on grass verges and pathways is not only unsightly but can add to the costs of maintaining the verges and highways at a time when council resources are already stretched.
18. The introduction of restrictions on parking at any location can exacerbate the issue at other locations through displacement, as such the impact on a community of any restriction on parking is carefully considered in the traffic regulation order making process. This process include for consultation with a set of statutory consultees and the local community.

Equality duty

19. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to -

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
20. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. As equality impact assessment is undertaken when introducing any TRO, we do not believe that this decision it will have an impact on our equality duty.

Resource implications

21. None as a consequence of this decision.

Legal implications

22. This is a non-executive function and as such the Chief Executive has the authority to delegate to officers (under Part 2 Article 10 in exercise of its functions in the Part 3 Functions Scheme Section 7 officer functions of the Constitution Economy and Place Scheme of delegation to officers part 26) to act on behalf of Herefordshire Council in highways and transportation matters.

23. The Road Traffic Regulation Act 1984 enables a Local Traffic Authority if so required to prohibit or restrict the waiting of vehicles or the loading and unloading of vehicles on a road, or on any part of the width of a road through a Traffic Regulation Order (TRO). TROs are subject to an order making process and once made must be properly designated by signs and road markings. The procedure for proposing and introducing TROs is set out in the Local Authorities Traffic Orders (Procedure) (England and Wales) Regulations 1996, as amended, (“The Regulations”).
24. Byelaws are discretionary local laws made by the council in their administrative area under an enabling power contained in a public general act or a local act requiring something to be done, or not done in a specified area. They are accompanied by some sanction or penalty for their non-observance and are enforced by the local authority.
25. Government guidance is that Byelaws are considered measures of last resort after the council has tried to address the local issue through other means. A byelaw cannot be made where alternative legislative measures already exist that could be used to address the problem. Byelaws should always be proportionate and reasonable and where no longer necessary, it should be revoked. The Byelaws (Alternative Procedure) (England) Regulations 2016 detail the alternative arrangements for making a byelaw.

Risk management

26. The risk associated with this matter are summarised below:

Risk / opportunity	Mitigation
That in certain circumstances the use of existing legislation is an ineffective means of regulation.	Enforcement is undertaken in accord with the enforcement policy.
The TRO programme and process timescales mean that restrictions on parking cannot be introduced on a timely basis.	TROs are prioritised to ensure that those with the greatest positive impact on the safety of a community are progressed ahead of others.
Even with TROs or other restriction in place individuals choose not to abide by that restriction	Effective enforcement.

Consultees

27. None.

Appendices

None.

Background papers

None Identified.