

Bath & North East Somerset Council

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| DECISION MAKER: | Cabinet | |
| MEETING DATE: | 05 May 2022 | EXECUTIVE FORWARD PLAN REFERENCE: |
| | | E 3348 |
| TITLE: | Decriminalisation and Civil Enforcement of Moving Traffic Offences | |
| WARD: | All | |
| AN OPEN PUBLIC ITEM | | |
| List of attachments to this report: Appendix 1 - List of Traffic Signs Subject to Moving Traffic Enforcement Appendix 2 – Equalities Impact Assessment – Moving Traffic Enforcement Appendix 3 – Moving Traffic Enforcement Consultation Report | | |

1 THE ISSUE

- 1.1 Local Authorities in England can now apply to the Department for Transport (DfT) for powers to enforce moving traffic offences such as banned turns; box junctions; and driving in formal cycle lanes, offences currently only enforceable by the Police. This report seeks approval to apply to the DfT for these powers so that the Council may use them to fulfil its statutory responsibilities and improve the management and safety of the road network, particularly in locations where enforcement action by Police Officer may be deemed impractical.
- 1.2 The report also outlines the Council's approach to the consideration of locations for moving traffic enforcement using Automatic Number Plate Recognition (ANPR) enforcement cameras in line with the new regulations (under Part 6 the Traffic Management Act 2004) and Secretary of State Guidance.

2 RECOMMENDATION

The Cabinet is asked;

- 2.1 To approve an application to the DfT by May 20th to acquire the powers to enforce moving traffic contraventions under the Traffic Management Act 2004 (TMA2004).
- 2.2 To approve the use of moving traffic enforcement powers using ANPR cameras from 1 June 2022 or the date when the Council receives the powers from the Secretary of State, whichever is the later.

- 2.3 To support and agree to the proposed approach for the use of moving traffic enforcement at proposed and future locations.
- 2.4 To incorporate moving traffic enforcement as a scheme into the Council's capital programme for 2022/23, funded by revenue through income generation. Subject to the powers being granted to the Council by the DfT.
- 2.5 To delegate authority for the consideration of future locations for moving traffic enforcement to the Director of Place Management in consultation with the Cabinet Member for Transport.
- 2.6 To note a review of bus gate signage is underway at existing restrictions to ensure there is consistency across all locations and the new regulations from 31 May 2022.

3 THE REPORT

- 3.1 Currently outside of London and Wales moving traffic enforcement (MTE) of restrictions such as banned turns; one-way streets; yellow box junctions; and some access restrictions is carried out only by the Police.
- 3.2 The Government has confirmed its intention through the introduction of new regulations, that come into force on 31st May 2022, that MTE powers are to be made available to all local authorities in England allowing civil enforcement to be undertaken using the TMA2004. A full list of the restrictions that are included within these powers is included within Appendix 1.
- 3.3 Once the Council has obtained the powers from the Secretary of State it will not need to reapply to implement MTE at other locations.
- 3.4 The enforcement of moving traffic restrictions is not a core priority for the Police. MTE will help us meet our statutory traffic management needs, make our roads safer and reduce congestion at proposed locations which may also help to reduce carbon emissions from transport.
- 3.5 Locations where these powers can be applied are at the Council's discretion and the use of camera enforcement is to achieve greater compliance with the restriction and not intended for the purpose of raising revenue. Whilst most restrictions will be in place for safety reasons, it is not expected that all existing or future restrictions will have cameras installed.
- 3.6 Any locations where MTE is proposed will undergo a public consultation of at least six weeks before camera enforcement is implemented. This consultation focusses on the details of the location and the restriction to be enforced and not on the use of MTE powers which the Government have confirmed are being made available to Councils (see paragraph 3.2 above).
- 3.7 Acquiring the powers to enforce moving traffic offences will enhance local decision making and allow the Council and partners to more effectively use collective resources to tackle persistent areas of contravention. The safety of all road users and specifically vulnerable people should always be a priority. In consultation with local communities moving traffic powers may provide further opportunities to achieve this aim in different ways to meet a community need.

- 3.8 The use of existing civil enforcement processes already in place for parking and bus lane enforcement will allow the council to undertake a more proactive approach to help motorists comply with these restrictions and ensure our approach remains transparent; accountable; proportionate; and consistent.
- 3.9 Civil enforcement action by the Council will be in line with our approach to bus lanes using ANPR cameras. Each recorded contravention will be subject to further human review to ensure that action taken is proportionate and not automatically generated.
- 3.10 Civil Enforcement also introduces a legal right of appeal (that does not involve the courts) following the issue of a Penalty Charge Notice (PCN) to motorists, this supports our educational approach to driver behaviour change. This right of appeal is not available with Police enforcement action which may also result in later prosecution.
- 3.11 The introduction of new regulations, which brings the enforcement of bus lanes and bus gates within the TMA2004 provides an opportunity for the Council to review existing bus gate signs and consider the use of the signs that are more familiar to drivers. This will improve the robustness of cases defended by the Council at the Traffic Penalty Tribunal (the independent national PCN appeals service) and is also anticipated to improve compliance with drivers.
- 3.12 The regulation change introduced by the Government will also see the penalty charge for a bus lane rise from £60 to £70, whilst increasing the 50% discount period from 14 to 21 days.

Our Proposed Approach

- 3.13 To ensure that we can achieve the objective of improved compliance we propose to evaluate all locations identified for enforcement against a hierarchy of principles as shown in Figure 1 below:

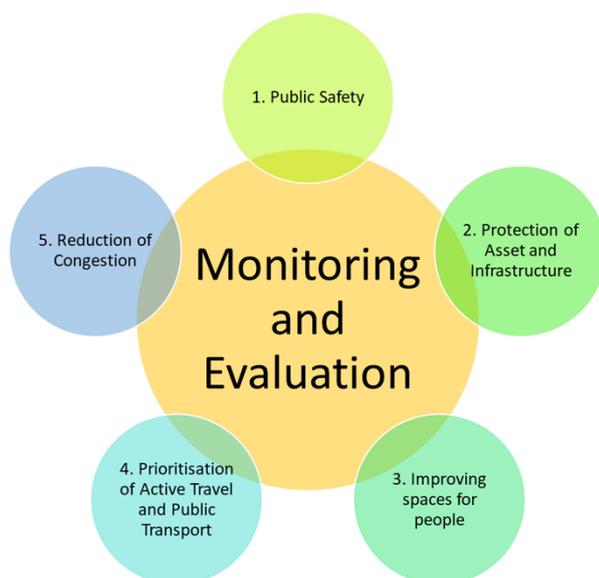


Figure 1 - Proposed approach to MTE

- 3.14 This will help ensure that the evidence and justification for the use of these powers is robust. Ongoing monitoring and evaluation where these powers are used is key to ensuring that enforcement action is, or continues to be, the most appropriate way for us to achieve the compliance with the restriction.

3.15 Monitoring the frequency; severity; and impact of moving traffic contraventions at locations proposed for enforcement action will help evaluate an appropriate solution to achieve compliance according to a second hierarchy based on the council's strategy of 'focus on prevention':

- (1) **Engineering** – physical measures to prevent or deter contraventions where practicable, for example, road markings or kerb lines.
- (2) **Education** – promotion of restrictions; consultation and additional signs to increase awareness of the restriction.
- (3) **Enforcement** – where no further practicable solution under (1) and (2) remains. This will include warning notices (see paragraph 3.16).

3.16 For all new locations where these powers are implemented it is proposed that a warning notice (with no penalty charge) will be issued for the first contravention during the initial six-month period of enforcement to serve as a further educational measure to improve compliance and embed driver behaviour change.

3.17 The monitoring of contraventions once camera enforcement is in place is proposed to determine the success of MTE at a given location as follows:

- (1) **Sustained compliance** - Where driver behaviour is improved it may be appropriate to pause enforcement action or relocate the camera temporarily.
- (2) **High non-compliance** - Where evidence shows that driver behaviour has not improved its proposed the solutions at the locations should be re-evaluated in line with our hierarchy in paragraph 3.15.

3.18 Ongoing monitoring and evaluation will aid our efforts to support active travel methods such as cycling, and the reduction of congestion would also aid public transport. This approach will help us understand where improvements are necessary to engineering and educational solutions on the network at other locations to prevent dangerous vehicle manoeuvres.

3.19 Our approach allows for equipment to be relocated to new locations identified for enforcement, reducing the future requirement to purchase new equipment.

The locations

3.20 If the powers are to be adopted it's important that their introduction is closely monitored. To achieve this aim and ensure the first Government deadline of 20 May to apply for these powers can be met, it is proposed that the locations where these powers are deployed is limited to a small number of sites where existing data supports their use. These are outlined below:

- (1) **A367 Charles Street and Monmouth Street junction.** This is a busy signalled junction in Bath where vehicles may travel in multiple directions. The site has a banned turn and yellow box.
- (2) **George Street and Gay Street junction.** Contravention of the banned turn places pedestrian safety at risk. It is not proposed that the yellow box is enforced at this time as the exit on George Street cannot be clearly seen from its start.

- (3) **Brook Road.** The commercial weight restriction of 7.5 tonnes protects the railway bridge and prevents large vehicles entering narrow residential roads beyond.
- (4) **Newbridge Road and Newbridge Hill.** This is a signalled junction with a banned turn to deter drivers making a manoeuvre that is dangerous due to oncoming traffic and which may lead to conflict with pedestrians.
- (5) **High Street, Bath Hill and Temple Street, Keynsham.** The banned turn from the High Street into Temple Street deters drivers from making a dangerous traffic movement across a lane of traffic where Cyclists may be emerging from Bath Hill into the High Street.
 - a) The High Street in Keynsham reopened in March 2022 following an extended period of closure lasting over 12 months whilst High Street renewal works were completed during the COVID pandemic.
 - b) To reflect feedback identified within consultation and the works outlined in paragraph 3.20(5)a) above, it's proposed that a further review of the location will be undertaken in consultation with the Cabinet Member for Transport and the Director of Place Management before MTE is implemented at this location.
 - c) This additional review will determine if the impact of the new road layout has achieved the desired outcome on driver behaviour and ensure that enforcement action remains the appropriate solution as set out in our approach in paragraph 3.15.

3.21 As these are new enforcement powers to the Council and their use is expected to be unfamiliar with many local drivers, the experiences from enforcement at these initial sites is key to the continued development of operational policies to support national policy and Statutory Guidance, which is expected this Spring.

4 STATUTORY CONSIDERATIONS

- 4.1 The Road Traffic Regulation Act 1984 (Section 122) requires local authorities to secure the expeditious, convenient, and safe movement of vehicular and other traffic, in addition the Traffic Management Act 2004 (Section 16) sets out the Network Management Duty for local authorities.
- 4.2 MTE powers are being made available to all local authorities in England outside London (where they are already in use) under Part 6 the Traffic Management Act 2004. The regulations giving effect to these powers come into effect on 31 May.

5 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

- 5.1 No additional resources are required to apply to adopt these powers.
- 5.2 The implementation of MTE the proposed locations, subject the council being granted a designation order from 31 May 2022, will require additional resources as set out below (funding has yet to be identified):

| Location | Year 1 - Capital | Year 2+ - Annual Revenue |
|---|-------------------------|---------------------------------|
| (1) A367 Charles Street and Monmouth Street junction. | £39.9k | £20.3k |
| (2) George Street and Gay Street junction | £15.9k | £6.6k |
| (3) Brook Road | £15.9k | £6.6k |
| (4) Newbridge Road and Newbridge Hill. | £15.9k | £6.6k |
| (5) High Street, Bath Hill and Temple Street, Keynsham | £15.9k | £6.6k |
| Additional lining and sign installation as appropriate to improve awareness of the restrictions | £7k | £- |
| TOTAL (if all locations implemented simultaneously) | £110.5k | £46.7k |

- 5.3 It's anticipated that annual scheme operating costs, including the capital costs of the equipment, will be funded by income generated from PCNs issued on an invest to save basis.
- 5.4 Where enforcement action is successful in achieving the objective of sustained compliance with a restriction PCN income at that location will be reduced.
- 5.5 Receipts from PCN income is to be ring fenced to fund scheme operating costs and meet regulatory requirements set out in paragraph 5.11.
- 5.6 The scheme has the flexibility to allow up front expenditure on the equipment to be reduced by not implementing and enforcing each of the proposed locations simultaneously. Flexible operation of the scheme ensures that equipment can then be relocated when either:
- (1) Sustained compliance is achieved, or
 - (2) According to a set schedule with a minimum of 6 months at each location to ensure the period for warning notices is met.
- 5.7 Future locations will benefit from the reuse of existing equipment in line with our approach (paragraphs 3.13 to 3.19).
- 5.8 Complimenting the ongoing monitoring and evaluation of each location will be the wider monitoring of income raised from PCNs across all locations. Where PCN income is not sufficient to fund the scheme operating costs then the scheme will either:
- (1) Be reviewed, or

(2) Operating costs are to be put forward as part of the annual budget setting process.

5.9 Due to the small number of locations and the outlined approach (through education with monitoring and evaluation) to achieve compliance, the review of contraventions and processing of PCNs (including appeals) is expected to be undertaken with existing back-office resources across both Parking and CAZ teams.

5.10 The experience from enforcing these locations will be key to the identification of future locations and resources required to implement and manage them.

5.11 Whilst The Civil Enforcement of Road Traffic Contraventions (Approved Devices, Charging Guidelines and General provisions) (England) Regulations 2022 combine parking; bus lane; and moving traffic enforcement together within the same legislative framework the general rules for Penalty Charge Notice income does not change. The income for traffic related contraventions should be used to cover the costs and any surplus used as prescribed in s31 as below:

(2) The purposes are-

(a) the making good to the enforcement authority's general fund of any amount charged to that fund under regulation 28(3) or 29(2) in respect of any deficit in the four years preceding the financial year in question;

(b) the purposes of environmental improvement in the enforcement authority's area;

(c) meeting costs incurred, whether by the enforcement authority or by some other person, in the provision or operation of, or of facilities for, public passenger transport services;

(d) the purposes of a highway improvement project in the enforcement authority's area.

6 RISK MANAGEMENT

6.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision-making risk management guidance.

7 EQUALITIES

7.1 The proposals outlined in this report are for the civil enforcement by the Council of restrictions that are already in place on the highway and that all drivers are therefore expected to comply with. Each restriction has been progressed through the statutory consultation process previously for the restriction to be included within a Traffic Regulation Order.

7.2 Where a driver fails to comply with a correctly signed traffic restriction on the highway the impact will potentially be felt by all road users, but this impact may be more greatly experienced by a road user with a disability.

7.3 The adoption of these powers will benefit road users most affected when drivers contravene traffic restrictions that are implemented to improve road safety.

7.4 Our Equalities Impact Assessment (Appendix 2) did not identify any adverse impacts because of these proposals and no specific feedback was raised by those that participated within the consultation.

8 CLIMATE CHANGE

8.1 The aim of a safe and well-functioning highway network is to reduce network failure and contribute to lower emissions. In some locations the enforcement of moving traffic offences will ensure safer environments for active travel and the reduction of carbon relating to shorter and more localised trips.

9 OTHER OPTIONS CONSIDERED

9.1 Not to apply for MTE powers.

- (1) This option has been rejected as the responsibility for enforcement of moving traffic restrictions would remain with the Police. If the council decides to adopt these powers, it does not prevent the Police from taking enforcement action themselves at any location should an officer consider it appropriate to do so. Police action takes primacy where both a Fixed Penalty Notice is issued by the Police and a Penalty Charge Notice is issued by the council for the same event.

10 CONSULTATION

10.1 In discussion with the Cabinet Member for Transport, the council submitted its expression of interest to the DfT in August 2021.

10.2 A public consultation on the use of MTE powers at the locations set out in this report (paragraph 3.20) was undertaken for a period of six weeks between 28 February and 11 April 2022. This consultation was publicised digitally via the Council's website; twitter account; press release; the Council's Interagency Network; direct email contact to all statutory consultees, Residents Associations, and all Town and Parish Councils. All properties that fell within 50m of each of the proposed locations, a total of 378 addresses, were contacted by letter and invited to participate in the consultation.

10.3 A web-based questionnaire was developed to seek the views from all stakeholders on the use of MTE powers at each location and whether they supported or objected to the proposals. The consultation did not seek views about the broader principles of MTE as new regulations have already set out the Government's intention to make these powers available to local authorities in England (see paragraph 3.2 above).

10.4 The consultation provided an opportunity for respondents to propose additional locations where the enforcement of moving traffic restrictions could be implemented, subject to further evaluation by the council in line with our approach (paragraph 3.13) and public consultation (paragraph 3.6).

10.5 A dedicated mailbox was made available for stakeholders to use where they required clarification on any element of the proposals.

10.6 Council officers staffed three separate drop-in sessions, operating from 10.00 through to 16.30, at each of the Council's One Stop Shops on consecutive weeks during the consultation period.

- 10.7 A webinar was held on 5 April at 18.30 to provide further opportunities for stakeholders to engage with the council, ask any questions, or seek further clarification prior to submitting their consultation response. This webinar is available online on the Council's YouTube channel at <https://youtu.be/0hisgxV8iEU>
- 10.8 The proposals and outcomes were presented to both the Liberal Democrat Group of Councillors and the Council's Informal Cabinet prior to this report being approved.
- 10.9 In summary, the consultation received a total of 142 responses during the six weeks it was live.
- (1) 65% of respondents supported the proposals (92 in total)
 - (2) 35% of respondents indicated their objection (50 in total)
 - a) Of the 35% who objected, 62% (31 in total) of these were objecting to the broader principle of the Council having MTE powers, rather than their use at the locations proposed. This comprises 31 of the total responses received.
- 10.10 95% of all responses received were by residents of Bath & North East Somerset.
- 10.11 Support was received on behalf of the Chief Constable of Avon and Somerset Police to the use of ANPR cameras to enforce the moving traffic restrictions at the locations identified in this report (paragraph 3.20).
- 10.12 The broader results of the consultation are included within Appendix 3 - Moving Traffic Enforcement - Consultation Outcomes Report.

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| Contact person | Andy Dunn 01225 395415 |
| Background papers | There are no background papers to this standalone report. |
| Please contact the report author if you need to access this report in an alternative format | |