

REPORT TO: East Lothian Council

MEETING DATE: 25 August 2015

BY: Depute Chief Executive (Partnerships and Community Services)

SUBJECT: Proposed Introduction of Decriminalised Parking Enforcement – Parking Attendant Service

1 PURPOSE

- 1.1 To seek approval of Council to present a business case to Transport Scotland to commence the statutory procedure necessary to decriminalise parking enforcement in the East Lothian Council area.

2 RECOMMENDATIONS

- 2.1 To refresh and update the Parking Management Strategy and progress the development of a business case to submit to Transport Scotland for approval to decriminalise parking enforcement in the East Lothian area; to undertake the necessary examinations and consultations appropriate in setting up a Parking Management Service within the area.

3 BACKGROUND

- 3.1 Car parking provision, its management and enforcement is vital to traffic movement and the quality of life in our towns and villages. It directly affects the businesses, residences and retailers located therein and hence the overall economy of East Lothian.
- 3.2 The economic vibrancy and vitality of town centres greatly improves with vehicle turn-over. Greater control of indiscriminate parking improves journey times and economic performance. Conversely, poor traffic/parking management increases congestion, environmental costs, and impacts on the health and wellbeing of individuals. Indiscriminate and dangerous parking behaviour may lead to social unrest, an increase in road traffic related incidents and detrimental affects on personal travel choices.
- 3.3 Decriminalised parking enforcement (DPE) permits local authorities to apply to Scottish Ministers for the legal powers to take over the

enforcement of parking offences within their area, including enforcement of on-off street parking as well as waiting and loading restrictions from the police.

- 3.4 DPE has been introduced in Aberdeen City, Dundee City, City of Edinburgh, Glasgow city, Perth and Kinross, Fife, South Lanarkshire, East Ayrshire, South Ayrshire, East Renfrewshire, Renfrewshire, North Lanarkshire, Inverclyde, Argyll and Bute, and East Dunbartonshire (see Appendix 1).
- 3.5 Police Scotland withdrew the Traffic Warden Service on 1 February 2014. While Police Scotland retains enforcement duties, they are only able to address indiscriminate and dangerous parking infringements and the occasional policing of time based limits. The withdrawal of Police Scotland's Traffic Warden Service has resulted in all remaining Authorities who have not implemented DPE now requiring to consider this option, as the alternative is to be left with no practical enforcement. No regular enforcement, by either Police Scotland or the Local Authority, of time based limits and general parking infringements could cause a significant detriment to the health and well being of our towns and villages.
- 3.6 Making an Order permits East Lothian Council to become the enforcing Authority. The powers have been available since 1991 and the legislation covering this is contained in the Road Traffic Act 1991. An Authority which operates a DPE regime employs parking attendants who place penalty charge notices (PCNs) on vehicles parked in contravention of Traffic Regulation Orders (TROs). Under DPE, penalty charges are civil debts due to the local authority, rather than the former system where they would be criminal offences. Revenue from PCNs can be used to fund enforcement activities. Surpluses can be used to improve off-street parking facilities, or other transport-related purposes.
- 3.7 The 1991 Act permitted the decriminalisation of most non-endorsable parking offences. The provisions of the act allow for the promotion of Orders decriminalising offences within particular geographical areas. The Orders that would enact this change are permanent and cannot be revoked.

Within defined geographical areas:

- Enforcement of the decriminalised offences ceases to be the responsibility of Police Scotland and becomes the responsibility of the local roads authority;
- Parking attendants can place penalty charge notices (PCNs) on vehicles contravening parking regulations;
- Penalty charges are civil debts, due to the authority and enforceable through a streamlined version of the normal civil debt recovery process;

- In appropriate circumstances (and where these powers have been requested by authorities) parking attendants can authorise the clamping or towing away of vehicles;
 - Motorists wishing to contest liability may make representations to the local roads authority;
 - If these representations are unsuccessful, they may appeal to an independent parking adjudicator, whose decision is final; and
 - The local roads authority retains the proceeds from the penalty charges, which are used to finance the enforcement and adjudication systems and for certain other traffic management purposes.
 - Under DPE arrangements, the system of “initial” and “excess” charges is replaced by the penalty charge notice (PCN) system.
- 3.8 In support of all enforcement actions, East Lothian Council is required to ensure Traffic Regulation Orders are valid, up to date, and properly marked and signed on site.
- 3.9 Parking attendants will be required to enforce all traffic-related orders, including: the Disabled Persons Parking Places Act; the Responsible Persons Parking Bill (once enacted), and all temporary Traffic Regulation Orders put in place to support local community events or otherwise.
- 3.10 The Scottish Parking Appeals Service operates an adjudication service for Scottish local authorities. The Traffic Commissioner appoints adjudicators (usually retired judges, Lawyers, etc) under the auspices of the DVLA. East Lothian Council will have to subscribe to this service. A full and detailed report must be submitted to the Appeals Service to review disputes. Report drafting can be provided by another organisation but **must** be signed off by an East Lothian Council official. This cannot be re-assigned to another body.
- 3.11 To give legitimacy to the use of DPE and associated parking interventions there is a fundamental requirement to prepare and adopt a Parking Management Strategy, which conforms and augments the aims and objectives of the Council’s Local Transport Strategy. A Parking Management Strategy has been in draft form since 2011 and the Local Transport Strategy is currently being refreshed.
- 3.12 To introduce DPE, three Scottish Statutory Instrument (SSI) are required to be made by the Scottish Parliament: Road Traffic (Permitted Parking Area and Special Parking Area) (East Lothian Council) Designated Order; The Parking Attendants (Wearing of Uniforms) (East Lothian Council Parking area) Designation Order and (Parking Adjudicators) (East Lothian Council) Regulations.

- 3.13 A business case must be made to Transport Scotland to substantiate East Lothian Councils reasons for introducing DPE in their Council area. Fundamental to all DPE business cases is the requirement to demonstrate a cash neutral position after 5 years. Transport Scotland, however, will take a pragmatic view in considering the monetary returns and may permit a small running deficit. This would have to be explicitly justified in the submission with specific provision made for in the General Account and guaranteed not to impact on other services. The view of Transport Scotland is that no business case will be supported, which is predicated on the reallocation of Council funds that adversely impact other services areas.
- 3.14 The detailed business case will be lodged in the members' library prior to a submitting to Transport Scotland for consideration.
- 3.15 Subject to the acceptance of the business case by Transport Scotland and prior to the setting before Parliament the necessary Orders required to implement DPE, a further report will be brought to Council to consider all aspects of DPE and a Parking Management Service.
- 3.16 Managing a DPE service is a complicated undertaking and requires qualified back office resources, technical and professional staff to undertake the work. There is no capacity to integrate DPE into the current establishment. There is scope to work with other authorities to deliver some of the back office resources; however, no matter what level of DPE is introduced some of this will need to be managed and administered directly by East Lothian Council. Accordingly, there is a fundamental requirement to recruit professional parking services staff to the establishment. This is essential to deliver and manage the service.
- 3.17 Transport Scotland is required to consult with Police Scotland; East Lothian Council neighbouring authorities and the Traffic Commissioner before placing the Orders before Parliament. It is highly unlikely that there will be any objection; particularly from Police Scotland.
- 3.18 East Lothian Council will have to consult with the public generally and the Scottish Parking Appeals Service specifically. The general consultation is to seek comment; however, a public mandate would arguably legitimise introduction. Consultation with the Scottish Parking Appeals Service is necessary to ensure they are able to meet East Lothian's business needs.
- 3.19 The business case must also confirm all Traffic Regulation Orders are validated or that the process is sufficiently underway that the main areas of contention will be checked and amended. There is no obligation under DPE to consolidate Orders; however, consolidating to a single map-based system is considered a rational approach longer term.
- 3.20 The validation of East Lothian Traffic Regulation Orders will require detailed inspection of all TROs to ensure they are legally competent. This will target high value areas initially; after that progressing on a priority - financial risk and road safety bases. To accelerate this process the

Council may procure professional services to undertake this task on the Councils behalf. It is estimated the cost will be circa. £60,000.

- 3.21 It is anticipated that the making of the Orders to allow DPE will take approximately 6 months.
- 3.22 Once introduced there is a legal requirement to submit details of all income and expenditure to the Scottish Government on an annual basis.
- 3.23 The use of all income generated by DPE must comply with Section 55 of the Road Traffic Regulation Act 1984 as amended. At the end of each financial year the local Authority must make good any deficit from the General account and any surplus shall be applied for all or any the purposes:
 1. Making good any deficit to the previous year's account;
 2. Meeting all or part of the maintenance costs of off street parking accommodation;
 3. Making to other authorities the cost of provision of maintenance by them;
 4. The provision of additional off-street parking;
 5. Contribute to the provision or operation of public passenger transport services;
 6. The purpose of a road improvement (this does not constitute road maintenance);
 7. For the purposes of environmental improvements in the local authorities area.

4 POLICY IMPLICATIONS

- 4.1 If introduced, Decriminalised Parking Management will contribute towards providing a Safer Environment - a key priority for East Lothian Council and will also contribute towards East Lothian's Single Outcome Agreement Outcome 9 – *East Lothian's homes and roads are safer.*

5 EQUALITIES IMPACT ASSESSMENT

- 5.1 This report is not applicable to the well being of equalities groups and an Equality Impact Assessment is not required.

6 RESOURCE IMPLICATIONS

- 6.1 Financial – All costs associated with the development of the business case inclusive of procuring professional service to validate Traffic Regulation Orders can be contained within the Road Services - Revenue Budget 2015/16.
- 6.2 Personnel – development of a business case will impact of resources but can be achieved within the existing establishment.

The impacts of introducing DPE fully will significantly affect staff resources. There is scope to work with other authorities to deliver some of the back office resources. However, no matter what level of DPE is introduced East Lothian Council will require additional staff to manage the operation of the Service. This will include Parking Manager/Officers, and parking attendants. The extent of this will be dependent on the level of DPE introduced and will be addressed in any subsequent report being brought forward in accordance with Section 3.15.

6.3 Other - None

7 BACKGROUND PAPERS

7.1 None

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Appendix 1 – Parking Enforcement Areas

