

CABINET ITEM COVERING SHEET PROFORMA

AGENDA ITEM

REPORT TO CABINET

27 SEPTEMBER 2007

**REPORT OF CORPORATE
MANAGEMENT TEAM**

CABINET DECISION

Regeneration and Transport – Lead Cabinet Member – Councillor R Cook

BUS LANES – CIVIL ENFORCEMENT

1. Summary (expanded report summary)

This report informs Members of the current extent and role of bus lanes in the Borough and the unauthorised use made of them. It also informs Members of the enforcement arrangements for compliance with the associated Traffic Regulation Orders. Importantly it highlights the changed means of enforcement under recent legislation that allows for the local highway authority to take on that role. Members have previously agreed in principle to seek powers to take on bus lane enforcement but evidence of a number of detailed decisions by the Council are required by the Secretary of State prior to granting these powers. Members are also asked to agree to take up clamping and towing away powers.

2. Recommendations

Recommended that

1. Members agree that officers, in addition to actions by the police, take on enforcement of bus lanes as a civil contravention.
2. Members set the charge, at £60, for the penalty amount for keepers of vehicles recorded as contravening the regulations.
3. Members authorise the Head of the Council's legal service to enter into an agreement with the Bus Lane Adjudication Service Joint Committee.
4. Members appoint annually a representative, and substitute, to serve on the Bus Lane Adjudication Service Joint Committee.
5. Members agree that powers be obtained for contraventions of traffic orders to be dealt with by clamping or by removal of the vehicle when appropriate
6. Members authorise the Head of Technical Services, in consultation with the Cabinet Member, to seek powers to enforce other moving traffic offences if deemed appropriate in the future.

3. Reasons for the Recommendations/Decision(s)

Bus Lanes are installed for the benefit of passenger travellers. They assist buses in achieving more reliable journey times on congested roads and removing conflict with other vehicles in areas with heavily used bus stands. They are important in helping to promote

buses as an alternative means of travel to the private car. Lack of enforcement of bus lanes has led to significant abuse of the restrictions by some motorists, which in turn, detracts from the original aims and objectives of these facilities. Recent legislation now permits civil enforcement using approved camera technology subject to certain agreements that require Cabinet approval.

4. Members Interests

Members (including co-opted Members with voting rights) should consider whether they have a personal interest in the item as defined in the Council's code of conduct (**paragraph 8**) and, if so, declare the existence and nature of that interest in accordance with paragraph 9 of the code.

Where a Member regards him/herself as having a personal interest in the item, he/she must then consider whether that interest is one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest (**paragraphs 10 and 11 of the code of conduct**).

A Member with a prejudicial interest in any matter must withdraw from the room where the meeting considering the business is being held -

- in a case where the Member is attending a meeting (including a meeting of a select committee) but only for the purpose of making representations, answering questions or giving evidence, provided the public are also allowed to attend the meeting for the same purpose whether under statutory right or otherwise, immediately after making representations, answering questions or giving evidence as the case may be;
- in any other case, whenever it becomes apparent that the business is being considered at the meeting;

and must not exercise executive functions in relation to the matter and not seek improperly to influence the decision about the matter (**paragraph 12 of the Code**).

Further to the above, it should be noted that any Member attending a meeting of Cabinet, Select Committee etc; whether or not they are a Member of the Cabinet or Select Committee concerned, must declare any personal interest which they have in the business being considered at the meeting (unless the interest arises solely from the Member's membership of, or position of control or management on any other body to which the Member was appointed or nominated by the Council, or on any other body exercising functions of a public nature, when the interest only needs to be declared if and when the Member speaks on the matter), and if their interest is prejudicial, they must also leave the meeting room, subject to and in accordance with the provisions referred to above.

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SUMMARY

This report informs Members of the current extent and role of bus lanes in the Borough and the unauthorised use made of them. It also informs Members of the enforcement arrangements for compliance with the associated Traffic Regulation Orders. Importantly it highlights the changed means of enforcement under recent legislation that allows for the local highway authority to take on that role. Members have previously agreed in principle to seek powers to take on bus lane enforcement but evidence of a number of detailed decisions by the Council are required by the Secretary of State prior to granting these powers. Members are also asked to agree to take up clamping and towing away powers.

RECOMMENDATIONS

Recommended that:

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DETAIL

Background

1. Stockton-on-Tees Borough Council enforces on-street parking regulations and use of its own off-street public car parks where they are controlled by Order. On-street enforcement was previously undertaken by Cleveland Police but from 5 September 2005 local parking enforcement was decriminalised. This was referred to as DPE (Decriminalised Parking Enforcement) at the time but now referred to as CPE (Civil Parking Enforcement).
2. The Bus Lane Contraventions (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2005 make provision for the enforcement of bus lane contraventions by local authorities which are approved for the purposes of section 144 of the Transport Act 2000, as an alternative to enforcement by the police. In particular, they provide for penalty charges to be set by the local authorities, these charges being imposed only on the basis of a record produced by an approved device. Charges are payable by the owner of the vehicle with certain exceptions relating to hired vehicles and vehicles kept by vehicle traders. A charge cannot be recovered if the contravention in question is also subject to criminal proceedings or the serving of a fixed penalty notice. The regulations also provide for the making of representations to the local authority concerned, the appointment of bus lane adjudicators and related matters. Finally they deal with the keeping of accounts and the uses to which any surplus can be applied.
3. This would be the first of a number of moving traffic contraventions that could be enforced as a civil matter. Others could include prohibited turns by, or directions of, moving vehicles and yellow box contraventions. It is recommended that future applications for powers to enforce other moving traffic offences be delegated to the Head of Technical Services in consultation with the Cabinet Member for Regeneration & Transport. This report, however, is for consideration of bus lane enforcement alone. Civil Parking Enforcement involved the transfer, other than endorsable offences, of parking enforcement from the Police to the Council. Bus Lane enforcement is not the same, it is not decriminalised. The police retain powers to issue fixed penalty notices. In the event of a Council penalty charge notice and a Police fixed penalty notice being issued for the same offence, then the Council must withdraw its notice.
4. Local Authority enforcement of bus lanes is widespread in London. Outside London, enforcement powers have been taken up by Reading Borough Council in September 2006, Manchester City Council in October 2006, Brighton and Hove City and Oxfordshire County Councils in March 2007. In London bus lane enforcement has been operating for a number of years with studies showing that the number of prohibited vehicles using bus lanes has reduced significantly as a result of enforcement.

Locations of bus lanes

5. Currently, Bus Lanes are in place in Stockton High Street, Yarm Lane, Bridge Road, Bishopton Lane, Norton Road, Yarm Road (near West End Way), at Norton Road, along Yarm Road (Eaglescliffe) and in Thornaby at Westbury Street. Bus only facilities in the public highway are also provided at Durham Road (junction with Hardwick Road), at Bowesfield Lane, and at Port Clarence Road close to the Transporter Bridge. **Appendix 1** lists the locations of all existing bus lane restrictions.

Objectives of Enforcement

6. Better enforcement is essential to improve compliance of the Traffic Regulation Orders made to: -
 - Improve punctuality of bus services, allowing easier and more consistent journey times.
 - Encourage patronage of public transport by reducing duration of travel particularly during peak traffic periods.
 - To improve the environment by encouraging commuters to choose more sustainable forms of travel and thereby reduce CO₂ emissions.
 - To enhance highway safety by separating alighting bus passengers from other traffic.

In addition, section 16 of the Traffic Management Act 2004 imposes a duty on the Council, as a local traffic authority, to manage its road network with a view to achieving, so far as may be reasonably practicable having regard to its other obligations, policies and objectives to secure the expeditious movement of traffic on the authority's road network.

Existing enforcement

7. Cleveland Police are currently solely responsible for bus lane enforcement. However, other priorities have meant that the public often view resources devoted by the Police to enforcement of moving traffic offences as inadequate. Despite a number of joint (Council/Police) campaigns, a lack of continual and high profile enforcement has led to a relatively high level of abuse of the Stockton High Street bus lane in particular. It is therefore recommended that the Council assumes powers to enforce bus lanes in Stockton with the first location as Stockton High Street.

Enforcement by the Council

8. Council enforcement will be undertaken using camera evidence capture. Parking attendants on the street play no role in bus lane enforcement therefore this initiative will have no adverse impact on current parking enforcement levels. Images are relayed back to the security centre from fixed cameras (or recorded by mobile cameras onto DVDs). Penalty Charge Notices (PCNs) are raised within the office after examination of evidence and posted to the registered keeper (owner) of the vehicle as identified by the DVLA within 28 days of the contravention. Motorists can examine the recorded evidence and they can make formal representations against their PCN. Should the Council not accept a representation, the owner may appeal to the bus lane adjudicator.

Evidence Capture and Viewing

9. Legislation calls for type approval for camera equipment used in enforcement of moving traffic offences. The camera itself can be static and mounted on a pole. For placing in a conservation area, High Street Stockton being such an area, the consent of the Planning Authority may be required. A proposed site for the Stockton High Street camera has been suggested as at its junction with Silver Street. This would afford the opportunity to enhance CCTV coverage of that part of the town centre. Future locations could include a further static camera at Yarm Lane, which could also supplement CCTV coverage of the area during its weekend night-time closures. This proposal is strongly supported by the Safer Stockton Partnership Violence Reduction Group. An alternative to fixed sites at other bus lane locations would be use of a mobile system with cameras attached to a special vehicle, with the images recorded onto a DVD.
10. Vehicle keepers are entitled to view the evidence held against them. The viewing suite has to be secure with monitoring of all visitors into the room, the images, held on a DVD need to

be securely held, and the evidence viewing room itself be a secure and private environment. The Council's Surveillance Centre already has a facility that satisfies these requirements. Evidence viewing would be by appointment.

Amount of Penalty Charge

11. The penalty charge level can be set at £40, £50, or at £60. The choice should be made on the basis of how best to deliver the objectives of the bus lane strategy and achieve a high degree of compliance. Penalty charges should be set at a level that is consistent with that basis while attempting to meet the objective of producing a system that becomes self financing within a reasonable time. The Department for Transport's guidance in this area is that a wide range of charges would not be appropriate; the penalty charge for parking contraventions within Stockton-on-Tees, and neighbouring local authorities with decriminalised parking enforcement powers, stands at £60. It is recommended that bus lane contraventions also be set at £60. In line with parking penalties a 50% discount applies for prompt (within 14 days) settlement.

Bus Lane Adjudication Service

12. Should the Council take up civil bus lane enforcement powers then the National Parking Adjudication Service (NPAS) is the tribunal that will deal with appeals against bus lane PCNs. The Council is required to join the Bus Lane Adjudication Service Joint Committee (BLASJC) that has appointed NPAS to provide the adjudication service. The Council's legal service requires authority to enter into a signed Agreement under Section 101 of the Local Government Act 1972 to join BLASJC. Additionally a nominated Representative, and substitute, (Councillor) is required to serve on the Joint Committee. Meetings of this Joint Committee are scheduled for January and June each year (to coincide with the National Parking Adjudication Service Joint Committee). The adjudication charging arrangements are reviewed annually and for the year ending 31 March 2008 are set at the same as for parking appeals: -
 - Joining Fee – nil
 - PCN fees - £0.60 each
 - Appeal case Fee - nil

Penalty Charge Notice Progression

13. Should payment remain outstanding at the end of the relevant period (28 days after PCN issue and representations not made or 28 days after an unsuccessful appeal) then a charge certificate may be served. This increases the charge by 50%. PCNs then outstanding may be the subject of a county court order and referred to bailiffs for recovery on behalf of the Council. These later stages are similar to that for enforcement of parking regulations. Where a representation against a PCN is accepted, the amount of the penalty charge is cancelled.

E-Agenda

14. Along with the now established parking contravention procedures, those in receipt of a bus lane penalty charge notice may utilise electronic facilities. On-line payments may be made, contact may be made from the Council's web site and appeals may be made to the bus lane adjudicators on-line.

Clamping and Towing

15. When the Council decided to take up Decriminalised Parking Enforcement powers it did not at that time seek to include powers to clamp or tow away. It is now considered appropriate that the Council does seek Consent to remove or to immobilise vehicles and to advertise a scale of charges.

Removal by towing away or lifting of a vehicle in contravention of a traffic regulation order cannot be undertaken lightly. In most cases it would not be proportional to the misdemeanour. In addition to the penalty charge notice the motorist would face fees for removal and storage of the vehicle. However a vehicle contravening a bus lane order or an order in a high traffic volume street can have more serious implications than at other, less sensitive locations.

Immobilising a vehicle, fixing a clamp to a wheel being the usual means, is also a practice to be undertaken with caution. For example, it would not be appropriate in a bus lane or heavily trafficked street. Routine clamping by private contractors on private land is disliked by the public who can feel exploited by the level of release charges and the absence of an appeals procedure. However, it has come to light since the Council took over from the Police the enforcement of on-street traffic orders that some motorists escape payment of parking penalty charges. This they do by use of a vehicle not properly registered at the Driver and Vehicle Licensing Agency. In some cases drivers exploit that fact and run up numerous penalty charges that the Council are unable to pursue. In clamping the contravening vehicle, or removing it, the Council can seek payment of previous unpaid penalty charges put against that vehicle.

The Secretary of State for Transport determines fees for removal or immobilising vehicles. The Civil Enforcement of Parking Contraventions (Guidelines on Levels of Charges) (England) Order 2007 states that outside greater London charges must be set at:-

- Release of a vehicle from an immobilisation device - £40
- Removal of a vehicle - £105.00
- Storage of a vehicle - £12 for each day, or part of a day.
- Disposal of a vehicle - £50.00

FINANCIAL AND LEGAL IMPLICATIONS

Financial

16. Evidence capture by way of static camera will incur a set-up cost of around £18,000 each for a pole mounted camera or cameras. Existing town centre cameras do not meet the specification required for bus lane enforcement. Additional software module for moving vehicle enforcement on the existing notice processing software system will cost £9,000.
17. A high level of bus lane abuse has been observed in the past, a vehicle every fourth minute has been recorded in the High Street. This will significantly reduce when regular enforcement is in place, but will not disappear as has been the experience reported elsewhere. Assuming a modest daily capture of abuse of 5 vehicles over 300 days in a year then an income in the region of £42,000 may be expected in a full year. Therefore, a breakeven situation with set up costs and enforcement costs can be expected with the kick-start capital cost of the first camera being funded from the Local Transport Plan (Public Transport block).
18. The Council will have to set up a separate bus lane account to ensure that the operations are not only effective but are carried out efficiently and economically. Income from Penalty Charges should initially be used to recover the costs of setting up, operating and maintaining the bus lane enforcement scheme including the new software purchase. Any surplus revenue raised has to be returned to the general fund either to cover a deficit previously built up; to meet costs in providing or operating public transport; or for local highway improvements. The Council will need to report the costs and revenues each year to the Department for Transport. It would be possible to fund an additional camera on Yarm Lane (or another site) with any initial deficit in 2007/8 being met from the surplus in 2008/9.

Legal

19. The Bus Lane Contraventions (Approved Local Authorities) (England) Order 2005, (Statutory Instrument 2005 No.2755) includes 'Stockton-on-Tees' amongst the local authorities listed as an approved local authority for the purposes of section 144 of the Transport Act 2000 (civil penalties for bus lane contraventions).
20. Cleveland Police retain the ability to issue fixed penalty notices to vehicles in contravention of the Traffic Order (unlike parking contraventions).

RISK ASSESSMENT

The financial risks of this initiative are considered to be low.

Failure to adequately enforce use of bus lanes will defeat the very objectives of the lanes and lead to widespread abuse of the restrictions by motorists. Now that the Council can enforce bus lanes it is likely that the Police will reduce resources targeted at such offences. The Council has a new network management duty under the Traffic Management Act 2004 to ensure the expeditious movement of traffic and to assist bus punctuality performance. Failure to improve enforcement of bus lanes could jeopardise the Tees Valley Major Scheme bid already strongly endorsed by the Council.

COMMUNITY STRATEGY IMPLICATIONS

Environment

Increased enforcement will lead to improvement of bus journey times and reliability to encourage increased use of public transport.

Community Safety and Well-Being

Compliance with use of bus lanes will contribute to the Council's road safety agenda. The enforcement cameras can also be used as an additional CCTV resource improving community safety and assisting the safer Stockton partnership.

Health

The Council Travel Plan aims to encourage more sustainable forms of transport and healthier lifestyles.

Economic Regeneration

Improved enforcement of Bus Lanes is an essential feature of the Tees Valley Major Scheme Bid and viewed as critical by bus operators to ensure the desired frequency and punctuality targets are met.

Modal shift from private car to public transport is also essential if the Council's regeneration aspirations are to be fully met since more efficient use of the existing highway network will be required.

Education and Lifelong Learning

None

Arts and Culture

None

CONSULTATION INCLUDING WARD/COUNCILLORS

An informal consultation exercise has been undertaken with views sought from Members with a bus lane in their ward, Thornaby Town Council, Egglecliffe Parish Council, the Police, the two primary bus operators, and others. Responses have been supportive.

Cleveland Police stated that any additional enforcement in Stockton High Street would be of benefit to road users and pedestrians.

Stagecoach on Teesside finds it refreshing to see more intended action to demonstrate the Council's commitment to ensure essential bus lanes are kept free of traffic for buses.

Egglecliffe Parish Council quote examples of observed abuse and feel that enforcement of the bus lane in Yarm Road should be stepped up.

Bus Lanes are used by motorists from all wards.

Wards with bus lanes are:

Stockton Town Centre
Norton North
Norton South
Egglecliffe
Mandale and Victoria
Parkfield and Oxbridge.

Name of Contact Officer	Bill Trewick
Post Title	Traffic and Road Safety Manager
Telephone No.	01642 526716
Email Address:	bill.trewick@stockton.gov.uk

Background Papers

Cabinet Report 1/2/07 (Min 1005)

Ward(s) and Ward Councillors:

All

Property

Proposals relate only to enforcement of Traffic Orders upon the public highway.

Bus Lane Data

Bus Lane	Days	Times	Hours per week	Number of lengths	Overall Length	June 2007 Survey					
						a.m. peak, over a 2 hours period		p.m. peak, over a 2 hours period		Location	Ward
						Bus	Abuse	Bus	Abuse		
High Street Stockton	All	24 Hours	168	1	319m	104	23	108	23		STC
High Street Stockton	All	9.30 – 4.30	49	1	319m						STC
High Street Stockton periphery	All	24 Hours	168	5	299m	46	30	51	70	Bishopton Lane	STC
						56	4	58	11	Yarm Lane	
						45	3	52	4	Bridge Road	
Norton Road	All	a.m. & p.m. peak	31.5	5	628m	39	393	41	210	North of St. Mary's	STC NS & NN
Yarm Road	Mon to Fri	p.m. peak	12.5	2	475m			13	186	Parklands	E
								16	105	Neasham Road	E
Westbury Street	All	24 Hours	168	1	90m	19	28	19	34	Westbury Street	M & V

STC – Stockton Town Centre
 E – Eaglescliffe
 NS – Norton South
 NN – Norton North
 M & V – Mandale and Victoria

a.m. Peak 7.30 – 9.30 am
 p.m. Peak 3.30 – 6.00 pm

Throughout Taxis, Blue Badge Holders, and Motor Cycles are denied use of a bus lane during its operational hours.