

TRANSPORT FOR LONDON

SURFACE TRANSPORT PANEL

SUBJECT: TfL ROAD NETWORK HIGHWAY ENFORCEMENT

DATE: 3 MARCH 2010

1 PURPOSE

- 1.1 The purpose of this paper is to inform the Panel of TfL's approach to highway enforcement and how it intends to work collaboratively with London's boroughs.
- 1.2 This paper follows a paper submitted to the Panel on 3 July 2009, which informed the Panel of the outcome of the six month trial of delegation of certain TfL enforcement powers to the London Borough of Wandsworth.

2 BACKGROUND

- 2.1 On 5 November 2008, the TfL Board approved a six month trial (which commenced 1 December 2008) of the delegation of certain TfL highway enforcement powers, in relation to the removal of pavement obstructions, on part of the Transport for London Road Network (TLRN) in Wandsworth. To facilitate the trial, TfL and the London Borough of Wandsworth entered into an agreement under section 101(5) of the Local Government Act 1972.
- 2.2 The resources deployed by the London Borough of Wandsworth in respect of the trial included two enforcement officers, a supervisor and an administrative officer with a total of 634 hours spent over the six month trial period at a total cost of approximately £14,000. Under the section 101(5) Agreement, TfL agreed to contribute £12,000 towards these costs. The excess costs of the trial were absorbed by the London Borough of Wandsworth.
- 2.3 It transpired from the trial that all of the enforcement carried out by the London Borough of Wandsworth was based on the issue of Fixed Penalty Notices (FPNs) either pursuant to the London Local Authorities Act 2004 for street trading offences or pursuant to the Anti-Social Behaviour Act 2003 for displaying advertisements in breach of regulations. The powers that TfL delegated to Wandsworth were not used.

3 PROPOSALS

Delegation of powers

- 3.1 It is TfL's responsibility and duty as the highway authority to maintain the TLRN and to ensure it is free from obstruction. In the trial, 57 FPNs were issued, of which ten related to A-boards and 47 related to street trading. The management of street trading is a local authority responsibility and not the responsibility of the highway authority.

- 3.2 Fixed penalty notices under the Anti Social Behaviour Act 2003 are a simpler form of enforcement than that available to TfL under the Highways Act. TfL has no mechanism to issue FPNs for highway obstruction purposes.
- 3.3 The London Borough of Wandsworth has a legal duty to prevent, as far as possible, the obstruction of the TLRN where in their opinion the obstruction would be prejudicial to the interests of its area (section 130 (3) of the Highways Act 1980).
- 3.4 The trial showed that effective enforcement can be carried out by London boroughs on the TLRN utilising existing Local Authority powers, and this is clearly beneficial for the local community and for the drive toward creating better streets.
- 3.5 TfL therefore proposes that boroughs willing to undertake enforcement under their own powers will be encouraged to do so. TfL proposes to work with the boroughs to assist from time to time on supporting a particular area blitz in co-ordination with borough officers and also to progress prosecutions under TfL's powers if required.

Financial

- 3.6 The TfL budget to carry out highway enforcement on the TLRN was circa £100,000 per annum. The London Borough of Wandsworth trial was funded from this budget. However, in future years this budget reduces to zero as the carrying out of the enforcement activities, in relation to the removal of highway obstructions and similar offences, will be carried out by the re-training of existing TfL highway operations staff and our supply chain.
- 3.7 There is therefore no budget available in future years to fund London boroughs to carry out routine enforcement activities on the TLRN and no financial assistance will be offered to boroughs should they undertake enforcement under their own powers. TfL will continue to undertake its responsibilities and duties as highway authority.

Way forward

- 3.8 TfL will express to willing boroughs support for a multi-agency blitz of sections of network, which could include TfL and borough officers, the Driver and Vehicle Licensing Agency, HM Revenue and Customs, the Police, and other appropriate agencies. This would enable illicit street trading, unlicensed vehicles and non-registration for VAT, for example, to be targeted in a combined effort.

4 LEGAL

- 4.1 Appendix 1 details the enforcement powers available to TfL and the boroughs, and when and how they can be used.

5 RECOMMENDATION

- 5.1 The Surface Transport Panel is asked to NOTE the contents of this paper.

6 CONTACT

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TFL AND BOROUGH POWERS RELATING TO HIGHWAY OBSTRUCTIONS ON THE TLRN

Nature of Obstruction	TfL's Powers	Borough's Powers	Comments
Street Trading – either in breach of street trading licence conditions or without one		Prosecution under Part III of the London Local Authorities Act 1990.	
A-Boards, flyposting and graffiti	A-Boards – prosecution for wilful obstruction. Section 137 of the Highways Act 1980	Issue Fixed Penalty Notices. Anti-social Behaviour Act 2003 Planning enforcement for breach of advertising controls.	The issuing of FPNs is a much more efficient remedy in that it is quicker and cheaper than prosecution, which requires the gathering of evidence and prosecution through the Courts
Other highway obstructions	<u>Duty</u> to assert and protect the public's right to use and enjoy the highway. This means dealing with obstructions under Section 130 of the Highways Act 1980. Common Law power to remove obstructions. Power to remove obstructions for second and subsequent offences. Section 137ZA of the Highways Act 1980	<u>Power</u> similar to TfL's <u>duty</u> although this becomes a <u>duty</u> where in the borough's opinion the obstruction would be prejudicial to the interest of their area. Section 130 (3) of the Highways Act 1980.	May need to arrange the safe storage of obstructions if of any value
Things deposited on the highway that constitute a nuisance	Serve notice requiring removal. Failure to comply resulting in complaint to Magistrates' Court for removal and disposal order. If dangerous, can remove direct		May need to arrange the safe storage of obstructions if of any value
Things deposited unlawfully and persistently by persons having control of business in premises in the vicinity. This is aimed principally at white or other valuable goods which are sometimes placed on the highway outside shops.	Serve seven day removal notice and then possible disposal		Cumbersome procedure involving subsequent notices including site notices and may need to arrange the safe storage of the things removed