

RECORD OF DECISION MADE UNDER DELEGATED AUTHORITY

*PART 1 – PUBLIC DOCUMENT

SERVICE DIRECTORATE: REGULATORY

1. DECISION TAKEN

To reduce the observation set period from 5 minutes to 2 minutes for vehicles parking on Double or Single Yellow Lines where there is no sign of any loading/unloading taking place on the highway and when parked adjacent to a footway, cycle track or verge lowered to meet the carriageway (i.e. dropped kerbs).

2. DECISION TAKER

Ian Fullstone – Service Director Regulatory

3. DATE DECISION TAKEN:

11 December 2020

4. REASON FOR DECISION

- 4.1 To enable effective enforcement of vehicles parking in a restricted street during prescribed hours e.g. on double or single yellow lines that are not loading or unloading which are causing an obstruction and safety hazard on the highway.

5. ALTERNATIVE OPTIONS CONSIDERED

- 5.1 Observation times of vehicles parking on yellow lines to see whether there is any sign of loading/unloading taking place is not a legal requirement and is entirely at the discretion of the Local Authority. Depending on the contravention type, times can vary between instant and a set period of time, such as 5 minutes, as to when a Penalty charge notice is issued.

- 5.2 Three options have been considered:

- (i) No observation time and to issue an instant Penalty Chare Notice (PCN) - this will not allow the CEO sufficient time to observe the activity, and to reasonably believe that the loading exemption doesn't apply. This could result in a number of PCN' s being issued incorrectly, resulting in an increased number of challenges which in turn will place additional pressure on current resources in the Parking Services Notice Processing Team. This is not considered a suitable option.
- (ii) To retain the set observation period at 5 minutes – retaining the status quo where the Civil Enforcement Officers (CEO) will continue to observe vehicles for the set period and only issue a PCN once the 5 mins has lapsed which affords the driver time to remove their vehicle. There are a number of contraventions that take place across the district where people park their vehicle on yellow lines where they are not loading/unloading and abusing

them and causing a safety hazard. By not taking further action to consider reducing the observation period to below 5 minutes will mean that drivers will continue to repeat the contravention in the future and will not help address this ongoing issue. This leads to anti-social parking and increased social tension, this is a particular issue at this time with the increase in takeaway establishments as a result of the Pandemic

- (ii) To reduce the set observation period from 5 minutes to 2 minutes - this will enable more effective enforcement and to manage the continual abuse of inconsiderate and unlawful parking on yellow lines where loading and unloading is not taking place, other than where certain exemptions or situations may apply, which would be at the discretion of the CEO working within the statutory guidance. See section 8 below setting out the officer's rationale.

6. CONSULTATION (INCLUDING THE EFFECT ON STAKEHOLDERS, PARTNERS AND THE PUBLIC)

- 6.1 The Executive Member for Planning & Transport and deputy as well as other ward councillors have been informed and are supportive of the decision taken.

7. FORWARD PLAN

- 7.1 This decision is not a key Executive decision and has therefore not been referred to in the Forward Plan.

8. BACKGROUND/ RELEVANT CONSIDERATIONS

- 8.1 Both officers and members repeatedly receive complaints from local residents and some businesses where vehicles are being parked on Double and Single Yellow Lines that are not loading or unloading causing an obstruction, nuisance and safety hazard to other road users. This is particularly the case in areas outside take ways, newsagents and ATMs in the town centres and in local shopping areas. This is an ongoing issue and has been exasperated with the recent COVID pandemic restrictions where some local businesses have been afforded the opportunity such as cafés and restaurants to operate a takeaway service along with the normal take away trade. This is where drivers are abusing the current restrictions and take the risk of being issued with a PCN by continuing to park while the CEO observes.
- 8.2 Officers also receive on going complaints where vehicles are parked adjacent to a footway, cycle track or verge lowered to meet the carriageway (i.e. dropped kerbs).
- 8.3 Parking Enforcement is carried out in accordance with the Traffic Management Act 2004 and have regard to the Secretary of State's Statutory Guidance to Local Authorities on the Civil Enforcement of Parking Contraventions, issued in 2014. This Guidance states that enforcement authorities should design their parking policies with particular regard to:
- managing the traffic network to ensure expeditious movement of traffic, (including pedestrians and cyclists);
 - improving road safety;
 - improving the local environment;
 - improving the quality and accessibility of public transport;
 - meeting the needs of people with disabilities, some of whom will be unable to use public transport and depend entirely on the use of a car; and
 - managing and reconciling the competing demands for kerb space.

- 8.4 The Council has an adopted Parking Strategy (Jan 2019) where **Policy 1 - Management and resources** refers to the Council's committed to finding the most efficient and effective use of resources to implement improvements and manage the parking service on a day to day basis
- 8.5 In respect of on-street parking (public roads and streets) enforcement, the Council acts on behalf of Hertfordshire County Council (the Highway Authority) under the terms of an agency agreement between the two authorities¹. The enforcement of observation periods is a parking operation matter and does not require the agreement of HCC.
- 8.6 The Traffic Management Act does not specify observation periods. The definition given in the Operational Guidance states '*for some contraventions, it is necessary to observe the vehicle for a period of time to ascertain whether a contravention is taking place*' The Parking Practice Note PPN 23 on Observation and Grace Periods issued by the British Parking Association (BPA) dated 2008 sets out good practice for Local Authorities to follow. NHDC and other adjacent authorities in Hertfordshire tend to follow the BPA guidance.
- 8.7 The BPA in their guidance states that '*it is normal for an authority to set a specific time for continuous observation depending on the contravention type. Times can vary between instant and a set period of time say 5 minutes in the case of observing vehicles parking on Double Yellow Lines (DYLs) to see whether there is any sign of loading/unloading taking place.*'
- 8.8 The general approach adopted by most authorities including NHDC is a 5 minute observation period. This is based on case law and was essentially put forward as a reasonable period by a High Court Judge, who determined a longer period is likely to be subject to abuse and a shorter period does not provide sufficient time to determine if an exempt activity is taking place, which also may affect the ability to uphold or pursue a PCN. It is noted that other than where loading/unloading may be taking place there may be other exemptions or situations where a vehicle is parked on a DYL or SYL which can stretch over the set time. For example where picking up and setting down of a disabled person might be taking place, or where statutory vehicles, Health Emergency Badges or emergency vehicles may need to park. It will be for the CEO to observe the situation and carry out the necessary enforcement activity as appropriate.
- 8.9 Other Authorities in Hertfordshire such as East Hertfordshire, Welwyn Hatfield and St. Albans issue instant PCNs in areas where vehicles take advantage of the observation period, particularly in the high streets, offering shops like newsagents, bakers, and ATM machines where parking on yellow lines could be obstructive.
- 8.10 In light of the complaints received and following the above investigation regarding the current guidance and other Hertfordshire local authority practice, it is proposed to reduce the set observation period in North Hertfordshire from 5 minutes to 2 minutes for vehicles parked on yellow lines where loading/unloading is not taking place. This will not apply where certain exemptions are observed as set out in para 8.8 above.
- 8.11 This is an operational decision and will require an amendment to the Parking Services Office Procedure Manual regarding the issuing of PCNs relating to observation times for loading and unloading in accordance with certain criteria.
- 8.12 This 2 minute observation time will be applied across the district and will come into effect once the Parking Services Office Procedure Manual has been updated.

¹ Agreements with HCC include the Highway Agency Agreement dated 24 January 2002 and Parking and Traffic Order Agency Agreement dated 17 January 2005.

- 8.13 This operational change will be publicised on the Council's website and through the Council's social media channels. A copy of this report setting out this decision will also be placed in MIS.

9. LEGAL IMPLICATIONS

- 9.1. Paragraph 14.6.10 (b) (ii) of the Council's Constitution confirms that enforcement of on and off street parking orders is within the remit of the Service Director: Regulatory.
- 9.2. Observation times are not a legal requirement and are entirely at the discretion of the Council.
- 9.3. This update will not come into force until the Parking Services Office Procedure Manual has been updated in accordance with 8.11 above.

10. FINANCIAL IMPLICATIONS

- 10.1 This is an operational Decision and it is the requirement of the Strategic Infrastructure & Policy Manager to ensure that the service operates in accordance with the Council's financial regulations and Medium Term Financial Strategy. This decision will not impact on the financial aspects of the service. There may be an increase in the number of PCN issued and associated income initially but is expected to return to normal levels as the public become aware and adhere to the restrictions.

11. RISK IMPLICATIONS

- 11.1 The Parking Service" and "Implementation of Parking Strategy" are already identified as risks on the Council's Risk Register. Currently, officers have assessed "Implementation of the Parking Strategy" as a Medium risk in terms of both Impact and Likelihood.
- 11.2 The Parking Enforcement Manager will manage the Council's reputational risk by ensuring that the CEO Team operate within the requirements of the legislation and in accordance with the Parking Services Office Procedure Manual regarding the issuing of PCNs relating to observation times for parking on yellow lines.

12. EQUALITIES IMPLICATIONS

- 12.1 *In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.*
- 12.2 *There are no equalities implications associated with this decision.*

13. SOCIAL VALUE IMPLICATIONS

- 13.1 *The Social Value Act and "go local" policy do not apply to this decision.*

14. ENVIRONMENTAL IMPLICATIONS

- 14.1. There are no known Environmental impacts or requirements that apply to operational procedural decision in this report.

15. HUMAN RESOURCE IMPLICATIONS

15.1 This decision will not impact on the current staff resources within the Parking Enforcement Team, in fact it will enable more efficient use of CEO time in having to log a vehicles details and then return at a later stage before issuing a PCN if found to be in contravention.

16. BACKGROUND PAPERS

16.1 NHDC Parking Strategy - adopted January 2019

17. APPENDICES

17.1 None

NOTIFICATION DATE

Date sent to all Members, put on website and appears in MIS – Committee, Member & Scrutiny Services can confirm this with you,

Signature of Executive Member Consulted



Date 11/12/2020

Signature of Decision Taker



Please Note: that *unless urgency provisions apply* EXECUTIVE decisions cannot be implemented until 5 clear working days have elapsed after the decision has been taken to allow for scrutiny call-in.

Call-in does not apply to NON-EXECUTIVE DECISIONS