

<b>Item No.</b> 7.1	<b>Classification:</b> Open	<b>Date:</b> 28 November 2012	<b>Meeting Name:</b> Council Assembly
<b>Report title:</b>		Adoption of s 16 London Local Authorities and Transport for London Act 2003	
<b>Ward(s) or groups affected:</b>		All	
<b>From:</b>		Strategic Director of Environment and Leisure	

## RECOMMENDATIONS

That council assembly agrees:

1. to adopt Section 16 London Local Authorities and Transport for London Act 2003 ("the Act") to give effect to highway enforcement powers concerning vehicle crossings over footway and verges for the benefit of public safety (Appendix 1);
2. that the Appointed Day for implementation of the adopted legislation should be 1 April 2013 pursuant to section 3 of the (Act); and
3. that the resolution and associated public notices be published in accordance with section 3 of the Act.

## BACKGROUND INFORMATION

4. The matter of vehicles crossing the public footway or verges to access the frontages of premises, without having the correctly constructed vehicle cross over, has become a highway safety concern within the London Borough of Southwark.
5. Vehicles crossing the footway without the benefit of a duly constructed vehicle crossover can cause a safety hazard to pedestrians and vehicles as sight lines may be inadequate, pedestrians and other vehicle users will have no visual references to indicate that a vehicle may emerge from premises. The lack of a duly constructed crossover can also damage the public highway.
6. The Highway Authority has limited enforcement powers to address this issue under the current legislative powers contained within the Highways Act 1980, presenting a risk to pedestrians and vehicles. The lack of an effective enforcement provision has also created an additional financial cost to the council due to consequential repairs that must be undertaken by the authority as a result of vehicles accessing the frontages of premises in this manner.
7. The Act came into force in 2003 with the objective of providing increased enforcement powers to local authorities to deal with certain obstructions of the highway through the creation of fixed penalty notice powers for certain offences, and other traffic related provisions. The majority of the provisions of the Act came into effect from 1 January 2004. However, sections 4,5,7 and 16 were expressly excluded from the general commencement with provisions for local authorities to individually elect whether to implement the excluded sections

within their borough and determine the date that the provisions would become operative. In February 2006, the London Borough of Southwark adopted the London Local Authorities and Transport for London Act 2003. However, S.16 was not included in the report. An extract of Section 16 of the Act is attached at Appendix 1 of the report.

8. Section 16 of the Act grants additional enforcement powers to the Highway Authority and will provide more robust enforcement provisions to safeguard the protection of our highway and highway users. These powers ultimately provide for the prosecution of an occupier, who takes or allows someone else to take a motor vehicle across a verge or footway where no vehicle crossing (crossover) has been constructed, following the service of a notice seeking cessation of this activity, the ability to take physical steps to prevent this action continuing. An occupier can be charged for such works by the council.
9. The council now wishes to implement the use of the enhanced enforcement provision provided by Section 16 of the Act as set out in the recommendation. This provision cannot be implemented until it has been adopted by a resolution of the council and a date for the commencement of the provisions has been published. The date of implementation can not be less than 3 months from the date of publication of the passing of the resolution.
10. The adoption of this legislation would ensure that more effective enforcement action can be undertaken by the council in respect of vehicles crossing the footway or verge, reducing the risks to residents and other road users by allowing preventative action and reducing incidents of damage to our highways. The report therefore seeks council assembly's approval of the recommendation.

## **KEY ISSUES FOR CONSIDERATION**

### **Current powers**

11. The Highways Act 1980 (S.184) empowers the local authority to take action against occupiers of any premises who habitually takes or permits to be taken, a mechanically propelled vehicle across a kerbed footway or a verge in the public highway to or from their premises. The Act allows the local authority to either execute such works for the construction of a vehicle crossing over the footway or verge or impose such reasonable conditions on the use of the footway or verge as a crossing following the service of a notice.
12. The costs of works can be recharged to the occupier or a fine not exceeding £1000 can be imposed by the court for breaching any of the reasonable conditions imposed. However the Act does not allow for the local authority to undertake any preventative works to physically stop any vehicles using the footway or verge.

### **New enhanced powers**

13. Section 16 of the Act introduced expanded powers with regard to the cessation of taking of vehicles across the kerbed footway or verge. It makes provision for the service of a notice which allows for the execution of works by the local authority to prevent vehicles being taken across the footway or verge through for example the erection of bollards or other physical works. In many cases prevention of use of the footway or verge would be the preferred option because the likelihood of damage to the asset is increased and provision can be made

free of charge for a dedicated disabled bay for most residents who have genuine access needs. The council now has access to the exercise of these provisions. Any works undertaken to prevent the use of a kerbed footway or verge under s16 would be recharged to the occupier of the property/premises that is being accessed via the particular kerbed footway or verge.

14. This differs from a notice served under the Highways Act in that the council will have powers to prevent particular land being accessed by way of the kerbed footway or verge, which may be the preferred option in many instances, rather than incur the delay and financial cost of commencing legal proceedings. The cost of the works will also be able to be recharged to the occupier.
15. In the event that the council undertakes works to prevent the use of a crossover being accessed by way of a footway or verge following the service of a notice under Section 16 of the Act, Section 16(12) of the Act makes it a punishable offence liable to maximum fine up to £1,000 to:
  - a. knowingly use a footway or verge as a crossing in contravention of a notice;
  - b. knowingly permits it to be so used; or
  - c. remove, damage, alter or deface any prevention works executed without reasonable excuse
16. The service of a notice under this provision is classed as enforcement action and therefore the decision to serve the notice and any subsequent enforcement action taken as a consequence of non-compliance will be undertaken in accordance with the council's enforcement policy. The enforcement policy provides that the council's approach to enforcement is to be founded on the key principals of fairness and proportional response to encourage compliance set out in the government's Enforcement Concordat 1998.
17. In addition to the overarching principals set out in the enforcement concordat a more detailed policy document is currently being developed in regards to the management of the road network and public space. This is part of the council's response to the Network Management Duty 2005 which sets out the requirement for the council that the network is safe and clear of obstructions and that all occupation and works are coordinated to minimise disruption. This policy is due to be adopted following internal consultation in December 2012.
18. For the reasons set out above in the report, it is considered that the adoption of s16 of the Act will ensure that more effective enforcement can take place, preventing damage to the highway and the reduction in the safety risk to other highway users.
19. It should be noted that any vehicle constructed or adapted for use for the carriage of a person, suffering from some physical defect or disability, such as mobility scooters, are excluded from enforcement action under s16 of the Act.

### **Community impact statement**

20. Adoption of the Section 16 powers will result in an enhanced and better managed streetscape. It will improve safety for pedestrians both from the illegal vehicle movements and from the damage that is caused by them.
21. These powers do not represent a change in approach in terms of the scope of enforcement. They are simply a change to the process that would be used to

achieve the required result. As such there is no change to current impact on the community from adoption of these powers.

### **Staffing/procurement implications**

22. Enforcement of the legislation will be carried out from within current resources. Any costs incurred through enforcement of the notice can be recharged to the occupier/owner of the premises.

### **Consultation**

23. Consultation has taken place with internal partners including highways, finance, asset management, planning enforcement, arboriculture, major projects team, and environmental health and trading. No issues have been identified in terms of operational delivery or conflicts with other council policies and adoption of these powers does not negatively impact on the use of any other legislative powers in use by other teams.

### **Equalities and diversity**

24. The implementation of s16 of the Act will impact upon those persons who are crossing the footway or verge where no legitimate vehicle crossing is present.
25. This may impact financially upon persons who are from low income households or persons with disabilities without necessary parking facilities available close to their residence. However, residents with a genuine need to access their vehicle for reasons of disability can apply to the council and will be provided a dedicated disabled parking bay at their premises at no cost. There are no specific negative impacts for this characteristic. A positive impact may be a reduction in obstructions / access issues on the highway for older residents who have mobility problems. This is a universal service / policy with no differentiated delivery. It will be enforceable within the borough wherever a contravention is detected.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Director of Legal Services**

26. This report recommends that the council assembly agrees to the adoption of Section 16 of the Act to give effect to highway enforcement powers concerning vehicle crossings over footway and verges for the benefit of public safety (Appendix 1), that the appointed day for implementation of the adopted legislation be 1 April 2013 and that the resolution and associated public notices be published in accordance with section 3 of the Act.
27. Paragraph 9 of the report correctly advises that a full council resolution of the council is required in order give effect to the provisions of s16 of the Act. Following a resolution to agree the recommendation, the council will be required to publish a notice of the resolution in a local newspaper circulating in the London Borough of Southwark and in the London Gazette.
28. Part 3A of the Southwark Constitution 2012/2013, paragraph 18 states that the 'making, amending, revoking, re-enacting or adopting byelaws and promoting or opposing the making of local legislation or personal bills' is reserved to council

assembly for decision. Paragraph 22 also reserves 'all other matters which, by law, must be reserved to council assembly to council assembly'.

29. Section 3(a) of the Act provides that the appointed day for the implementation of the Section 16 of the Act has to be set, in relation to a borough, by resolution of the borough council. Council assembly therefore has authority to approve the recommendation.
30. As advised in the report, Section 16 of the Act will provide the council with enhanced enforcement powers to prevent an occupier of premises from habitually taking, or permitting a mechanically propelled vehicle to be taken, across a kerbed footway or a verge in the highway for the purpose of accessing their properties. This provision will apply in circumstances where an approved highway crossover is not in existence.
31. Paragraphs 11 -15 of the report set out a comparison between the current enforcement position and an explanation of the enhanced benefits that the s16 of the Act will provide.
32. The highway authority has a statutory duty to maintain the public highway in accordance with Section 41 of the Highways Act 1980 and could therefore be held liable for any harm or damage caused to pedestrians, vehicles or private property in circumstances where no action is taken to address safety concerns.
33. Section 16 (1) of the Act enables the council to serve a notice on the occupier of the premises requesting the cessation of the taking or permitting to be taken, mechanically propelled vehicles, across the kerbed footway or verge. In accordance with Section 16(3) the council must have regard to the following matters in determining whether to issue a notice:
  - The need to prevent damage to a footway or verge
  - The need to ensure safe access to and egress from premises (so far as practicable)
  - The need to facilitate passage of vehicular traffic in and parking of vehicles on the highway (so far as practicable)
  - The need to prevent obstruction of the highway or verge.
34. A notice served by the council pursuant to s16 of the Act must provide the occupier with 28 days notice before it comes into effect. Section 16(5) provides the occupier with an opportunity to object to the notice in writing and request the council to withdraw the notice. The council must determine this objection within 21 days of receipt and confirm if the notice will be withdrawn or maintained. In the event that the council determines not to withdraw the notice, the occupier may appeal to the county court within 28 days of receipt of the council's objection response.
35. Section 16(7) sets out the grounds of objection that may be relied upon by the occupier. On appeal to the county court under Section 12(8) the court shall make such order as it thinks fit.
36. Section 16 (9) provides that a notice will become effective in circumstances where, no objection or appeal is served prior to the expiry of the respective periods, or where an appeal is unsuccessful on the date on which the order of the court is made.

37. Upon a notice, served under Section 16, becoming effective the council may carry out works to prevent vehicles from crossing the highway or verge. The Act creates three specific criminal offences, punishable by fine, relating to contravention of the notice or interference with any works that the council may undertake as set out in paragraph 15 of the report.
38. Section 16 (2) (a-c) of the Act provides that a notice issued by the council cannot prohibit an occupier from enjoying the benefit of a planning permission (made at least 8 weeks prior to Section 16 becoming operative), works covered by a certificate of lawfulness under Section 191 or 192 of the Town and Country Planning Act 1990, or any permitted development under the Town and Country Planning (General Permitted Development) Order 1995.
39. The adoption of this statutory provision will provide the council with robust enforcement powers to reduce the risk to pedestrians and other users of the highway through the use of preventative measures and the incidents of damage to the public highway. Before making a resolution to appoint a day for commencement of Section 16 of the Act, the council must have due regard to the Public Sector Equality Duty (PSED) in accordance with s149 Equality Act 2010.
40. This duty requires public authorities to consider the aims of the general equality duty to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not to take prejudice and promote understanding when making decisions and setting policies. The protected characteristics specified under the Equality Act are age, disability, gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation.
41. In discharging the PSED duty , the council must have regard, in particular, to the need to:
  - (a) Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
  - (b) Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
  - (c) Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
42. Although targeted enforcement action may in some circumstances fall disproportionately heavily upon groups with protected characteristics, paragraphs 24-26 of the report confirms that there has been compliance with this duty. This is evidenced by the equalities analysis undertaken to measure of the potential impacts of enforcement under Section 16 of the Act. This analysis is used to provide the council with insight and understanding the effects of decisions on different groups. It also is used to assist the council in identifying if there are any unintended consequences for some groups in the implementation of a particular decision.
43. The equality analysis identifies that the adoption of the Act may have some impact upon the, disabled and individuals on low incomes. However, these

impacts are either considered to be low or impacts that can be addressed through the implementation of mitigating measures. It therefore satisfies the council's legal requirements enshrined in the council's approach to equality: delivering a fairer future for all.

44. The enhanced enforcement powers that will be available to the council following the adoption of Section 17 engage certain human rights under the Human Rights Act 2008 ("the HRA"). The HRA prohibits unlawful interference by public bodies with conventions rights. The term 'engage' simply means that human rights may be affected or relevant. In this instance the following rights are potentially engaged:
  - a. **The right to a fair trial (Article 6)** – giving rise to the need to ensure proper consultation and effective engagement of the public in the process
  - b. **Article 1, Protocol 1 (Protection of Property)** – this raises the potential for interference with individuals' right to peaceful enjoyment of existing homes upon adoption of the s16 of the Act.
45. It is important to note that not all rights operate in the same way. There are very few rights that are absolute and cannot be interfered with under any circumstances. Other 'qualified' rights, including the aforementioned Article 6, and Protocol 1 rights, can be interfered with or limited in certain circumstances. The extent of legitimate interference is subject to the principle of proportionality whereby a balance must be struck between the legitimate aims to be achieved by the council in making a decision such as improving highway safety potential interference with individual human rights. Public bodies have a wide margin of appreciation in striking a fair balance between competing rights in making these decision
46. Therefore providing that the council, its members and officers understand human rights considerations and throughout the decision making process take them into proper account by striving to strike a balance between competing rights, no unlawful interference should be caused. Although the adoption of s16 of the Act will create three specific criminal offences, punishable by fine, relating to contravention of the notice or interference with any works that the Council may undertake, Section 16(3) of the Act sets out the criteria which the Council must have regard to in determining whether to issue a notice.
47. Any individual served with a notice is entitled to formally object to the service and request that the notice be withdrawn under Sections 16(5) and 16 (7). In the event that the notice is not withdrawn an individual has the statutory right to appeal to the county court, within the specified time limits. The adoption of s16 of the Act will also have the legitimate aim of improving highway safety and should not cause interference with Article 6 and Protocol 1 rights.

#### **Strategic Director of Finance and Corporate Services (NR/FCS/29/9/12)**

48. This report recommends that the council assembly agrees to the adoption of Section 16 for the London Local Authorities and Transport for London Act 2003.
49. The strategic director notes the resource implications contained within the report.

## BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Network Management Policy 2010	160 Tooley Street, London SE1 2QH	Nicky Costin 020 7525 2156
Equality Analysis	160 Tooley Street, London SE1 2QH	Nicky Costin 020 7525 2156

## APPENDICES

No.	Title
1	(Extract) London Local Authorities and Transport for London Act 2003: Section 16 Vehicle crossings over footways and verges

## AUDIT TRAIL

<b>Lead Officer</b>	Des Waters, Head of Public Realm	
<b>Report Author</b>	Nick Costin, Road Network, Parking & Marina Manager	
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<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
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Director of Legal Services	Yes	Yes
Strategic Director of Finance and Corporate Services	Yes	Yes
<b>Cabinet Member</b>	No	No
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