

	<h2>Environment Committee</h2> <h3>15 March 2017</h3>
<p style="text-align: right;">Title</p>	<p>Adoption of Section 16 of London Local Authorities and Transport for London Act 2003</p>
<p>Report of</p>	<p>Commissioning Director for Environment</p>
<p>Wards</p>	<p>All</p>
<p>Status</p>	<p>Public</p>
<p>Urgent</p>	<p>No</p>
<p>Key</p>	<p>No</p>
<p>Enclosures</p>	<p>None</p>
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<h2>Summary</h2>
<p>This report seeks approval to recommend to Full Council that the Council should adopt Section 16 of the London Local Authorities and Transport for London Act 2003 (“the Act”) so as to give effect to highway enforcement powers concerning unauthorised vehicle crossings over footway and verges for the benefit of public safety</p>

<h2>Recommendations</h2>
<p>1. That the Environment Committee approve:</p> <ol style="list-style-type: none"> 1. To Recommend to Full Council that the Council should adopt Section 16 of the London Local Authorities and Transport for London Act 2003 (“the Act”) so as to give effect to highway enforcement powers concerning unauthorised vehicle crossings over footway and verges for the benefit of public safety;

2. To Recommend to Full Council that the Council fixes a day on which Section 16 of the London Local Authorities and Transport for London Act 2003 will come into operation. The Appointed Day for implementation of the adopted legislation should be 10th July 2017 pursuant to Section 3 of the (Act); and that the resolution and associated public notices be published in accordance with Section 3 of the Act.

1. WHY THIS REPORT IS NEEDED

1.1 The report outlines enhanced enforcement powers available to the Council as Highway Authority under Section 16 of the London Local Authorities and Transport for London Act 2003, concerning unauthorised vehicle crossovers and vehicles driving over the footway or verge. These enhanced enforcement powers are an addition to existing powers contained in Section 184 of the Highways Act 1980. In Barnet, there are number of instances whereby unauthorised crossing of the footway is taking place without having made the necessary arrangements to have the kerb dropped. This unauthorised use also presents problems with regards to potential damage to the footway and verge including any underground services placed beneath the highway, as well as creating risk to pedestrians and other road users. The proposals within this report, if adopted by the Council, will enable the Council to take action against drivers who habitually drive across footways without proper arrangements being made.

1.2 BACKGROUND

1.2.1 Section 16 of the London Local Authorities and Transport for London Act 2003 grants additional enforcement powers to the Highway Authority to serve a notice on 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 and requiring them to cease this activity. If they do not comply with the notice, this section allows the Authority to take preventative steps to stop it being possible to take a vehicle across the footway (e.g. erect bollards) and to charge the owner or occupier of the premises for the works.

1.2.2 In order for this part of the legislation to be used by the London Borough of Barnet it is necessary for a resolution to be passed by Full Council and for a date to be published for implementation. The date of implementation can not be less than 3 months from the date of publication of the passing of such a resolution.

1.2.3 Most provisions of the London Local Authorities and Transport for London Act

2003 came into effect from 1st January 2004. Sections 4, 5, 7 and 16 of the Act were expressly excluded from the general commencement and, instead, provision was made for local authorities to determine individually whether the sections should come into effect in their areas and, if so, to fix the date or dates on which the sections would come into operation.

- 1.2.4 The current legislative powers under the Highways Act 1980 are limited with regard to enforcement provision and the expanded powers under the London Local Authorities and Transport for London Act 2003 will allow more robust enforcement and ensure the protection of our highways and highway users. 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. This part of the legislation cannot be used until a resolution has been passed by the Council.
- 1.2.5 Section 3 of the Act allows each authority to introduce the sections of the Act specified in Section 1 of the Act on different dates, subject to the necessary notification and publication requirement. The 'appointed day' has to be set by a resolution of the Full Council and the making of the resolution and the day chosen have to be advertised in the London Gazette and in a local newspaper with a gap of at least 3 months between publication and the day itself.
- 1.2.6 The current powers under the Highways Act 1980 (S.184) empowers the local authority to serve notice upon the occupier of any premises adjoining or having access to a highway maintainable at the public expense who habitually takes or permits to be taken a mechanically propelled vehicle across a kerbed footway or a verge in the highway to or from those premises. The notice allows the local authority to either execute such works for the construction of a vehicle crossing over the footway or verge as may be specified in the notice or impose such reasonable conditions on the use of the footway or verge as a crossing as may be so specified. 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.
- 1.2.7 The additional powers under the London Local Authorities and Transport for London Act 2003 (S.16) if introduced will expand powers with regard to the cessation of taking or permitting to be taken mechanically propelled vehicles across the kerbed footway or verge. The notice that can be served under this legislation allows for the execution of works by the local authority to prevent such vehicles being taken across the footway or verge. 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 damages to the asset is reduced.
- 1.2.8 This differs from the Highways Act notice with regard to the preventative measures, which in many cases would be the preferred option, but all works

are still able to be recharged to the occupier without the need to take the matter to court.

1.2.9 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 prompt an expectation that a vehicle may emerge from the premises and it can also damage to the public highway. This damage also results in risk to pedestrians and vehicles and is an additional cost burden on residents of the Borough as it has to be repaired.

1.2.10 Under Section 41 of the Highways Act 1980 the Highway Authority has a duty to maintain the highway. If the Council is aware of vehicles crossing the footway without a duly constructed vehicle crossover and an accident occurs to someone due to damage caused by such action, then the Council could be deemed at least partially liable if it had not acted.

1.2.11 The adoption of this legislation would ensure that more effective enforcement can take place regarding vehicles crossing the footway or verge, the reducing risk to residents and other road users by allowing preventative action and reducing incidents of damage to our highways. It is therefore proposed that the London Local Authorities and Transport for London Act 2003 (S.16) be resolved to be adopted.

2. REASONS FOR RECOMMENDATION

2.1.1 Amending the current policy is necessary in order to mitigate all future maintenance liabilities to the Council as a result of vehicles driving over the footway without authorised vehicle crossovers. The enhanced enforcement powers are an addition to existing powers contained in section 184 of the Highways Act 1980. Adoption of the Section 16 powers will result in an enhanced and better managed streetscape. It will improve safety for pedestrians both from illegal vehicle movements and from the damage that is caused by them. The powers 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.

3 ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDATION

3.1 If the policy is not adopted then the majority of all on-going maintenance costs will need to be met from the Council's resource which is not ideal due to on-going budget constraints. The proposal is to adopt Section 16 of the London Local Authorities and Transport for London Act 2003 to enhance the Council's enforcement options in relation to habitual crossings across kerbed footways or verges to access the highway. The alternative is to do nothing and continue to use the powers and penalties under the Highways Act 1980. If the Highways Act notice is ignored, this gives the Council powers to install a vehicle crossover and recover its costs, either by taking the resident to Court or putting a land charge against the property. The downside to this course of action is that it can tie up a significant amount of Council resources, either in

terms of money or officer time and if the matter is putting pedestrians or other highway users at risk the delays may be put lives at risk. Section 16 offers the opportunity to issue a notice requiring the crossings to cease and to back that up with prosecution.

4 POST DECISION IMPLEMENTATION

- 4.1 If the Committee is so minded to approve the recommendations set out in this report, arrangements will be made to report to Full Council and implement the adoption of additional enforcement powers under Section 16 of the London Local Authorities and Transport for London Act 2003.

5 IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1 The Corporate Plan 2015 – 2020 is based on the core principles of fairness, responsibility and opportunity to make sure Barnet is a place:

- Of opportunity, where people can further their quality of life
- Where people are helped to help themselves, recognising that prevention is better than cure
- Where responsibility is shared fairly
- Where services are delivered efficiently to get value for money for the tax payer

- 5.1.2 Manage demand for services through efficiency savings and delivering services differently (“Fairness” principle)

- 5.1.3 Driving out inefficiencies to deliver more with less (“Responsibility” principle)

- 5.1.4 The adoption of Section 16 of London Local Authorities and Transport for London Act 2003 across the borough will assist with making the highway safer by providing additional enforcement powers to take action against unauthorised vehicle crossings in the borough.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

- 5.2.1 **Benefits** – The new enforcement power would have benefits including:

- Reduced risk to residents and road users (see paragraph 1.2.11)
- Mitigate future maintenance liabilities for managed budgets (see paragraph 2.1.1). The adoption has a lead in time and this maintenance cost savings has not currently been estimated, though it is viewed as not insubstantial.

- 5.2.2 **Costs of Enforcement** – If adopted, the enforcement power will incur costs within the Highways Service. These costs are outside the scope of the current core contract with Regional Enterprise Limited. The adoption has a lead in

time, and therefore the proposal is being brought before the Committee in advance of full resolution of the cost issue. Officers would agree the appropriate method of funding these costs within existing budgets.

5.2.3 Costs of Prevention - If prevention of use activity is undertaken then any additional costs to the service in erecting the barriers will be fully recharged to the owner or occupier and that income is netted off against costs. There is a risk of non-payment of any recharged works and in this event there will be an additional cost to the Council in writing off any unpaid debts. The service will look to minimize this risk by:

- A robust system of recharging and payment reconciliation in place
- Legal processes to reclaim the monies owed, including the securing of debts as a charge to the property.

5.3 Social Value

5.3.1 Not applicable as this report does not relate to the procurement of services. 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. 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. It will be enforceable within the borough wherever a contravention is detected.

5.4 Legal and Constitutional References

5.4.1 Article 15A of the Constitution (responsibility for Functions, June 2016) empowers the Environment Committee to consider for approval of policy for those areas under the remit of the Committee.

5.4.2 The report correctly identifies the need for a council resolution in order for Section 16 of the London Local Authorities and Transport for London Act 2003 ("**the Act**") to come into effect. Following such resolution, the Council must cause a notice of the resolution to be published in a local newspaper circulating in Barnet and in the London Gazette, specifying the day fixed as the day on which the resolution will take effect. The commencement day must not be earlier than three months from publication of the notice

5.4.3 When in operation, Section 16 of the 2003 Act will enable the Council to take action 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 to or from the premises. The Section 16 power will apply in circumstances where the Council has not, as highway authority, constructed a vehicle crossing for the premises or served a notice under Section 184 of the Highways Act 1980

5.4.4 Section 16 of the 2003 Act permits the Council to serve a notice on the occupier of the premises to cease taking or permitting mechanically propelled

vehicles to be taken across the kerbed footway or verge. Before issuing a notice, the council must have regard to specified matters, namely –

- 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.

5.4.5 A notice served by the Council under Section 16 of the 2003 Act must give at least 28 days before it takes effect. The occupier has two opportunities to challenge a notice. First, the occupier may object in writing to the notice and the Council is required to consider whether it will maintain or withdraw the notice. Secondly, if the Council does not withdraw the notice, the occupier may appeal against the notice to the county court.

5.4.6 If a Section 16 notice takes effect, then two consequences follow. First, the Council may carry out works to prevent vehicles crossing the highway or verge. Secondly, the Act imposes criminal sanctions relating to contravention of the notice or interference with the Council's works. Section 16 of the 2003 Act creates three specific offences –

- Knowingly permitting a footway or verge to be used as a crossing in contravention of a notice served under Section 16.
- Knowingly using a footway or verge as a crossing in contravention of a notice served under Section 16.
- Removing, damaging, altering or defacing works executed by the Council, following a notice becoming effective, to prevent mechanically propelled vehicles from crossing (without reasonable excuse).

5.4.7 The Council may take criminal proceedings against not only the recipient of the Notice but also the driver of a mechanically propelled vehicle or a person who interferes with works.

5.4.8 As the service of a Section 16 notice is classed as enforcement action, then the decision to serve the Notice and any subsequent action taken in breach of the Notice should be undertaken in accordance with the Council's Enforcement Policy.

5.4.9 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.

5.4.10 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.

5.4.11 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.

5.4.12 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.

5.5 Risk Management

5.5.1 The risks of damage to the highway, accidents and associated financial costs may be reduced if the Council is able to take effective action against crossings of kerbed footways and verges. By utilising the full powers contained in Section 16 of the London Local Authorities and Transport for London Act 2003, the Council will increase its options for taking action.

5.5.2 The adoption of Section 16 of the London Local Authorities and Transport for London Act 2003 will allow the Council more options for enforcement. Potential offenders should be discouraged by the fines that can be handed down by a magistrate under the London Local Authorities and Transport for London Act.

5.5.3 Those that persist on breaking the law can be prevented from doing so through the ability to put in preventative measures.

5.6 Equalities and Diversity

5.6.1 Street design should be inclusive, providing for all people regardless of age or ability. There is a general duty for public authorities to promote equality under the 2010 Equality Act. There is also a specific obligation for those who design, manage and maintain buildings and public spaces to ensure that disabled people play a full part in benefiting from, and shaping, an inclusive built environment.

5.6.2 The 2010 Equality Act outlines the provisions of the Public Sector Equalities Duty which requires Public Bodies to have due regard to the need to:

1. eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010

2. advance equality of opportunity between people from different groups
3. foster good relations between people from different groups

5.6.3 The broad purpose of this duty is to integrate considerations of equality into day to day business and keep them under review in decision making, the design of policies and the delivery of services. As part of the consultation development a separate stakeholder management plan is being developed to ensure that equalities issues are incorporated into the policy development, consultation and implementation.

5.7 Consultation and Engagement

5.7.1 If the Environment Committee is minded to approve the recommendations, then any proposal to implement will be consulted upon as required by the Act. The proposal to implement the Section 16 powers responds to concerns expressed about residents crossing the footway without having made the necessary arrangements to have the kerb dropped. Implementation of the powers is an administrative process and does not require prior consultation to take place. However, the Council is required to publish a notice of its decision in a local newspaper and in the London Gazette, specifying the day fixed as the 'appointed day' on which the resolution will take effect.

6 BACKGROUND PAPERS

6.1 None