

ASSEMBLY

5 December 2012

Title: Adoption of Regulatory Provisions to Enforce the Unauthorised Crossing of Kerbed Footways and Verges	
Report of the Corporate Director of Housing and Environment	
Open Report	For Decision
Wards Affected: All	Key Decision: Yes
Report Author: Kath Stent, Interim Group Manager, Environmental Health & Trading Standards	Contact Details: Tel: 020 8227 3994 E-mail: kath.stent@lbdd.gov.uk
Accountable Divisional Director: Robin Payne, Divisional Director of Environment	
Accountable Director:	Darren Henaghan, Corporate Director of Housing and Environment
Summary: The report outlines enhanced powers available to the Council as Highway Authority under section 16 of the London Local Authorities and Transport for London Act 2003, concerning vehicles driving over the footway. These enhanced enforcement powers are an addition to existing powers contained in section 184 of the Highways Act 1980. Residents have regularly expressed their concern about neighbours crossing the footway without having made the necessary arrangements to have the kerb dropped. This unauthorised use also presents problems of potential damage to paving and any underground services, as well as creating risk to pedestrians and other road users. The proposals within this report, if adopted by the Assembly, will enable the Council to take action against drivers who habitually drive across footways without proper arrangements being made.	
Recommendation(s) The Assembly is recommended to resolve: (i) that the Council adopts the powers available under Section 16 of the London Local Authorities and Transport for London Act 2003 in respect of the enforcement of unauthorised crossing by vehicles over kerbed footways or verges; and (ii) that 17 March 2013 is the 'appointed day' on which these powers will come into effect.	
Reason(s) To enable the adoptive provisions of the London Local Authorities and Transport for London Act 2003 to be implemented providing necessary enhancements to existing enforcement powers in relation to Vehicle Crossings over footways and verges to the benefit of public safety.	

1. Introduction and Background

- 1.1 Section 16 of the London Local Authorities and Transport for London Act 2003 grants additional power 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 stop doing it. Ultimately, if they do not comply with the notice, this section allows the Authority to take 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 In order for this part of the legislation to be used it is necessary for a resolution to be passed by the Assembly and for a date to be published for implementation. The date of implementation cannot be less than three months from the date of publication of the passing of such a resolution.
- 1.3 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.
- 1.4 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 Assembly 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 three months between publication and the day itself.

2. Proposal and Issues

- 2.1 Residents tell us that they are concerned about neighbours crossing the footway without having made the necessary arrangements to have the kerb dropped. This also presents problems of potential damage to both paving and any underground services as well as creating risk to pedestrians and other road users.
- 2.2 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.
- 2.3 The complementary powers provided by Section 16 of the London Local Authorities and Transport for London Act 2003 and the Highways Act 1980 are summarised in **Appendix 1**.

3. Options Appraisal

- 3.1 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.

- 3.2 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. Consultation

- 4.1 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.
- 4.2 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.

5. Financial Implications

Implications completed by: Jo Moore, Finance Group Manager

- 5.1 This report is seeking to adopt new powers made available under the London Local Authorities & Transport for London Act 2003. The Council has already adopted the Highways Act 1980 powers. As detailed in the table below these new powers allow the Council to either prosecute the owner or occupier (maximum £1,000 fine) or to take preventative action by installing bollards to prevent access.
- 5.2 The enforcement activity and prosecution will be undertaken by the Council's existing teams (including legal) and therefore costs will be contained within existing budgets. Any income from fines will be used to meet the Council's existing enforcement income budget of £142k which covers all aspects of non-compliance of environmental legislation and not just this particular contravention.
- 5.3 If the prevention activity is undertaken then any additional costs to the service in erecting the barriers will be fully recharged to the owner or occupier. 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 unless the debt can be secured by way of charge to the property concerned.

6. Legal Implications

Implications completed by: Paul Feild, Corporate Governance Solicitor

- 6.1 The Council took part in the promotion of the London Local Authorities and Transport for London Act 2003 ("the 2003 Act") in 2002/3. However some of the measures require a specific resolution to come into effect, including Section 16. Such a resolution needs to be taken by a full Council, ie the Assembly. Following the resolution, the Council is required to publish a notice of the resolution in a local

newspaper 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.

- 6.2 Once effective Section 16 will enable the Council to take action to prevent an occupier from habitually taking or permitting a vehicle to be taken across a kerbed footway or a verge in the highway to or from their premises.
- 6.3 Section 16 enables the Council to serve a notice on the occupier of the premises to cease taking or permitting mechanically propelled vehicles across the kerbed footway or verge. Before issuing a notice, the Council must have regard to specified matters, that is:
- 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.
- 6.4 The notice 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.
- 6.5 Once the 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. The measure 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).
- 6.6 The Council may take criminal proceedings against not only the recipient of the Notice but also the driver of a vehicle or a person who interferes with works.

7. Other Implications

- 7.1 **Customer Impact** - There are no impacts relating to race, gender, sexuality, faith, age, disability or community cohesion. Compliance and /or non compliance with legislation will involve costs to owners and/or occupiers.
- 7.2 **Property / Asset Issues** - Adoption of Section 16 of the London Local Authorities and Transport for London Act 2003 will support the prevention of damage to Council owned assets.

Background Papers Used in the Preparation of the Report:

London Local Authorities and Transport for London Act 2003
Highways Act 1980

List of appendices:

- **Appendix 1** - Summary and examples of applicable qualifying and disqualifying factors