

# Cabinet Report



Listening Learning Leading

Report of Head of Development and Corporate Landlord

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To: CABINET

Date: 11 August 2022

## New car park order 2022 – consultation results

### Recommendations

That cabinet:

- (a) agrees the making of a new 2022 car park order having considered the comments made during the consultation period
- (b) authorise the head of Legal and Democratic to make the new order and to determine the date it comes into effect
- (c) adopts the new Parking Policy as appended to this report in appendix C.
- (d) agrees to South Oxfordshire District Council joining PATROL (Parking and Traffic Regulations Outside London) Adjudication Joint Committee as a member
- (e) request the leader to appoint a Cabinet member to represent South Oxfordshire District Council on the PATROL Adjudication Joint Committee for the remainder of this council until May 2023;
- (f) request the leader to appoint a Cabinet member as the named substitute in respect of the appointment under (e) above.

### Purpose of Report

1. This report provides details of feedback received during the consultation period to enable cabinet to make new 2022 car park orders.

2. Officers request cabinet also agree a new Joint Managent Parking Policy (JMPP) required as part of Civil Parking Enforcement (CPE) legislation to provide transparency of how we provide the car parking service.
3. The leader is requested to appoint Cabinet members to the Parking and Traffic Regulations Outside London Adjudication Committee.

## **Corporate Objectives**

4. The provision and pricing of car parking supports the South's strategic objective theme: "Investment and innovation that rebuilds our financial viability".

## **Background**

5. In December 2020, South Oxfordshire District Council and Vale of White Horse District Council approved a joint Cabinet report for the introduction of Civil Parking Enforcement (CPE), agreeing to support an application by Oxfordshire County Council (OCC) to the Department for Transport (DfT) for the introduction of CPE across Oxfordshire.
6. This application for Oxfordshire was approved by the DfT and OCC began implementing CPE on street from 1 November 2021.
7. As part of the approval of this application we are required to change our off-street car parking orders to introduce and follow the requirements of the Traffic Management Act 2004 legislation that will be operating across Oxfordshire.
8. The Individual Cabinet Member Decision (ICMD) of 16 September 2021 agreed to prepare and publish new draft orders to include changes so we could operate our off-street car parks under CPE and to allow the head of Housing and Environment to oversee the statutory consultation. The ICMD also agreed the level of penalty charge notices (PCN).
9. Officers organised a Notice of Proposal highlighting the changes to the order to be published in the local newspaper, displayed in the car parks and published on the council website and on social media. This information was made available from 12 May to 6 June 2022.
10. The changes to the order are relatively minor such as the wording of a 'car park inspector' changing to a 'civil enforcement officer' and PCNs being issued for offences rather than excess charge notices.
11. The most important change is how we process the PCNs; how people dispute the issuing of the tickets and the ultimate outcome which is dealt with by a national adjudication service rather than in the magistrate's court.
12. In addition, as part of CPE we are required to prepare and publish a parking policy which includes details on how we process and deal with PCNs. Officers have drafted a joint South and Vale Car Park Management Policy attached as appendix C.
13. Cabinet is required to consider the outcome of the consultation and to agree the implementation of the joint Parking Policy.

14. PATROL represents over 300 local authorities in England and provides a governing body which includes an adjudication service where the recipient of a PCN can challenge the decision of a Council. The Council is required to be a member of PATROL and to nominate a Council member to participate in the committee meetings

## **Results of the consultation**

### **Statutory consultation on the draft car park 2022**

15. As required, we published a Notice of Proposal in the Oxford Times newspaper on 12 May 2022 and sent a draft order to the Oxfordshire County Council Highways (who must consent to the order) and other appropriate organisations, including the Police. Cabinet is required to consider any representations received before making the order.

16. The statutory consultees support the draft order and did not raise any comments or objections. OCC has given formal consent to the order.

17. Appendix A has a table of the comments received from statutory consultees.

### **Public feedback**

18. Officers have received one formal objection and two queries a) and b) below.

a) I would like clarification on the change to the no return.

Officers have replied to explain in the new order the no return has been extended from no return 'to the same car park' to 'no return to any car park in the same town'. This is to reduce the risk of users obtaining multiple 'free' tickets and avoiding paying for parking. Users are still allowed to extend their paid for parking by using the app or by 'phone up to the maximum stay period.

b) Parking in Wallingford for residents.

The resident complained it was difficult to work out what the changes were. They feel the parking charges make it impossible to live effectively in the town. The main concern is the lack of residents parking in Wallingford which is not included in the change to the order.

However, the residents goes on to raise specific items in the new Order they 'don't like' and these are listed in appendix 1B. There is a list of issues raised with the new order although the resident says they are unclear on what is being changed and suggests use of more plain English.

Subsequently the resident has raised a formal objection which is shown in appendix 2B.

19. Officers have replied to say that points 2,3,4,5,6,7,9,10,11,12 and 13 concern car park fees and charges which cabinet consider separately or are issues set out in legislation we cannot change and are not being considered as part of this consultation and the change to CPE.

20. In reply to points 1, the change to the no return has been included to reduce the risk of users obtaining multiple free tickets and is covered in 17 a) above.

21. In reply to point 8. which is about paying the fine and objecting, the car park policy clarifies that if someone wishes to challenge they should not pay the fine and the PCN is 'on hold' until a decision is made. If the council upholds the PCN the reduced rate is still offered.
22. Officers have told the complainant that the objections will be considered by cabinet as part of this report. Officers consider however this feedback does not impact on the making of the new order and request Cabinet agree to the making of the new orders with no changes.

## **Options**

23. As there are no substantiated objections to the draft orders the recommended option is to agree the orders with no amendments.
24. The alternative option is to not change the orders and continue operating using existing orders. Officers do not consider this a viable option as we will be unable to enforce parking rules within car parks.

## **Joint Management Parking Policy (JMPP)**

25. Officers have drafted a car parking policy as required by CPE legislation. The policy as attached at appendix C details how we provide the car parking service and the various associated elements.
26. The new policy incorporates existing policies such as the cancellation policy and pricing policy and once adopted will sit aside the new order. Once the new order is made and implemented, the parking policy will be published on the council website in an open and transparent way and so the public are aware of how we manage car parks.

## **Membership of PATROL**

27. We are required to appoint a member representative on the PATROL Committee. Although Oxfordshire County Council will carry out off street parking enforcement, South Oxfordshire District Council will become members of the Joint Committee and are entitled to a place on it. Appointees do have to be councillors but do not have to be members of the executive. The appointment would be for the life of the Council. Council is entitled to appoint one named substitute.
28. The PATROL Committee is the body that enables all local authorities with Orders to carry out civil enforcement of parking contraventions and to exercise their functions under the Traffic Management Act 2004 and the Civil Enforcement of Parking Contraventions (England) General Regulations 2007.
29. There is a statutory requirement for civil enforcement authorities to make provision for the independent adjudication of appeals against civil traffic penalties. This is exercised by the council joining the PATROL Adjudication Joint Committee which provides resources for the Traffic Penalty Tribunal.
30. The main function of the Joint Committee is to provide resources to support independent adjudicators and their staff who together comprise the Traffic Penalty Tribunal. The tribunal's appeal streams include:

- Parking
- Bus Lanes
- Road User Charging
- Littering from vehicles

31. PATROL also undertakes initiatives to support its member authorities and raise awareness of the objectives of civil enforcement.

32. Nominated members are committing to attend in person three committee meetings a year in Westminster, generally January, July and October.

### **Climate and ecological impact implications**

33. The new order includes an offence for 'engine idling' which will allow the enforcement of drivers who keep vehicles running.

34. The main benefit of CPE, for on street and off street parking, is to encourage the free flow of traffic around town centres, thus reducing pollution

### **Financial Implications**

35. Any council decision that has financial implications must be made with the knowledge of the council's overarching financial position. For South, the position reflected in the council's medium-term financial plan (MTFP) as reported to Full Council in February 2022 showed that the council is due to receive £2.1 million less in revenue funding than it plans to spend in 2022/23 (with the balance coming from reserves).

36. This funding gap is predicted to increase to over £3 million by 2026/27. As there remains no certainty on future local government funding, following the announcement of a one-year spending review by government, and as the long-term financial consequences of the Coronavirus pandemic remain unknown, this gap could increase further. Every financial decision made needs to be cognisant of the need to address this funding gap in future years.

37. The new offences under CPE provide for the issuing of PCNs at a higher level (more serious offences for example parking in a disabled bay without displaying a blue badge) and lower level (overstaying your time). As the current excess charge notices are all issued at the equivalent of the higher level, there may only be a loss of income from the lower level offence PCNs. This loss may be balanced by a new increased charge for the issue of a charge certificate and if that remains unpaid, there is a further increase if/when the case is registered at the traffic enforcement centre to allow for the collection of debt.

38. In addition for each PCN issued there is a cost of 30 pence which goes to PATROL (Parking and Traffic Regulations Outside London - the adjudication service) to administer the appeal system. This would be a cost of £631 per year based on the ECNs issued in 2021/22.

39. Total income from ECNs in 2021/22 was £49,540. Officers estimate the income from PCNs issued under CPE may reduce and future budgets may have to be amended in light of this when more accurate income rates become available.

40. In line with legislation, the car park account needs to be able to show how much we spend on car parks and identify any surplus income to be spent on highways and car park improvements.
41. Members of outside bodies are entitled to travel expenses. The cost of attending the PATROL committee costs would be met from existing democratic services budgets.

## **Legal Implications**

42. Under Regulation 14 of The Local Authorities' Traffic Order (Procedure)(England and Wales) Regulations 1996, we can modify an order, whether in consideration of any objections or otherwise, before an order is made. In doing so we must take appropriate steps to a) inform persons likely to be affected by the modifications; b) giving those persons an opportunity of making representations; and c) ensuring that any such representations are duly considered by the authority.
43. We are required to publish and promote our car parking orders so that people are aware of the changes and the new charge levels.
44. Officers placed adverts in local newspapers, put notices in all pay and display car parks and all legal documents were placed on the website. Communications highlighted the changes via social media.
45. Officers ask Cabinet to confirm that no changes to the draft order are required and so can go ahead with publishing a new order. Once signed and sealed, we will advertise the new approved order via a 'Notice of Making' in the local press and on our website. We will also place a copy of the 'Notice of Making' in each car park. We must reply to anyone who objected to the draft order to explain whether or not we have accepted their objection and the reason for our final decision.
46. Officers intend for the new order to come into force on 12 September 2022.

## **GDPR Implications**

47. Implementing CPE means there will be changes to how we manage personal data and we will also be using a different processing system. Officers will work on a Data Protection Impact Assessment (DPIA), update any changes within privacy notices and within the Councils Record of Processing Activities (ROPA).

## **Risks**

48. There is a legal duty to draft a new order and consult formally with statutory consultees like the Police and the Highways Authority and we have carried out this out. As the changes to the order are minor and only impact on those receiving a PCN, we have not carried out a district wide formal consultation with residents. Publication in the local newspapers on social media and in all the car parks reduces the risk that there is a legal challenge later on which could make the new order invalid.
49. An outline explanation of how we process the PCNs is explained on the back of the tickets issued and with an address of our website and parking policy. This reduces the risk of challenge from those who have received an ECN in the past and are not aware of the new process.

50. When operating car parks under CPE we are required to publish a parking policy which makes clear how we operate our car parks. A draft policy is attached at Appendix C. Cabinet is required to adopt the policy as we would be at risk of challenge to any PCNs issued without it.
51. The Council could decide not to make an appointment to the Joint Committee; however, we would not be able to enforce under CPE regulations.
52. There is a statutory requirement for civil enforcement authorities to make provision for independent adjudication for appeals against civil traffic penalties. PATROL has been established to enable local authorities undertaking civil parking enforcement to exercise their functions under Section 81 of the Traffic Management Act 2004 (TMA).

## **Conclusion**

53. Officers carried out a formal consultation with statutory bodies on changes to the car parking order as well as publishing information on relevant changes. We received no formal representations to warrant making any changes to the draft order and so ask Cabinet to consider the comments and agree for officers to carry out the making of a new 2022 order.
54. Officers request Cabinet approves the adoption of the draft car parking policy for publication.
55. Officers request Cabinet approves the membership to PATROL and the representatives put forward to join the committee.

## **Background papers**

None

## Appendix A

### Consultation with statutory consultees on South Oxfordshire District Council draft car parking Order 2022

| <u>Organisation</u>        | <u>Comment made</u>                      |
|----------------------------|--|
| Oxford Fire and Rescue     | No reply                                 |
| OCC Highways               | Replied to say no comments or objections |
| Thames Valley Police       | Replied to say no objection              |
| Southern Central Ambulance | No reply                                 |
| Thames Travel              | No reply                                 |
| NHS Trust                  | No reply                                 |
| Road Haulage Association   | No reply                                 |
| Logistics UK               | No reply                                 |



## Appendix 1B

Extract of email from resident specifically relating to the changes in the order

On reading the Order there are a few things I don't like

- It is not clear what has changed – thus I cannot determine if my views are because they are new powers/rules or that it has always been this way
- The document is very wordy and legalese – I would have difficulty working out what I have done wrong. Suggest plain English is used.
- There seems to be wide powers in here to change provision of charging for a bay – I think before any change is made (i.e. adding electric charging bays or disabled bays) consultation is done rather than the change being made without checking with your customers
- Item 7 – vehicle driven away prior to notice being served. My view is that the notice hasn't been served. You are reliant on the word of an individual. This isn't good enough.
- A reduced fee seems like a bribe – if I wanted to appeal I seem to lose the reduced fee. Thus, you are disadvantaging people who feel they have a right to appeal. You are making it harder on them.
- Electric charging bays can be used by others when the car park is full. Similarly for disabled bays. This could be done by a notice on the board that the inspectors/staff could change when times are busy.

## Appendix 2B

Extract from further email from same resident as in 1B

I would like to object to the Order on these points (amongst others in my previous email) - above

1. No return policy: this has been proposed to not allow moving to another car park in the same town. As it stands, as a resident, I now need to move my car each day for an hour. Thus, make an unnecessary journey. In my case move my car (possibly to a road with a single yellow line or no parking restrictions) and then back into the car park (when in a road with parking restrictions). An unnecessary journey does not help with **climate change** or assist those that live in a centre of the town and have little option but to use the car parks
2. With a change of fees in this order to allow parking of up to 10 hours of an additional 40p, the fees have been set at a too high level. They have been changed to balance the books of parking cost against income, although I think this is partially unclear of the benefits of parking to the town's income and using a 2020-2021 figure which is a misleading headline value during COVID and the inclusion of "**depreciation**" as a cost which is just an accounting fiddle (if you remove depreciation the car parks make money). As well as this you are assisting with the **inflation spiral** that used as a reason for controlling pay rises but by having double digit increases year or year is pushing costs to users up.
3. The extension of parking to 8am to 6pm makes managing overnight parking difficult with managing tickets. As an example, I might return home at 5pm from work (when I do commute) for which I can get a 1-hour ticket for fee. However, I would need to leave home by 8am the next morning – although I could go out and get another ticket at 8am (although in theory I might have needed to move my car). I would suggest that a solution that states that no fines are given out before 9am each morning.

4. The extension of parking to Sunday's now makes me feel very trapped at home. If I leave a parking place on a road with unrestricted parking and return and cannot find a space, then I am forced to pay for a space. As well as making multiple trips around the block looking for space. This puts a lot of pressure on residents.
5. Season tickets should be available without a waiting list up to 100% capacity of the car park. The number of season tickets issued should be published.
6. Season tickets for local residents that have no choice but to use a local car park should be made available which could provide a set number of days to residents to park when on-street parking is not available for a reasonable cost (e.g., a fee of £1 a day and allow up to 100 days parking)
7. Fines should be **proportionate** to the cost of parking – if you overstay a free hour (which represents a cost of £1.80) the fine should be of an order of £5 and if all day it should be maybe limited to £10. At £25/35 reduced fees these are not proportionate.
8. It should be clear to people that they can still pay the fine and get the reduced fee as well as objecting to a fine. This wasn't clear to me – I assumed if I paid the fine then I couldn't object.
9. If a fine has not been placed on the vehicle, then it has not been served. If a car drives away, then it has not been served.
10. The risks identified (number 44 and 45) in the supplementary papers for the Feb 2022 cabinet meeting has come to play. However, the risk has also impacted the local residents who used on-street parking finding less availability. This has implications outside just parking.
11. Review using a clear English service to make the rules clear rather than legalese. Maybe aim to get the rules recognised by aiming to get the Plain English Campaign Crystal Mark or something similar.
12. Future changes to an increase in fees to now require a new order – not just publication
13. Future changes to the use of bays to now require a new order – not just publication

## Appendix C

### Joint South and Vale joint management policy