

# Minutes

## Overview and Scrutiny Committee



1<sup>st</sup> October 2009

Councillors	Present	Councillors	Present
J. Baugh	Yes	A. M. Meyer	No
G. Cohen	Apologies	R. Ramage	Yes
M. Dunn	Yes	D. E. A. Rice	Apologies
Dr. R. L. Evans	Yes	A. F. Shelton	Apologies
M. Gage (Chairman)	Yes	Mrs. J. Smith	Yes
J. E. B. Gyford	Yes	F. Swallow	Apologies

The following witnesses were also in attendance for item 5 of the Agenda concerning the Scrutiny Hearing on pavement parking:-

Mr. R. Jameson, Highways Manager, Mid Area Highways Office, Essex County Council  
Mr. A. Playle, Traffic Management, Essex Police  
Sgt. Wilson, Witham Police  
Mr. R. Walker, Parking Services Manager, Parking Partnership  
Mr. P. Partridge, Head of Operations, BDC  
Mr. M. Galley, Street Care Manager

### 32. DECLARATIONS OF INTEREST

**INFORMATION:** There were no interests declared.

### 33. MINUTES

**DECISION:** That the minutes of the meeting of the Overview and Scrutiny Committee held on 16<sup>th</sup> September 2009 be approved as a correct record and signed by the Chairman.

### 34. QUESTION TIME

**INFORMATION:** There were no questions asked or statements made.

### 35. SCRUTINY HEARING – THE PROBLEMS CAUSED TO PEOPLE WITH DISABILITIES AS A RESULT OF VEHICLES PARKING ACROSS AND ON PAVEMENTS.

Cllr. Gage the Chairman welcomed the witnesses to the meeting.

He reminded the Committee that this was one of two disabled issues that Members had agreed to investigate this year, and drew attention to the Information Pack that had previously been circulated containing all the written responses that had been received

from Officers and Partners and other interested organisations and individuals as a result of the initial consultation exercise.

Pavement parking was seen as a particular problem for people with disabilities including those using wheelchairs or mobility scooters, but also for people pushing prams or pushchairs. Often people had to go onto the road to get around the vehicles.

The purpose of the Hearing was to see how the District Council, the County Council and the Police can work together to develop a joint, partnership approach towards tackling the problems caused to people with disabilities (and other pedestrians) as a result of inconsiderate parking across and on pavements.

The Chairman invited each of the witnesses to make an opening statement.

Mr. R. Jameson, Highways Manager, Mid Area Highways Office, Essex County Council

Mr. Jameson advised the Committee that he had studied the contents of the Information Pack. Many of the issues highlighted in the photographs at the back of the Information Pack (relating to the Rayne area) were typical of the type of problems that the Highways Office dealt with on a daily basis. He felt that most of the situations shown in the photographs could be dealt with by way of new waiting restrictions, such as double or single yellow lines.

Mr. Jameson advised the Committee that the reason most drivers park their vehicle on a footway is because they judge the remaining carriageway width as being too narrow to accommodate passing vehicular traffic. There could be cars already legitimately parked on the other side of the carriageway. The footway is usually obstructed as a consequence of such decisions.

Mr. Jameson suggested that where these occurrences are happening on a habitual basis an approach should be made to the Highways Office to consider the imposition of waiting restrictions.

The Police have powers to take enforcement action where there is an obstruction to the highway, but no waiting restrictions apply. However, the legal definition of an obstruction means that there has to be no gap left at all for a person to pass on the pavement.

Mr. Jameson advised that new legislation now exists (Traffic Management Act 2004 – Section 86) that allows Civil Enforcement Officers (CEOs) to undertake enforcement where vehicles are obstructing accesses or dropped kerbs, without the need for any signs or road markings. He indicated that he had undertaken recent discussions with Mr. Walker the Parking Services Manager for the Parking Partnership on this issue, and there would need to be appropriate publicity undertaken concerning this legislation prior to its use. However, ultimately you should be able to ask the Parking Partnership to send a CEO and issue a ticket, without the need for any yellow lines.

Mr. Jameson referred to one of the photographs in the Information Pack which featured advertising (A frame type) boards on the pavement. He indicated that it was an offence for these to be placed on the highway under the existing Highways Act. However, when observed or brought to the attention of the Highway Authority, it is necessary for the authority to consider all such offences within the area, in order to be consistent in the way they are dealt with. This can escalate a single complaint into a much larger matter.

The Essex Police do have powers of enforcement for issuing fixed penalty notices to vehicles that are obstructing the width of a footway to such an extent that it is not possible for pedestrians with push chairs or in a wheelchair to pass.

Mr. Jameson advised the Committee that the legislation that Chief Inspector Gooden referred to in his written evidence (where local authorities can elect to enforce against vehicles parked on a footway, without the need for road markings or signs) applies only to London Boroughs. This is not a power that the Department for Transport has yet given to other County Council Highway Authorities. Essex County Council would welcome the introduction of such powers, but Mr. Jameson was not aware of any forthcoming proposal to widen these powers outside of London.

Mr. A. Playle, Traffic Management, Essex Police

Mr. Playle referred to Chief Inspector Gooden's written submission that was contained in the Information Pack.

He informed the Committee that footway parking is dealt with as an obstruction. It is not necessarily an offence to be parked on the footway, but it is an offence under the 1986 Road Vehicle Construction and Use Regulations to obstruct the footway. Section 103 states:- *"No person in charge of a motor vehicle or trailer shall cause or permit the vehicles to stand on a road so as to cause any unnecessary obstruction of the road"*. The road includes the footway as well as the carriageway.

Mr. Playle referred to the number of penalty notices issued for the offence of unnecessary obstruction over recent years. He advised the Committee that the notices would not all have been for parking on the footway – for instance, some would be for obstructing a driveway or a dropped kerb, penning in a vehicle or blocking a road.

Mr. Playle indicated that he had monitored figures over the course of a week in September using Essex Police's Incident Handling System and this indicated that the Police dealt with an average of 19 reports a day concerning obstruction reports. Most of these incidents were attended – some were for blocked drives, some were for parking on the footway – penalty notice tickets were issued or people spoken to as appropriate, some were resolved through a telephone call, some were resolved before the police arrived on scene.

Essex Police deal reactively to reports of obstruction. For a footway to be obstructed, it means in effect that a person is unable to get through. You cannot take action on a potential obstruction. If a case goes to court you have to prove that a person could not get past the obstruction. An officer has to make a judgement as to whether a 'buggy' or a mobility carriage could not get through. The Police do not take a proactive approach unless a Police Neighbourhood Action Panel (NAP) identified a particular 'hot spot' as a priority. If a Member was concerned about a particular area they could raise it at the local NAP meeting with a view to getting it made a priority.

Mr. Playle confirmed that if there was a particular problem the Police do liaise and cooperate with Officers in the County Council's Highways Office as to whether some parking restrictions are required. Mr. Playle acts as a liaison point when the Highways Office require some police input and will pass the enquiry to the appropriate police officer.

### Sergeant Wilson, Witham Police

Sgt. Wilson advised that in Witham, reports of obstruction are frequently received during school term time when parents were either dropping off children to school in the morning or picking them up in the afternoon after school has finished.

If a particular area was categorised as a NAP priority, the Police would give attention to and be more pro-active in the area in question.

### Mr. R. Walker, Parking Services Manager, Parking Partnership

Mr. Walker advised the Committee that under the Parking Partnership, Colchester Borough Council is the lead authority for parking enforcement for the Braintree, Uttlesford and Colchester areas, and the Partnership works under an agency agreement with Essex County Council.

He emphasised that the CEOs can only issue Penalty Charge Notices where there are some form of parking restrictions.

Mr. Walker advised that the issuing of a Penalty Charge Notice does not in itself move the vehicle. It is more the threat of receiving a Penalty Charge Notice that acts as a deterrent and prevents the vehicle owner from infringing the parking regulations.

As regards the new enforcement powers, Mr. Walker advised the Committee that his understanding was that the new legislation relates predominantly to vehicles obstructing accesses to dropped kerbs – not vehicle accesses, but it would include pedestrian or mobility crossing points from the footway across the carriageway to the opposite footway.

The new legislation in relation to dropped kerbs has only recently become enforceable, and you do not require Traffic Regulation Orders, traffic signs or road markings. However, the Parking Partnership would have to undertake appropriate publicity before implementing these powers as this legislation is not well known to the public. Publicity is essential as the management of the parking enforcement regime as a whole has to be based on consistency, transparency and fairness.

Mr. Walker indicated that in issuing Penalty Charge Notices for obstructions to dropped kerbs CEOs would have to be consistent. Some of the photographs included in the Information Pack show the blocking of dropped kerbs and those vehicle owners could be booked under the new legislation. However, CEOs have to be wary of being caught up in neighbour disputes as these may sometimes be the root cause of the problem. Also, if there is a pattern to the obstructions and they are happening at a certain time then it is helpful to be advised to this effect so that CEOs know when to visit.

Mr. Walker advised that as this type of enforcement is new and may be problematic CEOs would need to obtain far more evidence if the case was to stand up to adjudication at a Traffic Penalty Tribunal (the adjudication decision is based on the balance of probabilities).

Consequently, CEOs would need to be trained to a higher level in order for them to carry out this form of enforcement.

Mr. P. Partridge, Head of Operations, BDC

Mr. Partridge advised that the subject of parking on footpaths and verges was not a new issue. A lot of the estates when they were built were not designed to accommodate the number of vehicles that are currently parked in those streets. There is no doubt that those people who do park on the footways are inconsiderate, but equally there are some who whilst parked on the footway do leave enough width in the carriageway for emergency vehicles and larger vehicles to get through.

He indicated that the Council tends to take a reactive approach in relation to enforcement for vehicles parked on the footways.

Ideally, more laybys are required, but the Council would need the financial resources in order to build these.

Mr. Partridge felt that the Council generally works well with the Police and Essex County Council, but there are legislative constraints as to what enforcement action the various agencies can take.

He reminded the Committee that the Council was proposing to introduce a bye-law under the Local Government Act 1972 (as amended) that would effectively enable the Council to take enforcement action against anyone that is parking on a grass verge. That may also include the footway as well. Guidance was currently awaited from the Department for Communities and Local Government. As soon as that guidance is received, the views of Members will be sought as to which areas the byelaw should apply. However, even with this byelaw in place it will not address the underlying issue of a lack of adequate parking in the District.

Mr. Partridge advised that the Council's Community Wardens are reasonably pro-active in that they do record details of the vehicle registration numbers and will attempt to find out who is the owner of the vehicle. However, the Community Wardens powers are limited even if the vehicle is parked on yellow lines as they do not have power to issue a Fixed Penalty Notice.

In relation to the 'A' Boards issue, Mr. Partridge advised that the Council has a zero tolerance policy approach to fly-posting in Braintree District which was implemented some years ago. However, in relation to the 'A' Boards that are featured in the photograph in the Information Pack the Council had adopted a more tolerant approach in the last two or three years. If the 'A' Board has been professionally produced and it is advertising a business within close proximity, then we tend not to take any action on them. The Council does take action on 'A' Boards if they are located several hundred metres away from where the business is located, and in such instances these are collected and stored at the Council's depot where owners may claim them.

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A general question and answer session then ensued as follows:-

Question by Cllr. Mrs. J. Smith

As regards Chief Inspector Alan Gooden's written submission where he makes reference to the fact that London Boroughs are utilising 'parking on footways' legislation and enforcement under the Traffic Management Act 2004, but that nowhere in Essex has yet elected to use this. Is this an option that Essex County Council could consider adopting?

Answer by Mr. R. Jameson, Highway Manager, Essex County Council

This is not an option that the County Council can adopt. The Department for Transport has only given those powers to London Boroughs and not to other County Councils although I understand that Essex would want those powers if they became available. Chief Inspector Gooden's comments are unfortunately misleading in this respect.

Question by Cllr. M. Dunn

Can we be more pro-active in targeting the hot spots?

Answer by Mr. R. Walker, Parking Services Manager, Parking Partnership

As regards enforcement, I have mentioned that there is some additional training required for CEOs in relation to the new enforcement power for dropped kerbs in order to gather the extra evidence that would be required to present to the Traffic Penalty Tribunal whenever a contested parking ticket reached the adjudication stage. Publicity would also need to be undertaken so that the public were aware of these new powers. The fairness element of the legislation means that you should undertake that publicity first. There is also a danger of being drawn in to neighbour disputes when issuing Penalty Charge Notices which we have to be wary of.

There are beats or routes that CEOs cover, and CEOs will take action wherever a contravention is taking place that warrants the issue of a Penalty Charge Notice so we have to deal with matters fairly and consistently.

Question by Cllr. M. Dunn

How many Penalty Charge Notices go to adjudication?

Answer by Mr. R. Walker, Parking Services Manager, Parking Partnership

Parking legislation is very complex, but most motorists will observe the parking restrictions. There are a number of web sites (eg appealnow.com) set up by organisations that have taken on some very high profile cases that they considered to be unfair. It is the adjudication end of the process that tends to guide other elements of enforcement. The Traffic Penalty Tribunal will sit and judge a case and that tends to steer the case law. In this respect, the Tribunal produces a digest of cases and an annual report.

The legislation that restricts parking is in a different act to the legislation that deals with enforcement, but one relies on the other.

Judgements at adjudication are undertaken on the basis of the balance of probabilities.

Approximately, one in a thousand cases goes to adjudication. 70% of people that are issued with a Penalty Charge Notice will pay the discounted charge within the set period, the informal challenge process deals with the majority of the other 30%, but approximately 0.12% cases go through the formal adjudication process.

Question by Cllr. J. Baugh



As regards blocking of sight lines by vehicles which may not necessarily be causing an obstruction or parking on yellow lines, is there any action that can be taken about these?

The police appear to be tolerant as regards parking on one side of the road in Church Lane, Bocking (the straight stretch), but not the other. Further along at Polly's Hill there seems to be tolerance with vehicles parking on both sides of the road. There are no yellow lines as such. There does not appear to be consistency?

Answer by Mr. A. Playle, Traffic Management, Essex Police

First of all, there is no specific offence relating to blocking of sight lines. There is an offence called 'placing a vehicle in a dangerous position', but that is unlikely to be applicable in this particular case.

I am not familiar with the local situation in Church Lane, but clearly drivers need to take care when parking their vehicle. As indicated, there is no specific offence, but officers could speak to drivers to offer advice where it was felt that there was a particular problem.

The Highway Code refers to situations where the driver 'must not' do something which means there is legislation to that effect, or 'do not' (e.g. do not park within 10 metres of a junction) which means that it is advisory.

Answer by Sgt. Wilson, Witham Police Station

The traffic legislation from a policing point of view tends to be black and white – but with parking you may have to exercise an element of discretion as to whether the vehicle is causing an obstruction or not. If we see a vehicle parked in a situation that we are not quite happy with it, we can access the police computer to identify the owner and speak to that person and give some suitable words of advice.

Question by Cllr. J. Baugh

As regards the provision of laybys on verges, I appreciate that costs may be prohibitive, but is there any scope for a less expensive layby solution eg a gravel layby or using some other sustainable material, rather than putting in a proper layby?

Answer by Mr. P. Partridge, Head of Operations, BDC

Probably, Mr. Jameson may be better placed to answer that, but cost is always going to be the issue in these cases. Schemes are expensive depending on where you place them and how many drop kerbs or grasscrete areas you put in. We have the localism agenda which has brought the decision making down to a local level in terms of a lot of the County Council's schemes. One of the things we will be asking Members and the Parishes to consider is what schemes they would like to see within their areas. The difficulty, of course, is that there will not be enough money in either the District or County Council's budgets to provide the extent of parking that would be required. A lot of the estates in Braintree District also include land that is now under the ownership of Greenfields Community Housing, and any proposals on laybys on Greenfields land would clearly need to be discussed with them.

Answer by Mr. R. Jameson, Highway Manager, Essex County Council

Braintree District Council has traditionally provided layby parking for its tenants in its previous role as landlord, but the County Council's position is that it is not a parking authority so we do not provide parking facilities. The size of the layby and the drainage facilities required are all factors that affect the cost, but invariably the key issue apart from the policy issues and affordability is whether there is sufficient space beside the highway in which to construct a layby.

As Mr. Partridge has indicated the localism agenda is with us and will give local members an input as to what schemes they want to identify as priorities, but there is a danger that you could be inundated with requests for laybys.

Question By Cllr. J. Gyford

On very recent developments such as the Maltings Lane development in Witham and the Black Notley Hospital site development, there are layouts in which the streets are extremely narrow and where people routinely park on the kerb, partly because they do not want to stop the flow of traffic which would obviously take place if they were all parking properly on the highway. Has the County Council or the District Council in some way changed its requirements for the dimensions of roadways deliberately or accidentally that has led to the creation of this problem?

Answer by Mr. R. Jameson, Highway Manager, Essex County Council

By co-incidence, the County Council's lead Councillors have just signed off the County Council's revised parking document "Parking Standards Design and Good Practice" and I have given a copy to Cllr. Gage the Chairman of the Committee.

National legislation used to require a maximum standard of parking for the design of urban estate roads – approximately 1.5 vehicle spaces per new property.

I have circulated to Members an extract from the Essex Design Guide which sets out the standards for carriageway widths depending on the type of road.

However, the new parking standards that have been set out in the County Council's revised parking document today has changed it to a minimum parking provision. For example, if it is a two bedroom property the developer has to demonstrate that he can provide a minimum of two parking spaces for that size of property.

It is all to do with urban space design and making sure that the road oscillates so that it does not induce vehicles to speed, and having a reasonable carriageway width with a reasonable amount of forward visibility. Developers will have to demonstrate in their designs that they are adhering to the new parking standards.

Although we cannot undo what has happened in Maltings Lane and the Black Notley Hospital site, the new parking standards should help to ensure that the problems with congested streets as a result of pavement parking are reduced.

Question by Cllr. R. Ramage

There is a particular problem in Witham with HGV vehicles parking in areas where they should not be parking. What is the law regarding HGV vehicles parking in a residential road?



Also, in Witham Town you often see delivery trucks double parked in the main street. What approach do the Police take as regards enforcement?

Answer by Sgt. Wilson, Witham Police Station

In respect of vehicles double parking to offload, if the vehicles are causing an obstruction the Police would take action to move them on. However, I am not aware of any calls that the Witham Police have received about this particular problem.

Answer by Mr. A. Playle, Traffic Management, Essex Police

Just to add some clarification, it is an offence for large goods vehicles to park on the footway unless they are loading or unloading.

Answer by Mr. R. Jameson, Highway Manager, Essex County Council

I would just add that on the double parking issue, the new legislation not only prohibits vehicles parking on dropped kerbs, but also vehicles that double park so the CEOs could deal with that as well.

Question by Cllr. Mrs. J. Smith

I regularly go to my local NAP meeting, but nobody seems to know the purpose of the white lines that have recently appeared along certain roads on the Marks Farm estate in Braintree?

Answer by Mr. R. Jameson, Highway Manager, Essex County Council

White lines are normally put on rural roads to highlight the edge of the road.

They may also be put on other residential roads as a driveway protection marking to define the entrance to a person's property. Its aim is to discourage people from parking across the entrance.

Question by Cllr. R. Ramage

Do you feel that you have adequate resources to deal with all various matters that are raised daily concerning parking issues?

Answer by Mr. R. Walker, Parking Services Manager, Parking Partnership

Parking enforcement is designed to roughly break even. However, we cannot be everywhere all of the time. A CEO will generate income which approximately covers the costs of their activity. The numbers of CEOs and their beats/routes is kept under regular review.

Question by Cllr. Mrs. J. Smith

There were a number of cyclists riding on the pedestrianised pavements through Braintree Town today in Bank Street/High Street, but I could not locate a Police Community Service Officer to report this to. What is the enforcement policy regarding cyclists riding on pavements?

I have also noticed vehicles parked in disabled bays with no disabled badge on display?

Answer by Mr. A. Playle, Traffic Management, Essex Police

It is illegal to cycle on the footway, but you will find it enforced at different levels depending on the location and whether forcing cyclists on to the carriageway would put them at risk because of the level of traffic (e.g. Parkway in Chelmsford). However, in the case of Bank Street/High Street in Braintree clearly cyclists should not have been cycling in that location.

Answer by Sgt. Wilson, Witham Police

The Police have been promoting over recent months a programme regarding educating cyclists particularly youngsters, to encourage more cyclists, but also to highlight to cyclists the potential risks to pedestrians if they ride on the footway.

Answer by Mr. M. Galley, Street Care Manager, BDC

As regards parking in the disabled bays, the Community Wardens can issue Fixed Penalty Notices and I will draw this particular issue to their attention and ask them to be more vigilant.

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At the end of the session, the Chairman thanked the witnesses for making their initial statements and for answering Members questions.

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The Committee went on to consider the issue of pavement parking in the light of the written submissions that it had received as contained in the Information Pack, and the additional and helpful information that it received through the witness session.

It was apparent to the Committee that the legislation was very complex:-

- \* the County Council, as highway authority, is responsible for the imposition of any parking restrictions (yellow lines etc);
- \* the District Council, through the Parking Partnership, as agent for Essex County Council, is responsible for enforcement of any parking restrictions in force;
- \* the Police are responsible for enforcement of illegal parking causing obstructions (where there are no parking restrictions), but whilst parking near junctions and parking on the footpath may be a clear breach of the highway code, they may not necessarily be enforceable by law if there is no obstruction.

The Committee felt that it would be helpful to all Members (who often had to deal with enquiries from the public) and the public, if further guidance on parking enforcement was produced.

Members also wished **the Cabinet to be aware** that the witness session had demonstrated that there was a close liaison and working relationship between the Agencies involved and a willingness to take a partnership approach (e.g. by targeting resources to deal with the hot-spots) with a view to dealing with problems caused to

people with disabilities (and other pedestrians) as a result of pavement parking.

Following discussion, it was agreed to **RECOMMEND** to Cabinet as follows:-

New enforcement powers under Section 86 of the Traffic Management Act 2004

(1) that the Parking Partnership should provide appropriate training to CEOs concerning the new enforcement powers with a view to CEOs undertaking enforcement where vehicles are obstructing dropped kerbs;

(2) that the Parking Partnership undertakes full and comprehensive publicity in liaison with the respective authorities Marketing and Communications Teams to fully publicise the new legislation so that the public are made aware of the position, prior to implementing this new enforcement power;

Information to Members

(3) that a guidance note be issued to Members setting out the duties and responsibilities of the various Agencies (including the NAP forums) in relation to parking issues, and detailing (preferably with flowcharts) the various enforcement processes, and a list of contact points. There should be an appropriate input to the guidance note from the Council's Marketing and Communications Team;

Information to the Public

(4) that a handy guide on parking enforcement be produced for Members of the Public to be available in leaflet and electronic form, with an appropriately named title such as "Ten essential things you need to know about parking enforcement - all the do's and don'ts!"

Copies to be available at the Council's main offices and on the Council's web site, at the Nap forums, the Parking Partnership web site, and copies sent to Parish/Town Councils. Appropriate publicity should also be given to the leaflet in the Council's Contact magazine.

There should be an appropriate input to the handy guide from the Council's Marketing and Communications Team.

Lead Member

(5) that the Cabinet should nominate a lead Member to ensure that items 1 to 4 above are taken forward;

Essex County Council's Revised Parking Document "Parking Standards Design and Good Practice"

(6) that the Cabinet take note that this document containing revised parking standards has been published and is now official County Council Supplementary Planning Guidance.

The meeting closed at 8.52pm

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M. Gage  
Chairman