



Executive
15 June 2009

**Report from the Director of
Environment and Culture**

Wards Affected:
ALL

Proposed adoption of London operational Permit Scheme (LoPS)

Forward Plan Ref. E&C-09/10-004

1.0 Summary

- 1.1 This report recommends that the Council adopt a permit scheme to control all works on the public highway. The London operational Permit Scheme (LoPS) is to be a common scheme across London and currently 18 boroughs, including Brent have registered their interest in operating the scheme.

2.0 Recommendations

- 2.1 That officers are instructed to proceed with their consultation with the Department for Transport in respect of the London wide scheme.
- 2.2 That, subject to approval by the Department for Transport, officers apply to the Secretary of State to become a permit authority as part of the Common Permit Scheme for London.

3.0 Detail

- 3.1 The Traffic Management Act 2004, section 16, places a duty on local traffic authorities *“to manage their road network with a view to achieving, so far as may be reasonably practicable having regard to their other obligations, policies and objectives, the following objectives:*

- *securing the expeditious movement of traffic on the authority's road network; and*
- *facilitating the expeditious movement of traffic on road networks for which another authority is the traffic authority.*

3.2 Street works legislation has been changed to give greater powers to each authority to manage works and activities on the highway. These changes present each authority with two choices on how to manage works and activities:

- to maintain the current process of formal notification, which is based on an "intention" to work. The authority is currently able to recover about 30% of its costs of operating this process; or
- to introduce a permit system, which will require promoters to book access to the highway to carry out works and enable local traffic authorities to recover the costs of running a scheme by charging fees to issue permits for utility works.

3.3 The scale of the disruption or inconvenience caused by works on the highway depends on the type of activity and how busy the street is in which the activity is being carried out. Small scale activities in a non-traffic sensitive street of a residential nature may cause minimal disruption. However, any activity in a street where the traffic flow is close to capacity can have a significant impact. Even when disruption is minimal there may be nuisance and inconvenience affecting the quality of life for local communities.

3.4 The co-ordination and management benefits will enable Brent to implement joint working measures which will assist in tackling congestion. Where opportunities arise at major developments, the ability to promote trench sharing to save time on the road will go a long way towards satisfying Brent's Network Management Duty.

Permit Schemes

3.6 Authorities are not obliged to run a permit scheme but must apply to the Department for Transport if they wish to do so. Permit schemes are established by individual order in the form of a Statutory Instrument.

Permit schemes differ from existing powers for managing activities on the street in three major areas:

- permit schemes allow promoters to book occupation of the street for a specific purpose and for specific period rather than the current process of informing the authority by notice of the promoter's intentions;
- conditions can be attached to permits that impose constraints on the way that work is carried out and the dates and timings of activities; and
- the control that authorities have over variations to the permit conditions, particularly in the circumstances of extensions of time, give greater incentive to complete activities in a timely manner.

- 3.7** A permit scheme will apply to all street works, including those promoted by Brent Council as the Highway Authority. All promoters will be treated on the same basis in terms of co-ordination and setting of conditions. The regulations require sufficient separation between those operating the permit scheme and those responsible for promoting activities on behalf of the Highway Authority.
- 3.8** In April 2008 legislative changes relating to the Traffic Management Act introduced the requirement for local highway authorities to register their own activities in line with the current rules for utility companies. This represents a major change in requiring parity of working practices, but does not affect the proposal to adopt a permit system. The Council is self notifying its own highway maintenance and improvement works in order to improve network coordination and demonstrate parity.
- 3.9** A set of Key Performance Indicators (KPIs) have been developed by the government for use by local transport authorities to show that permit schemes are being operated fairly and equitably. Relevant authorities will be required to report against these KPIs and the results are expected to be used to assess their performance against the Network Management Duty.
- 3.10** Equal treatment is specifically mentioned in the Guidance on the Network Management Duty introduced under the Traffic Management Act 2004. Local transport authorities will be required to demonstrate parity of treatment between types of promoters, in particular the process applied to works promoted by statutory undertakers and the highway authority. A permit scheme would provide the evidence to demonstrate parity.
- 3.11** A permit scheme that specifies the date, time and duration of occupation of the highway provides a more certain basis for co-ordinating activities and works on the network and a more equitable basis for managing works. In addition conditions can be attached that will allow local circumstances to be taken into consideration, such as environmental constraints, ahead of the commencement of works.
- 3.12** It is extremely beneficial for a common scheme to be developed for the whole of London particularly as government has signalled that it will look favourably on regionally based schemes. In practice a regional approach would have other advantages, including any utility or contractor that proposes to work within the region would be working to one set of rules. This consistent approach would reduce errors and have major benefits in terms of reducing disruption and improving network management.
- 3.13** The LoPS has been prepared in accordance with the Network Management Duty (“NMD”) and Permits Code of Practice. In summary it is the objective of the LoPS to:
- Provide an environment to help each of the Permit Authorities operating the LoPS to meet their Network Management Duty; and

- Support those seeking to minimise disruption and inconvenience across London by encouraging good practices, mutual and collaborative working arrangements and a focus on getting it right; and
- Encourage a high emphasis on safety for everyone including site operatives and all other road users with special emphasis on the less able; and
- Encourage a sharing of knowledge and methodology across the industries working within the London Permit Scheme; and
- Emphasise the need to minimise damage to the structure of the highway and all apparatus contained therein; and
- Provide a common framework for all works promoters who need to carry out their works in London; and
- Treat all activities covered by the scheme and works promoters on an equal basis.

4.0 Financial Implications

4.1 Existing New Roads Streets Works (NRSW) regulations define the maximum fee payable and the ringfencing of income from the fees. Fees may only be charged to statutory undertakers and not to highway authorities. Currently the NRSW team has been sufficiently funded making use of fee income circa £400,000. This figure represents charges for sample inspections and overstays under section 74, defect inspection charges under section 72 and fixed penalty charges for noticing errors.

The Traffic Management Act 2004 enables local authorities to charge for issuing permits, which are applicable to statutory undertakers and highway authority contractors alike. The permit fees are additional to the NRSW fees described above. The income from permits cannot exceed the specified allowable costs of operating a permit system, including:

- a)** that proportion of direct costs and overheads attributable to operating the scheme in relation to statutory undertakers; and
- b)** That element of costs that are over and above the cost of an authority's co-ordination under New Roads and Street Works Act (the current process).

Officers will calculate an appropriate level to ensure that the scheme is cost neutral to the Borough whilst recouping all unit and core overheads. Details of some aspects are yet to be finalised, such as the process by which the Council's highway construction receives permits in an equitable manner to that of the statutory undertakes.

All financial matters will require constant monitoring and the Director of Finance will have an opportunity to scrutinise all elements of the costings prior to them being submitted to the Secretary of State.

All charges and fees raised in relation to Permits are not for the generation of revenue, and any monies received above and beyond the cost of the service will be reviewed following one year of running the scheme. If fees are considered to be significantly more considerable than the cost of the service to issue and monitor Permits, then the fees charged must be lowered in order to deliver better value.

4.2 Costs and overheads

The income from fees shall not exceed the total allowable costs prescribed in the permit regulations. The cost of performing the co-ordination and monitoring of utility works will at minimum be covered by the permit fees.

4.3 Fee Reviews

Authorities will need to review fees from time to time to satisfy themselves and the Secretary of State that overall fee income does not exceed allowable costs. Although authorities will make their best estimates of costs and income in setting fee levels there will be occasions when a surplus or deficit exists at the end of the year. In reviewing fee levels those surpluses or deficits may be carried over and counted in later years so that a balance of costs and income is achieved over a number of years. The outcome of annual fee reviews should be published and open to public scrutiny. A methodology will be developed so that in future fees can be indexed in between fuller reviews of permit fees. Other charges levied are defined within legislation, for example, overstay charges under section 74, defect inspection charges under section 72 and sample inspections under the New Roads and Street Works Act 1991 will not be subject to this annual review.

4.4 Use of Income

Permit schemes should not generate surplus revenue. Income should therefore be used only to meet the costs of the scheme.

4.5 It is anticipated that two additional staff and an upgrade of computer software will need to be in place to operate a permit system. The additional costs will be met by the fee income generated by the permit system.

4.6. Projected permit fees collected by Brent Council will be required to be monitored over the first year to make sure that the fees cover the cost of running the permit scheme. Any surplus revenues generated will require to be reduced in order to show that fees only cover the costs of managing the scheme.

- 4.7 The table below (A1) shows an estimated value of how much would be expected to be generated in relation to the amount of permits issued. By looking at Brent's past notification figures from Jan 2008 to December 2008 it is estimated that Brent could receive some 7000 permit applications. As part of the permit application process, PAA's or Provisional Advance Authorisations will also have a charge in relation to assessing a major permit application.

Permits Issued	Estimated Income
5000	£360,297
6000	£416,108
7000	£475,435
8000	£532,589
9000	£588,474

Table: A1 – Estimated Average Fees generated through Permit Scheme

- 4.8 Subject to the approval of the permit scheme by the Secretary of State and the Councils Executive, it is likely that the scheme will become operational in autumn of 2009.

5.0 Legal Implications

- 5.1 The implementation of a permit scheme will help Brent in complying with Section 16 of the Traffic Management Act 2004 which places a network management duty on the authority.
- 5.2 The Common Permit Scheme is subject to statutory consultation prior to submission to the Secretary of State under the Traffic Management Permit Scheme Regulations 2007. The consultees will include utility companies, local highway authorities and other regulatory bodies and other interested parties such as Transport for London and the emergency services. The Secretary of State may then approve the scheme with or without modifications and it will be given effect by a statutory order.
- 5.3 Under the Traffic Management Act 2004 and Network Management Duty Guidance, any authority seen to be failing its Network Management Duty could experience intervention from the Department for Transport with a Director of Traffic installed in charge of all departments witnessed to failing the Traffic Management and Network Management Duty criteria.
- 5.4 Regulations 21 to 28 of the Traffic Management Permit Scheme (England) Regulations 2007, (and Schedules 1 and 2 thereof) authorize Permit Authorities to issue Fixed Penalty Notices in respect of the criminal offences referred to in paragraph 5.5 below. Fixed Penalty Notices offer the offender an opportunity to discharge liability for an offence by paying a penalty amount. The penalty amount is £500 for working without a permit, but a discounted amount of £300 is available if payment is made within 29 days. For working in breach of a condition the penalty is £120 and the discounted amount £80, the same as for Fixed Penalty Notices under the notices system. The councils New

Roads and Street Works team currently issues Fixed penalty Notices for breaching notification requirements. Fixed Penalty Notices have been operational since October 2008.

- 5.5** Regulation 19 of the Traffic Management Permit Scheme (England) Regulations 2007 provides that it is a criminal offence for an undertaker or someone acting on its behalf to undertake works without a permit. The offence carries a maximum fine of level 5 on the standard scale (currently £5000). Regulation 20 provides that it is a criminal offence for an undertaker or someone acting on its behalf to undertake works in breach of a condition. This offence carries a maximum fine of level 4 on the standard scale (currently £2500).

6.0 Diversity Implications

- 6.1** The proposals in this report have been subject to screening and officers believe there are no diversity implications, which require full or partial assessment. The implementation of the London operational Permit Scheme will not affect people in terms of race, gender, age, sexuality or belief.

7.0 Staffing/Accommodation Implications

- 7.1** Permit Officers will be appointed for the requirements of co-ordination, road space management and permit assessments under the LoPS Permit Scheme Document, Network Management Duty and Traffic Management Act obligations. These posts are to be funded by the fees generated operating the scheme

8.0 Environmental Implications

- 8.1** The London operational Permit Scheme is largely based on providing a more expeditious network for all forms of traffic including pedestrians, cyclists, users of public transport as well as motorists. In turn this will assist in reducing the affects of congestion and air pollution in the borough.

- 8.2** The London operational Permit Scheme will deliver the following key benefits:

- Stricter control of highway openings with more focussed management should lead to less damage to the public highway, both in the numbers of openings and the prompt, supervised reinstatement of the highway surface.
- Residents and visitors will be able to get to their destinations more easily and reliably, potentially reducing frustration, and saving them time and money;

- public transport, such as the bus network, will operate more reliably, and potentially further relieving congestion on the road by maximising usage of the existing road network;
- better co-ordination and planning will reduce the duration of street works leading to reduced inconvenience to the public and businesses, including to pedestrians and cyclists:
- reductions in disruption and congestion caused by activities will also mean reductions in pollution and emissions, including CO2, which will benefit people living, working or travelling in the areas affected;

Background Papers

Sources of Further Information

- Traffic Management Act - 2004
- Traffic Management Act 2004 - Network Management Duty Document.
- Permit Regulations - 2007
- Statutory Guidance for Permits – March 2008
- NMD Guidance on Intervention Criteria - 2007
- Co-ordination of Street works and Works for Road Purposes and Related Matters – 1991
- London operational Permit Scheme – LoPS Document
- Permit Fees Guidance
- Permit Fee Matrix

Contact Officers

Any person wishing to inspect the above papers should contact
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