

	<p style="text-align: center;">Executive 14 January 2013</p> <p style="text-align: center;">Report from the Director of Adult Social Services and Director of Environment and Neighbourhood Services</p>
<p style="text-align: right;">Wards Affected: ALL</p>	
<p>Authority to implement changes to the Blue Badge scheme (charging and enforcement) in Brent from February 2013</p>	

1.0 Summary

1.1. This paper provides:

- an overview of the Blue Badge scheme and its enforcement;
- the recent national changes to the Blue Badge scheme;
- the proposed changes to the administration of Blue Badges in Brent, and
- the proposed changes to enforcement in Brent.

2.0 Recommendations

2.1 This paper recommends the Executive should:

- Agree to implement a charge for a standard issue Blue Badge in line with national guidance from 1 February 2013;
- Agree the set fee for recovery of enforcement costs and its future inflation indexing as set out in paragraph 6.10.
- Agree to enhance Blue Badge enforcement capacity to ensure that Blue Badge benefits are used only enjoyed by people with a genuine need; and
- Agree to the adoption of a robust enforcement approach.

3.0 Overview of the Blue Badge Scheme

- 3.1. The Blue Badge (Disabled Persons' Parking) Scheme was introduced in 1971 under Section 21 of the Chronically Sick and Disabled Persons Act 1970 ('the 1970 Act'). The aim of the scheme is to help disabled people with severe mobility problems to access services, by allowing them to park close to their destination. The scheme allows people to park without charge or time limit in otherwise restricted on-street parking environments, and allows them to park on yellow lines for up to three hours, unless a loading ban is in place.
- 3.2 There are significant benefits to having a Blue Badge. National research shows that 75% of Blue Badge holders would go out less if they didn't have a Blue Badge and 64% would be more reliant on family and friends. The financial benefit of a Blue Badge has been quantified by the Department for Transport (DfT) as between £35 per year for someone who lives in a rural area and rarely uses the badge, to £3,500 per year for someone who lives in London and uses the Blue Badge to travel to work everyday¹.
- 3.3 The DfT has set out the legislative framework for the scheme. However, there is no statutory legal guidance for the scheme's implementation and the DfT cannot intervene in the case of individual decisions about eligibility. The process is managed by the Local Authority and the badge is issued by the Local Authority where the applicant is resident, but they are able to use it anywhere in the country.
- 3.4 In Brent the scheme has historically been administered by the Chronically Sick and Disabled Persons (CSDP) team in Adult Social Care, but this team transferred to Brent Customer Services in October 2012. The latest report shows that 10,273 people have had a Blue Badge that was issued by Brent. On average the CSDP/BCS team deals with 400 applications a month (for a new badge or a renewal). In an average month:
- 250 of these are eligible without further assessment because they are over the age of 2 and receive Higher Rate Disability Living Allowance (HRDLA), are registered blind or receive a War Pensioners supplement
 - 70 would be agreed based on a desk based assessment which is based on the evidence (usually medical) that the applicant can supply to confirm their mobility problems, and
 - 80 (20%) require a Mobility Assessment to confirm their mobility problems and need. (In some areas, they have used other methods for confirming eligibility including GP letters.)
- 3.5 Whether the person is eligible without further assessment, or required a desk based assessment or mobility assessment, there is currently no charge for a Blue Badge in Brent. Since 1983 (and up until the 1st January 2012), Brent, like other Local Authorities, has been able to charge £2 for a Blue Badge, but has chosen not to.

4.0 Blue Badge Improvement Scheme

¹ Blue Badge Reform Programme, Impact Assessment, DfT

- 4.1. The Blue Badge Improvement Scheme (BBIS) came into effect on 1 January 2012. The main changes it delivers are:
- Processing applications
 - Eligibility
 - Preventing misuse
- 4.2 There is a new national website with a common application form in addition to local arrangements, and there is also a new national badge (which has a cost to the council of £4.60, covering production and postage). All applications still come to the Local Authority for processing and authorisation. After the local authority has processed the application, and confirmed eligibility, they send it to the national centre which will create the badge to national standards before sending it to the Local Authority.
- 4.3 Eligibility will be extended to disabled children between the ages of 2 and 3 with specific medical conditions and providing continuous automatic entitlement to a badge to severely disabled service personnel and veterans who have a permanent and substantial disability which causes inability to walk or very considerable difficulty in walking. There is also provision in the scheme to improve the consistency of access to the scheme, bringing in wider use of mobility assessments and therefore making access more transparent.
- 4.4 However, the biggest changes relate to improving the service: ensuring there are more spaces available to genuine Blue Badge holders by reducing fraud and misuse. This is the primary driver behind the national badge, however, other changes designed to reduce misuse include:
- The national badge which will be harder to forge and will make it easier to spot misuse
 - A national database has been created which will prevent multiple and fraudulent applications and make it easier for people checking badges on the streets to verify a badge
 - Additional powers have been given to the local authority to tackle fraud.
- 4.5 BBIS also recognises the increased costs on Local Authorities and specifically enables Local Authorities to cover their costs more appropriately by raising the maximum charge of Blue Badge (new or renewal) from £2 to £10 per badge for those badges issued after 01.01.12.

5.0 Proposed changes to the administration and charging of Blue Badges in Brent

- 5.1. This paper proposes that the majority of the administration of the Blue Badge scheme in Brent remains the same. Brent:
- already uses a mobility assessment to ensure transparent and consistent access to the scheme
 - currently requires all Blue Badge holders to collect their badge. Under BBIS badges can be sent directly to the individual, however, Brent is proposing that in line with previous recommendations from Brent Council's Audit and Investigation department, the vast majority of people will

continue to come in and collect their badge unless there is an exceptional reason why they cannot.

- 5.2 The main change that is being proposed is that the Executive agree to charge the full amount permissible, currently £10 for badges issued after 1 January 2012 that the Council can charge for issuing the badge.
- 5.3 The charge reflects the additional costs of processing the national blue badge, and the administration costs which Brent has not recovered in the past. It should be noted that there will be no charge imposed for an application for a blue badge, only for those who are successful in their application and when a badge is issued to them. While the cost implications for recipients of a Blue Badge are not underestimated, the proposal to charge is based on the relatively small cost to the holder (£10) in comparison to the significant benefit that a Blue Badge brings for the holder (up to £3,500 in London). Assuming the full cost is charged, it still does not cover the full costs of providing the service.

6.0 Proposed changes to enforcement in Brent

- 6.1 Blue Badge fraud and misuse is a significant problem nationally. It is a problem because it means people who have a genuine disability and a real need for a Blue Badge are often unable to park as the spaces are taken by people who do not need them. There is also a significant impact on parking revenues, which are not collected. The Department for Transport Blue badge scheme statistics 2010/11 and National Fraud Authority estimate that the cost (in lost parking revenue) of Blue Badge fraud and misuse nationally is £46m.
- 6.2 Fraud and misuse of Blue Badges comes in a number of forms:
- Fraud: when someone is using a counterfeit Blue Badge, or a stolen Blue Badge, or an altered Blue Badge, or a deceased person's Blue Badge
 - Misuse: when a genuine Blue Badge holder's Badge is used by another person and the Blue Badge holder is not in the car
- 6.3 Currently, if the Council identifies an instance of fraud, then it is investigated by Audit and Investigation and can be taken forward as a prosecution. If misuse is identified then the badge can be seized by the police, and returned to the genuine badge holder with a warning, but no penalty. If the person who is caught using a fake Blue Badge or misusing a genuine Blue Badge is a Brent Council staff member, then this would be taken forward as a disciplinary matter and possibly a prosecution as well.
- 6.4 In common with the rest of London and the UK there are high levels of Blue Badge abuse in Brent. Over the past 2 years the Council has run Blue Badge 'drives' every two months. On these 'drives' members of the Blue Badge team, Audit and Investigation and Police target particular areas and go out on to the streets to identify fraud and misuse. For example, over four days in 2011 (9/18/24 November and 1 December) 43 vehicles were checked, 20 Parking Charge Notices (PCNs) were issued, 2 cars towed and 12 badges were confiscated. However, this approach, while low cost, is not solving the

problem - regular 'drives' are not proving to be a deterrent. Therefore, this report proposes that the Council has an enhanced capacity to identify Blue Badge fraud and misuse.

- 6.5 The proposed approach to Blue Badge enforcement has a number of elements:
- Recruitment of an additional Monitoring Officer to act as a full time Blue Badge enforcement officer;
 - Enforcement to routinely take place without the presence of an officer from Audit and Investigation;
 - Continuation of Audit and Investigation's role in taking forward the subsequent investigations for serious fraud, e.g. staff involvement, stolen badges and any other organised element.
- 6.6 It is proposed that the Council will increase the identification of all forms of fraud and misuse through the employment of an additional Parking Monitoring Officer (PMO) to focus on Blue Badge fraud. They will work alongside an additional dedicated Civil Enforcement Officer (CEO). The PMO will lead the Blue Badge investigations, with the CEO accompanying to take any appropriate parking control enforcement, such as PCNs or vehicle removal. The new PMO will typically spend four days on patrol and one day in the office following up initial investigations including interviews under caution. This arrangement is expected to increase the number of Blue Badge vehicle checks from around a hundred per annum to several thousand per annum, and consequent increases in PCN issuance and vehicle removals for Blue Badge misuse.
- 6.7 Currently the Local Authority has three options for enforcement:
1. Where someone using a valid Blue Badge simply park in the wrong place or park for too long a PCN may be issued if appropriate.
 2. Where there is Blue Badge misuse a PCN can sometimes be supplemented by vehicle removal.
 3. In addition, the Local Authority has wide powers to prosecute a person who allows their Blue Badge to be misused and the person misusing the blue badge. Nationally, the guidance issued in February 2012 identifies the potential criminal sanctions for those found guilty of such abuse. In addition a local authority can withdraw the badge under regulation 9(2) of the Disabled Persons (Badges for Motor Vehicles) (England) Regulations 2000, after a relevant conviction or if fraudulently obtained.
- 6.8 In future, it is intended that any incident of misuse will still incur a PCN for the parking misdemeanour. However, it is also proposed that in all cases of misuse the perpetrator will be notified of the Council's intention to prosecute for the offence under section 21 of the Chronically Sick and Disabled Persons Act 1970 or section 117 of the Road Traffic Regulation Act 1984. Both offences carry a maximum penalty, on conviction, of a £1,000 fine, but the offender will also normally be expected to pay the Council's legal costs on top of any fine. After considering the evidence and any mitigating circumstances, the Parking

Enforcement Service, will take a view as to whether to proceed with a prosecution or agree not to pursue a prosecution provided the administrative costs of the Council are met. It is proposed that a set charge for administrative cost would be set at £100, and that this fee be subject to a RPI increase on 1 April each year (rounded to the nearest pound and using the calculation methodology set out for parking permits in the 19 September 2012 Executive report on parking simplification) with the first increase being on 1 April 2014.

- 6.9 However, if the Parking Enforcement Service decides to proceed with the prosecution of either the offender or the badge holder, the PMO and a social worker would have to submit a short report to a Head of Service, drafted against clear criteria, to approve a prosecution. Furthermore, to ensure that the needs of the most vulnerable are always fully considered it is proposed that a Safeguarding Adults alert is considered when any incident of misuse is evidenced and a Safeguarding Alert is automatically raised after the second and third instances of misuse.
- 6.10 Where a badge holder is successfully prosecuted for misuse or fraudulent use the Council will write, under powers conferred by s2 Regulations 2(3) and 2(4) of the Disabled Persons (Badges for Motor Vehicles) (England) Regulations 2000 (as amended) with notification that the Badge has been withdrawn. A badge can be withdrawn for one successful prosecution of a badge holder or third party of:
- an offence under section 21(4B) of the Chronically Sick and Disabled Persons Act 1970 (this covers misuse of a real badge or use of a fake/altered badge while the vehicle is being driven); or
 - an offence under sections 115 or 117 of the Road Traffic Regulation Act 1984 (this covers misuse of a real badge or use of a fake/altered badge when the vehicle is parked); or
 - dishonesty or deception committed under any other UK legislation in relation to the badge (which takes account of offences under, for example, the Fraud Act 2006, the Theft Act 1968, the Forgery and Counterfeiting Act 1981, etc.).
- 6.11 Where the offence prosecuted was committed by a third party using the holder's badge, the authority needs to demonstrate that the holder knew the third party was using the badge, before it can be withdrawn. If the badge holder wishes to later re-apply for a subsequent badge, serious consideration will be given to the previous withdrawal, but where they are successful they will be required to make payment of the issue fee.

8.0 Financial Implications

Proposed changes to the administration of the Blue Badge Scheme

- 8.1 Fixed cost per application that has to be paid to get a national blue badge: £4.60 per badge. This equates to £22k based on a static numbers of badges being issued.

The council received via a specific grant an amount of £22k to cover this, which is currently being held corporately, but it has been agreed that this

funding is to be transferred over to Adult Social Services to cover the cost of the applications.

Proposed changes to enforcement

- 8.2 The costs of the new enforcement arrangement would be 116k p.a. (set out in appendix A). The intention is for the bulk of new case work to be dealt with by the parking service, hence there will be limited impact upon the Audit and Investigations Team.
- 8.3 The income generated from this scheme is difficult to estimate, but would be made up of additional parking enforcement revenue plus receipt of costs set out in paragraph 6.10 above. The data from another London authority, that operates using a different model, over a 12 month period, resulted in £28k income (gross) from additional PCN issuance / vehicle removal release fees. Reducing this by about a third to take account of typical PCN collection and vehicle release rates gives £20k net.
- 8.4 Additionally, taking account of 100 cases in which the badge holder pays the fee described at 6.10, plus awarded and paid costs for any cases the result in a successful prosecution gives a further 10k net of receipts. It should be noted that costs are subject to VAT deductions.
- 8.5 The income would be £48k from the £10 charge which would be used to fund the enforcement costs falling to the parking service. Thus the total net receipts are estimated at £78k
- 8.6 The net cost is estimated at £38k which is being funded from within existing resources.

9.0 Legal Implications

- 9.1 Section 21 Chronology Sick and Disabled Person Act 1970 requires that Local Authority make available badges, in the prescribed form, for motor vehicles driven by, or used for the carriage of, disabled persons. The Disabled Persons (Badges for Motor Vehicles) (England) (Amendment) (No.2) Regulations 2011 [the '2011 regulations'] came into force on the 01.01.12 advising Local Authorities on the steps to adopt to ensure effective enforcement of the Blue Badge scheme.
- 9.2 In addition, the 2011 regulations set out the revised proscribed form of the badge. In practice this will mean agreeing that these badges are prepared nationally by the Blue Badge Improvement Service. The Council, in common with every local authority in England, has already agreed that this agency can take over the arrangements for making the badges once the local authority has confirmed an individual is eligible. The 2011 regulations make provision for an increase in the amount a local authority could seek to recover from an applicant from £2 to £10 from the 1st of January 2012. This is a flat charge and there is no provision under the 2011 Regulations to seek to recover the

true cost to the authority of administering the scheme. Nor is it expected under the Regulations that any application of the full charge would be subject to a means test or waived in exceptional circumstances.

- 9.3 The changes introduced by the 2011 Regulations were implemented following detailed consultation by the Department for Transport nationally on the proposed changes to the regime. The consultation report is published at: <http://assets.dft.gov.uk/consultations/dft-2011-20/blue-badge-consultation-response.pdf>. In addition the Local Authority has raised the proposed changes to how the scheme would be administered in relevant service user forums within Brent, e.g. the Pensioners Forum and Disabled Persons Forum. Feedback from those forums has been broadly supportive of the changes, particularly the implementation of more effective enforcement. Those present at the forum were, however, opposed to the implementation of a charge for the scheme.
- 9.4 It is noted that the Council propose to vastly increase the use of enforcement for misuse of a blue badge. Guidance issued by the Department for Transport encourages this more robust approach to enforcement. Further it should be noted the issuing of a PCN for the parking violation does not prohibit a prosecution for the offences associated with the misuse of the blue badge even when they arise from the same facts.
- 9.5 Furthermore, it is noted that this proposal adds a requirement that, prior to any prosecution, the Director for Adult Social Care reviews the case to consider the impact on the individual. In addition a safeguarding alert will automatically be generated. Neither of these measures is required by the statutory regime nor under the non-statutory guidance issued to assist Local Authorities manage the Blue Badge Scheme. They will however ensure that the Council's other statutory duties to vulnerable individuals are fulfilled.
- 9.6 In addition to the legal implications set out above Members should also take into consideration the public sector duty at s.149 of the Equality Act 2010 when deciding whether to adopt the proposed changes.

'Meeting the general equality duty requires 'a deliberate approach and a conscious state of mind'. R (Brown) v Secretary of State for Work & Pensions [2008] EWHC 3158 (Admin).

Members must know and understand the legal duties in relation to the public sector equality duty and consciously apply the law to the facts when considering and reaching decisions where equality issues arise. These are set out in more detail below.

10.0 Diversity Implications

- 10.1 Section 149 Equality Act 2010 requires the Council, when exercising its functions, to have "due regard" to the need to eliminate discrimination, harassment and victimisation and other conduct prohibited under the Act, and to advance equality of opportunity and foster good relations between those who share a "protected characteristic" and those who do not share that protected characteristic.

A “protected characteristic” is defined in the Act as:

- age;
- disability;
- gender reassignment;
- pregnancy and maternity;
- race;(including ethnic or national origins, colour or nationality)
- religion or belief;
- sex;
- sexual orientation.

Marriage and civil partnership are also a protected characteristic for the purposes of the duty to eliminate discrimination.

Having due regard to the need to “advance equality of opportunity” between those who share a protected characteristic and those who do not includes having due regard to the need to remove or minimize disadvantages suffered by them. Due regard must also be had to the need to take steps to meet the needs of such persons where those needs are different from persons who do not have that characteristic, and encourage those who have a protected characteristic to participate in public life.

The steps involved in meeting the needs of disabled persons include steps to take account of the persons’ disabilities.

Having due regard to “fostering good relations” involves having due regard to the need to tackle prejudice and promote understanding. Members should be aware that the duty is not to achieve the objectives or take the steps set out in s.149. Rather, the duty on public authorities is to bring these important objectives relating to discrimination into consideration when carrying out its public functions (which includes the functions relating to provision under the Chronologically Sick and Disabled Persons Act 1970).

“*Due regard*” means the regard that is appropriate in all the particular circumstances in which the authority is carrying out its functions. There must be a proper regard for the goals set out in s.149. At the same time, Members must also pay regard to any countervailing factors, which it is proper and reasonable for them to consider. Budgetary pressures, economics and practical factors will often be important. The weight of these countervailing factors in the decision making process is a matter for members in the first instance.

- 10.2 Members are respectfully asked to consider the Equality Impact Assessment at appendix B.
- 10.3 The changes which would be introduced, namely the imposition of a £10 charge for those who are issued with a Blue Badge and more robust enforcement for misuse/fraud, will have a very small impact on those with the protected characteristics. The introduction of a £10 charge for the new Blue Badges from the BBIS will only have a financial impact on those with disabilities, as only disabled people with mobility problems are eligible for the

Scheme. However, in the majority of cases the £10 is only payable every 3 years when the Blue Badge is renewed, and the badge permits free parking and access to restricted areas which would otherwise cost hundreds and occasionally thousands of pounds. Primarily the impact of these changes will have a positive effect. The scheme will be more sustainable in the long-term and will ensure more consistency in assessing eligibility and enforcement.

The implementation by the Council of a charge, if adopted, will solely fall on those with protected characteristics. The attached figures show a slightly higher proportion of woman hold a badge. The proportion of BAME Blue Badge holders almost exactly matches the population of Brent and, of course all have a disability in order to qualify for a badge. However the adverse impact will be low as the charge is set at £10 and would only apply each time a badge is issued (in the majority of cases this will be every three years), and will be more than offset by the financial benefits that accrue to badge holders. Implementing a charge will however enable the Council to recover some of the cost to it of administering the scheme and therefore ensure that the limited resources of the council should be targeted at those in the most need. In addition careful consideration has been given to ensure the proposal reduces the adverse impact on those with disabilities and the elderly by ensuring that the scheme is redesigned to better meet the concerns of those who responded to the national consultation and the objectives set out in s149 Equality Act, for example, by ensuring that those with a disability are able to access goods and services more easily.

The intention to offset the increased cost of enforcement with an increase in prosecutions will also have a positive impact on those using the badge, for the reasons set out earlier in this report, it should also assist to dispel wide spread conception that the scheme is abused and thereby foster good relations between those who have a protected characteristic (disability) and those who do not in line with the duty under s149 EA. It should be noted that many drivers misusing badges are often family members or carers that have no disability. However, in any case of prosecution or badge withdrawal in respect of a blue badge holder, measures to minimise any adverse impact for those from protected characteristics, include the requirement to refer automatically any second or subsequent misuse of a badge to the safeguarding team or the arrangements to ensure that prosecutions will only proceed against a vulnerable person once the matter has been reviewed by the Director for Adult Social Care.

Finally any remaining adverse impact experienced as a result of the likely increase in prosecutions by those from protected characteristics could be mitigated by those individual's not misusing the scheme. Therefore whilst it is not possible to eradicate any adverse impact, it is proportionate and necessary to have in place an effective enforcement regime to ensure that the Blue Badge scheme operates successfully in Brent.

Background Papers

Blue Badge Reform Programme: Impact Assessment 07/12/10
Blue Badge Scheme Local Authority Guidance: February 2012

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