

TRANSPORT FOR LONDON

SURFACE TRANSPORT PANEL

SUBJECT: REVIEW OF THE 6 MONTH TRIAL ON THE DELEGATION OF TfL HIGHWAYS ENFORCEMENT POWERS ON THE TLRN TO THE LONDON BOROUGH OF WANDSWORTH

DATE: 3 JULY 2009

1 PURPOSE AND DECISION REQUIRED

- 1.1 The purpose of this paper is to inform the Surface Transport Panel, and subsequently the meeting of TfL, of the outcome of the six month trial delegation of certain TfL highway enforcement powers to the London Borough of Wandsworth.
- 1.2 On 29 July, the meeting of TfL will be asked to:
 - (a) note the positive outcomes of the Wandsworth trial;
 - (b) review the suggested options for taking the trial forwards; and
 - (c) approve a delegation of authority to the Managing Director - Surface Transport for the negotiation and agreement of the terms of Section 101(5) agreements (under the Local Government Act 1972) with selected London boroughs.

2 BACKGROUND

- 2.1 Maintenance of the highways for which TfL is the highway authority, the Transport for London Road Network (TLRN), is carried out under three separate geographically defined contracts which run for a minimum of six years (to 2013) and a maximum of ten years. Until such time as these contracts are terminated, the majority of the maintenance functions cannot be cost effectively transferred to other highway authorities.
- 2.2 There are, however, some functions exercised outside of these contracts such as the exercise of highways enforcement powers on the TLRN, where transfer to a borough is feasible and may be mutually beneficial to TfL and the borough.
- 2.3 On 5 November 2008, the meeting of TfL approved a six month trial (which commenced 1 December 2008) of the delegation of certain TfL highway enforcement powers in relation to the removal of pavement obstructions on part of the TLRN in Wandsworth (the A24 Tooting High Street/Upper Tooting Road between Coverton Road and Lynwood Road). To facilitate the trial, TfL and the London Borough of Wandsworth entered into an agreement under Section 101(5) of the Local Government Act 1972.
- 2.4 The trial delegation of enforcement powers to the London Borough of Wandsworth ended on 31 May 2009.
- 2.5 On 29 April, the Mayor and all of the Borough Leaders signed the City Charter

at the first meeting of the Congress of Leaders. The City Charter identifies six areas for possible joint action relating to transport, including devolution of powers on the TLRN to the boroughs. A report to the Charter Board on 18 June set out the scope of possible devolution in more detail and the Wandsworth trial was included in this report.

3 OUTCOME OF THE TRIAL

3.1 The trial delegation of enforcement powers to clear the footways of obstructions was progressed by the London Borough of Wandsworth in four phases:

- (a) Phase 1: Commenced on 1 December 2008. Visits by the London Borough of Wandsworth's enforcement officers to the shopkeepers responsible for displays of goods and advertising boards on the footways in the area. This resulted in a significant percentage of traders complying with the request to keep the pavements clear.
- (b) Phase 2: Commenced on 24 January. Warning letters delivered to those traders still not complying – 25 in total. At the same time, letters were delivered to those traders who complied with requests to clear the pavement, thanking them for their co-operation and informing them that further action was to be taken against those who had not complied.
- (c) Phase 3: Commenced end of February. Issue of Fixed Penalty Notices (FPNs) commenced at the end of February. London Borough of Wandsworth officers, accompanied by the Police, issued FPNs for pavement obstructions and advertising signs offences. This phase continued until the end of the trial period.
- (d) Phase 4: Prosecution. The London Borough of Wandsworth is currently considering prosecuting street traders for the pavement obstructions and advertising offences.

3.2 The resources deployed by the London Borough of Wandsworth in respect of the trial include two Enforcement Officers, a Supervisor and an Administrative Officer with a total of 634 hours forecast to be spent over the six month trial period at a total approximate cost of £14,000. Under the Section 101(5) Agreement, TfL agreed to contribute £12,000 towards these costs. The excess costs of the trial have been absorbed by the London Borough of Wandsworth.

3.3 A total of 57 Fixed Penalty Notices (FPNs) have been issued to-date by the London Borough of Wandsworth. Of these, 10 are for the removal of A-boards while the other 47 relate to street trading.

3.4 The public perception of improvements has been very positive.

4 USE OF BOROUGH POWERS

4.1 The London boroughs have various powers which they can use to clear the pavements, apart from those that TfL, as highway authority for the TLRN, may delegate to them. Such powers include powers to issue, revoke and vary street trading licences under the London Local Authorities Act 2003 and powers to issue fixed penalty notices in respect of fly-posting, illegal advertising and A-boards placed on the highway under the Anti-social Behaviour Act 2003.

- 4.2 However, it appears that to date all enforcement action has actually been under the London Borough of Wandsworth's existing powers. The London Borough of Wandsworth has indicated that were it necessary to escalate enforcement action in individual cases it is likely that it would bring prosecutions under the delegated powers.
- 4.3 Around 80 per cent of the London Borough of Wandsworth's activity under the trial appears to have been related to the regulation of street trading. The remaining 20 per cent related specifically to the removal of highway obstructions.
- 4.4 It should be noted that prior to the trial, the London Borough of Wandsworth was not carrying out any street trading enforcement in the trial area, nor was it using its existing powers to deal with highway obstructions. The London Borough of Wandsworth has indicated that it considers the TLRN to be the jurisdiction of TfL and that without a delegation arrangement resources would not be available to carry out enforcement activity (using Wandsworth's existing powers or otherwise) on the TLRN.
- 4.5 Limited enforcement activity in the trial area was undertaken by TfL prior to the trial.

5 EXTENDING THE TRIAL

- 5.1 A survey of footway offences carried out across the entire TLRN indicated that the London Borough of Wandsworth has the third highest number of offences, with 275 recorded in one day. The number of offences per borough varies considerably, but the boroughs with the greatest number of offences are primarily in the central London boroughs, with 11 recording over 100 offences.
- 5.2 Existing enforcement activity on the TLRN costs approx £100,000 per annum and is roughly equivalent to two enforcement officers covering 11 boroughs. This level of resource is not sufficient to enable TfL to blitz hotspots on the TLRN in the way that the London Borough of Wandsworth has done in the trial area. Moreover, the wider range of enforcement powers available to the London boroughs means that in some circumstances the London boroughs may be able to make more efficient and effective use of enforcement resource than TfL.
- 5.3 The London Borough of Wandsworth is keen to continue with and extend over a wider area the trial arrangements and has submitted a five year proposal to carry out enforcement activity on the entire TLRN in Wandsworth at an annual cost of £65,000.
- 5.4 Not all parts of the network require the same level of enforcement as undertaken in the trial. Delegation of powers to London Boroughs to cover only those parts of the TLRN with the most obstruction offences (as listed in Appendix 1) on the same cost basis as the Wandsworth trial would cost £714,000 per annum. This is significantly in excess of the £100,000 per annum currently spent by TfL on enforcement action on the TLRN.
- 5.5 Another option for TfL would be to delegate enforcement powers to London Boroughs but cap funding provided in respect of the exercise of those powers at £100,000 per annum (i.e. the current amount spent by TfL on highway enforcement across the TLRN). Providing funding up to a total of £100,000

represents 14 per cent of the cost basis for the Wandsworth trial and is a reasonable reflection of the proportion of the activity undertaken by the London Borough of Wandsworth that was directly related to the removal of highway obstructions rather than street trading.

6 OPTIONS FOR THE FUTURE

Option 1

- 6.1 Delegate highway enforcement powers (by way of agreements under Section 101(5) of the Local Government Act 1972) to selected London Boroughs for routes (to be agreed) without providing any funding for a period of five years, reviewable annually, and also encourage the London boroughs to utilise their own existing powers to keep the TLRN free from obstructions.
- 6.2 The benefits of this option are:
- (a) an improvement in the standard of highway enforcement could be achieved by the boroughs using their existing powers, resources and local knowledge and relationships. They would be able to tailor the service to better meet local needs and requirements;
 - (b) the boroughs could combine the enforcement activities relating to highway obstructions and street trading on borough roads and the TLRN and thereby exploit synergies between the activities and improve overall co-ordination;
 - (c) TfL would be able to dedicate some of its existing enforcement resource to those areas not covered by the delegations with a consequent improvement in service standards or could achieve a cost saving (there would be a saving on existing costs to TfL of approximately £50,000);
 - (d) the boroughs may be able to recover certain costs through the revenue generated by fixed penalty notices;
 - (e) this option would support City Charter proposals to devolve certain powers to the boroughs; and
 - (f) where agreed standards were not being met, the Managing Director - Surface Transport would have authority annually to review the delegation and, if appropriate, to terminate the arrangements with the boroughs.
- 6.3 The disbenefits are:
- (a) TfL would still need to undertake highway enforcement activity in those areas not covered by the delegation;
 - (b) the number of boroughs willing to exercise their existing powers and/or powers delegated to them by TfL to ensure the highway is clear of obstructions without additional funding may be low;
 - (c) the service standards offered by the boroughs are likely to be lower than if funding were provided; and

- (d) TfL, as Highway Authority, still has a duty to ensure the TLRN is clear of obstructions and may still have to undertake enforcement action if service standards delivered by the boroughs are low.

Option 2 – This is the preferred option

- 6.4 Delegate highway enforcement powers to selected London boroughs for routes to be agreed (proposed hotspots as listed in Appendix 1) at a total agreed cost of no more than £100,000 per annum to TfL for a period of five years, reviewable annually.
- 6.5 The benefits of this option are:
 - (a) an improvement in the standard of highway enforcement could be achieved by the boroughs using their existing resources and local knowledge and relationships. They would be able to tailor the service to better meet local needs and requirements;
 - (b) the boroughs could combine the enforcement activities relating to highway obstructions and street trading on borough roads and the TLRN and thereby exploit synergies between the activities and improve overall co-ordination;
 - (c) TfL would be able to dedicate some of its existing enforcement resource to those areas not covered by the delegations with a consequent improvement in service standards, or it could achieve a cost saving;
 - (d) boroughs may be able to recover some costs from the revenue generated by fixed penalty notices;
 - (e) this option would support City Charter proposals to devolve certain powers to the boroughs; and
 - (f) where agreed standards were not being met, the Managing Director - Surface Transport would have authority annually to review the delegation and, if appropriate, to terminate the arrangements with the boroughs.
- 6.6 The disbenefits are:
 - (a) TfL would still need to undertake highway enforcement activity in those areas not covered by the delegation;
 - (b) the number of boroughs willing to exercise their existing powers and/or powers delegated to them by TfL to ensure the highway is clear of obstructions if the funding available is restricted to 14 per cent of the Wandsworth trial costs (£100,000 per annum in total) may be low; and
 - (c) many obstructions of the highway may be related to street trading and if the London boroughs do not carry out street trading enforcement activity the benefits of delegations may be limited. TfL, as Highway Authority, would retain a duty to ensure that the TLRN was clear of obstructions.

Option 3

- 6.7 Make no further delegations of highway powers. TfL would retain its existing powers for the removal of highway obstructions and would continue to enforce to current (i.e. pre-trial) standards.

6.8 The benefits of this option are:

- (a) no additional cost to TfL;
- (b) service standards would be consistent across the TLRN; and
- (c) London boroughs already hold powers to enable them to undertake highway enforcement activities.

6.9 The disbenefits are:

- (a) service standards would remain lower than on many adjacent borough roads;
- (b) the opportunity to exploit synergies through combined enforcement and street trading activities will be lost;
- (c) the boroughs may have little incentive to use their existing powers to keep the TLRN clear of obstructions; and
- (d) the opportunity to collaborate actively with the boroughs in accordance with the City Charter would be lost and relationships with certain boroughs may suffer.

7 CRIME AND DISORDER AND RISK MANAGEMENT IMPLICATIONS

Crime and Disorder

- 7.1 Any improvements in TLRN highways enforcement and the potential increased presence of Council Inspectors will have a positive impact on levels of crime and disorder.
- 7.2 The Wandsworth Town Centre Manager commented that the local streetscape within Tooting is now healthier, cleaner and safer directly as a result of the trial.
- 7.3 Safety and the state of the footways are completely interconnected. This is not merely to do with perception – the cluttered messy and obstructed state of the town centre was encouraging illegal activity. This contributed to the feeling of unease local residents were experiencing. Now the footways are clear and tidy, it is obvious to them that Tooting is being closely monitored and action taken against offenders. Local residents' comments indicate that they feel safer and more confident.
- 7.4 There are also direct links between actual crime and poorly enforced town centre streets. The apparent lack of management was attracting illegal street traders. The London Borough of Wandsworth has rigorously enforced against these traders. Illegal traders seem reluctant to place themselves where they will stand out and be easily spotted, leading to a reduction of illegal trading.
- 7.5 The footway clutter was also creating pinch points - areas where goods extending in front of a shop were abutting far too close to bus shelters, for example and providing cover for pickpockets and other petty criminals.

Risk Management

- 7.6 TfL would seek an indemnity from each of the London boroughs involved in any wider rollout of the delegation of powers against claims and liability that may

arise.

8 LEGAL AND FINANCIAL IMPLICATIONS

Legal

- 8.1 The Highways Act 1980 imposes a statutory duty on TfL to protect the public's rights to use the TLRN. It creates the offence of wilful obstruction of the highway and provides highway authorities with powers to remove things deposited on the highway so as to be a nuisance. TfL, as highway authority, also has powers to remove things deposited on the highway under Section 17 of the London Local Authorities and Transport for London Act 2003.
- 8.2 TfL's Highways Act and London Local Authorities and Transport for London Act enforcement powers in respect of the TLRN could be undertaken by other highway authorities under Section 101(5) of the London Government Act 1972, which allows TfL to enter into "joint arrangements" with other highway authorities for the discharge of any of its functions.

Financial Implications

- 8.3 Under Option 2, the costs to TfL of a wider rollout of the delegation of enforcement powers to selected London boroughs (as per Appendix 1) would be capped at £100,000 per annum. The funding provided to the boroughs would therefore equate to the expenditure currently incurred by TfL on enforcement activities.
- 8.4 TfL would retain responsibility for enforcement in the remaining boroughs/ routes.
- 8.5 Under Option 2, the delegation of enforcement powers would not, therefore, require additional funding.
- 8.6 The costs identified in the trial did not include the cost of bringing any court proceedings against offenders which may also be undertaken by the borough under the delegation arrangements. Where the costs of any such prosecutions should rest would be one of the detailed terms of any Section 101(5) agreements to be negotiated by the Managing Director - Surface Transport should the enforcement powers be delegated.

9 CONCLUSIONS

- 9.1 The Wandsworth trial has been a success. The London Borough of Wandsworth was able to make use of its range of powers together with its local knowledge and experience to de-clutter the highway more effectively and more efficiently than TfL.
- 9.2 The response of residents of Tooting to the trial has been positive.
- 9.3 TfL officers have inspected the trial area and have commented favourably on the state of the pavements. Overall, the perception is that there has been a noticeable improvement.
- 9.4 The London Borough of Wandsworth is keen to extend the trial both in time and scope and/or to make the delegation a permanent arrangement. TfL would like

to explore similar delegation arrangements with other London boroughs.

10 RECOMMENDATIONS

10.1 The Panel is asked to NOTE this report, prior to it being submitted to the meeting of TfL on 29 July for the meeting to be asked to:

- (a) NOTE the positive outcomes of the Wandsworth trial;
- (b) REVIEW the suggested options for taking the trial forwards; and
- (c) APPROVE a delegation of authority to the Managing Director - Surface Transport for the negotiation and agreement of the terms of Section 101(5) agreements (under the Local Government Act 1972) with selected London boroughs.

11 CONTACT

11.1 Contact: David Brown, Managing Director – Surface Transport
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TLRN HOTSPOTS

Borough	Road Name	Start Point	End Point	Length
Bromley	West Wickham High St	Station Rd	Manor Park	700m
Lewisham	New Cross Rd	Deptford Bridge	Deptford Broadway	300m
Lewisham	Lewisham High St	Molsworth St	Rushey Green	1400m
Lewisham	Lewisham Way	Florence Rd	Loampit Hill	600m
Lewisham	Lee High Rd	Lewisham High St	Burnt Ash Rd	2000m
Lewisham	Catford Rd	Rushey Green	Stansted Rd	800m
Richmond	A205 Upper Richmond Rd West	Priests Bridge	Clifford Ave	2000m
Croydon	A23 London Rd	Brigstock Rd	Colmer Rd	3100m
Merton	A24 High Street Colliers Wood	Priory Rd	Robinson Rd	1000m
Haringey	A503 Seven Sisters Rd / A10 High Road	Amhurst Road junction	Bruce Grove junction	4400m
Southwark	A2 Old Kent Rd	Bricklayers Arms	Dunton Rd	600m
Camden	A400 Camden High St	Hampstead Rd	Parkway	400m
Westminster	A5 Edgware Rd	Marble Arch	Old Marylebone Rd	700m
Wandsworth	A24 Tooting High St / Upper Tooting Rd	Coverton Rd	Lynwood Rd	850m
Wandsworth	A3 Battersea Rise	Clapham Common West Side	Boutflower Rd	500m
Wandsworth	A3 Balham High Road	Bedford Hill	Trinity Rd	1100m
Lambeth	A3 Clapham High St	Bedford Rd	Clapham Park Rd	700m
Lambeth	A23 Streatham High Rd	Pendennis Rd	Stanthorpe Rd	700m
Tower Hamlets	A10 Whitechapel Road	Commercial St	Cambridge Heath Rd	1200m
Hackney	A5201 Old St	City Rd	Hoxton St	500m
Hackney	A1202 Great Eastern St	Old St	Commercial St	1100m
Hackney	A10 Kingsland High St & Stoke Newington Rd	Balls Pond Rd	Evering Rd	1200m
Islington	A1 Upper St	Pentonville Rd	Highbury Corner	1500m
Islington	A1 Holloway Rd	Highbury Corner	Archway	3000m
Islington	A503 Seven Sisters Rd	Eburne Rd	Hornsey Rd	300m
Islington	A1201 Farringdon Road	Calthorpe St	Charterhouse St	1000m
TOTAL				31.7km