

TONBRIDGE & MALLING BOROUGH COUNCIL

PLANNING and TRANSPORTATION ADVISORY BOARD

27 May 2009

**Report of the Director of Planning Transport and Leisure
and the Chief Solicitor**

Part 1- Public

Matters for Recommendation to Cabinet - Non-Key Decision

1 ROAD CLOSURES – TOWN POLICE CLAUSES ACT 1847

Summary

The Borough Council has power to enact road closures by Notice pursuant to the Town Police Clauses Act 1847. It provides a useful and efficient way for local community development to be supported. Current operational policy is described and an endorsement of the arrangements is recommended.

1.1 Context

- 1.1.1 Shire districts in two tier areas retain a power to close roads using the Town Police Clauses Act 1847 (TPCA). Though it is an ancient piece of legislation and it is couched in archaic language, it nonetheless continues to be useful in helping the Borough Council's community development role. It provides a simple, speedy and inexpensive means of providing road closures in certain prescribed circumstances in contrast to the slower, more expensive process that has to be followed for closures under the Road Traffic Regulation Act 1984 (RTRA 1984) and associated enactments. In any case, this latter piece of legislation is a power exercisable by the Local Highway Authority, Kent County Council, and it is not available to the Borough Council directly.
- 1.1.2 The Borough Council routinely exercises powers under the TPCA for a range of events throughout the year; for example, Remembrance Sunday processions, St George's Day parades and other events of this nature. As time has gone on and more recent legislation has been introduced, there have been questions about how appropriate it is to use the powers available under the TPCA for certain categories of events and how these should be exercised.
- 1.1.3 In effect there are a series of questions to be answered;
- Can the power be lawfully used for the particular event?

- Does the Borough Council wish to exercise the power for the particular event?
- If the Borough Council wishes to use its powers under the Act, what process should be followed?

1.1.4 The answers to these questions suggest the need for some operational policy and the purpose of this report is to advise accordingly so that the Board can recommend a suitable approach to the Cabinet.

1.2 Lawful Use of the Act

1.2.1 The wording of the TPCA at Section 21, states: *“The Commissioners may from time to time make orders for the route to be observed by all carts, carriages, horses, and persons, and for preventing obstruction of the streets, within the limits of the special Act, in all time of public processions, rejoicing, or illuminations, and in any case when the streets are thronged or liable to be obstructed and may also give directions to the constables for keeping order and preventing obstruction of the streets in the neighbourhood of theatres and other places of public resort.”*

1.2.2 Therefore, the Council, as the ‘commissioners’ may make an order to control traffic in an area where there is a special occasion which is likely to result in ‘thronging’. The event must be of a special kind as distinct from the everyday life of a town or place and “an "occasion" when the streets, for reasons other than the normal day-to-day usage, are likely to contain more than the usual amount of traffic. Clear examples of when this power has been used in the past have included processions such as the Christmas Festival or the 2004 celebration of Kelly Holmes double gold medal at the Olympics. It has also been used for events such as the Larkfield 10K Run.

1.2.3 More recently, there was consideration whether it could be used for road closures associated with Farmers Markets but the considered view has been that these are not special events on account of their frequency. A market occurring regularly on a weekly or monthly basis does not have the character of a special event and is more part of the routine life of the town or village in which the market takes place. This is why the consistent practice over many years has been to carry out such events using the RTRA 1984.

1.2.4 Having decided that the use of the Act is lawful, the Council has discretion whether to apply it. Subject to fulfilling certain requirements described in the next paragraph, the general presumption has been that the Council would wish to use its powers under the Act in the interests of community development and well-being. The events are generally charitable by nature and it is possible that they would be unable to take place using the alternative closure procedures under the RTRA depending on the County Council’s stance on charging.

1.2.5 As it is, the Council does not charge for processing a Notice under the TPCA and, generally offers some assistance with setting out the closure. This is currently

covered by an existing Borough Council budget. It is possible that requests for closures could be received from organisers of events that are commercial and profit making. Were this to happen, the event organiser would be expected to meet the cost of the Notice and any associated set up costs for the closure.

- 1.2.6 Current operational procedure is based on ensuring that a fundamental criterion is fulfilled before the Council authorises a TPCA closure. This is that the event organiser has secured approval and endorsement from the Police and from the Highway Authority for the proposed closure arrangements.
- 1.2.7 In practice, the Council provides advice to organisers to help them be aware of what they need to do. However the basic responsibility for ensuring that they liaise with the police and the highway authority in a timely fashion has to remain with them. This is especially critical because the County Council requests of the order of 12 week's notice of any road closure proposals.

1.3 Developments in Regulations

- 1.3.1 The Council's current practice is based on the law and regulations as they now are. However, changes may be on the way particularly as a result of the Traffic Management Act. In some parts of the country, the TPCA has already been rendered obsolete as a result of the stance of the Local Highway Authority and Police that it is no longer appropriate legislation. That is not currently the case in Kent and we continue to have available a useful piece of legislation, albeit very old, to assist the local community. However, its utility is being compromised with incremental ratcheting of requirements for barriers, marshalling and ever stricter risk assessments from the Highway Authority.
- 1.3.2 If the police and highway authority view changes on the use of the TPCA or if the increasing requirements from the County Council for setting up closures become unsustainable, the Board will be advised. Until then, the Board is invited to endorse operational policy based on the current arrangements described in this report and to recommend accordingly to the Cabinet.

1.4 Legal Implications

- 1.4.1 As set out in the report

1.5 Financial and Value for Money Considerations

- 1.5.1 The staff costs of preparing and displaying Notices and the cost of setting out barriers for certain events is met within existing service budgets and there is an ear-marked reserve of £20,000 for any over-run of costs that has not to date been called upon.

1.6 Risk Assessment

- 1.6.1 In view of the inherent risks associated with any road closure, the Borough Council will not process a request for one under the TPCA unless it has a clear and unqualified approval from both the Police and the Local Highway Authority, Kent County Council, for the arrangements, risk assessment, method statement and public liability insurance cover.

1.7 Policy Considerations

- 1.7.1 Community – the operational policy aspects of this report are an integral part of community development.

1.8 Recommendations

- 1.8.1 That the Council lends its support to local community events requiring road closures by interpreting the lawful use of the Town Police Clauses Act as widely as legally permissible
- 1.8.2 The current operational arrangements as described in the report **BE ENDORSED**.

Background papers:

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Nil

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