

TONBRIDGE & MALLING BOROUGH COUNCIL

OVERVIEW AND SCRUTINY COMMITTEE

22 April 2024

Supplementary Report of the Interim Chief Executive

Part 1- Public

Matters for Information

1 CALL IN DECISION NOTICE D240034CAB – PARKING PROPOSALS AND CHANGES TO ON-STREET AND OFF-STREET PARKING FEES AND CHARGES.

At the request of Cllr M Hood, Vice-Chair of Overview and Scrutiny Committee, this supplementary report sets out the legal position concerning fees and charges for on-street and off-street parking and the purposes for which any surplus income generated from parking can be used.

1.1 Parking Revenue

- 1.1.1 Local authorities' statutory powers to provide on-street and off-street parking and to impose parking charges are derived from Part IV of the Road Traffic Regulation Act 1984 (RTRA).
- 1.1.2 Section 122 of RTRA 1984 imposes a duty on local authorities to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians) and the provision of suitable and adequate parking facilities on and off the highway.
- 1.1.3 Under sections 32 and 35 of the RTRA, local authorities have the power to make provision for parking places off-street and to impose parking charges for the purpose of relieving or preventing congestion of traffic.
- 1.1.4 Under sections 45 and 46 of the RTRA, local authorities have the power to designate parking places on the highway, charge for use of them and issue parking permits for a charge. In determining what parking places are to be designated, the local authority should consider both the interests of traffic and those of the owners and occupiers of adjoining property.
- 1.1.5 Section 55 (as modified) prescribes how the income and expenditure for designation orders made under section 45 for on-street parking including how the income and expenditure for enforcement activities for on-street and off-street enforcement activities are to be accounted for.

1.1.6 Section 55(2) states that local authorities should keep an account of their income and expenditure in respect of parking places. At the end of each financial year, any deficit in the account should be made good out of the general fund and (subject to (3) below) any surplus income, should be applied for all or any of the purposes specified in (4) below. Insofar as such surplus is not so applied, it should be appropriated to the carrying out of some specific project falling within the purposes in (4) below and carried forward until applied to carrying it out.

- (3) If the local authority so determine, any amount not applied in any financial year, instead of being or remaining appropriated, may be carried forward in the account to the next financial year;
- (4) The purposes for which surpluses can then be applied are –
 - (a) the making good to the general fund of any amount charged to that fund under (2) above in the 4 years immediately preceding the financial year in question.
 - (b) meeting all or any part of the cost of the provision and maintenance by the local authority of off-street parking accommodation, whether in the open or under cover.
 - (c) the making to other local authorities or to other persons of contributions towards the cost of the provision and maintenance by them, in the area of the local authority or elsewhere, of off-street parking accommodation, whether in the open or under cover.
 - (d) if it appears to the local authority that the provision in their area of further off-street parking accommodation is unnecessary or undesirable, the following purposes –
 - (i) meeting costs incurred, whether by the local authority or by some other person, in the provision or operation of, or facilities for, public passenger transport services.
 - (ii) the purposes of a highway improvement project in local authority's area.
 - (iii) [this part is only relevant to London authorities]
 - (iv) the purposes of environmental improvement in the local authority's area.
 - (v) in the case of such local authorities as may be prescribed, any other purposes for which the authority may lawfully incur expenditure (Regulations have yet to prescribe a list of such local authorities).

“A highway improvement project” means a project connected with the carrying out by the appropriate highway authority (whether the local authority or not) of any operation which constitutes the improvement (within the meaning of the Highways Act 1980) of a highway in the area of a local authority in England or Wales

“Environmental improvement” includes–

- (a) the reduction of environmental pollution (as defined in the Pollution Prevention and Control Act 1999 (see section 1(2) and (3) of that Act)
- (b) improving or maintaining the appearance or amenity of–
 - (i) a road or land in the vicinity of a road, or
 - (ii) open land or water to which the general public has access; and
- (c) the provision of outdoor recreational facilities available to the general public without charge.

1.1.7 Surplus income over expenditure for our off-street parking spaces where we charge for parking are placed into the local General Fund.

1.1.8 In the case of (*Attfield*) v London Borough of Barnet [2013] EWHC 2089 (Admin), which was a case brought against Barnet challenging an increase in on-street parking permit charges, the High Court held that as a matter of general principle, a public body must exercise a statutory power for the purpose for which the power was conferred by Parliament and not for any unauthorised purpose. The RTRA 1984 is not a revenue-raising or taxing statute and does not authorise the Council to use its powers to charge local residents increased parking charges with the purpose of raising surplus revenue for other transport purposes funded by the General Fund. However, the courts recognise that councils should have a discretion to set charges to reflect their parking policies and when setting charges to budget for a modest surplus to allow for unforeseen expenses, shortfalls in other years and payment of capital charges/debts.

1.2 Legal Implications

1.2.1 The legal implications have been covered in 1.1 of the report.

1.3 Members are asked to note the report.

Background papers:

Nil

contact: Joy Ukadike
Head of Legal and Democratic
Services & Interim Monitoring
Officer

Adrian Stanfield
Interim Chief Executive