

# Agenda Item IMD4

## INDIVIDUAL EXECUTIVE MEMBER DECISION

REFERENCE IEMD: IEMD 2024/04

<b>TITLE</b>	Street works: fines and lane rental surplus funds Wokingham Borough Council Consultation response report
<b>DECISION TO BE MADE BY,</b>	Executive Member for Active Travel, Transport and Highways - Paul Fishwick
<b>DATE, MEETING ROOM and TIME</b>	5th March 2024 LGF3, Shute End at 12:00
<b>WARD(S)</b>	Borough Wide
<b>DIRECTOR / KEY OFFICER</b>	Director of Place and Growth – George Framalitto

### **PURPOSE OF REPORT (Inc Strategic Outcomes)**

To formally approve the Wokingham Borough Council response to the Street works: fines and lane rental surplus funds Department for Transport consultation.

### **RECOMMENDATION**

It is recommended that the Executive Member for Active Travel, Transport and Highways:

- Agrees the response contained in this report for submission by officers as the formal response from Wokingham Borough Council.

### **SUMMARY OF REPORT**

This report considers the content of the Department for Transport Street works: fines and lane rental surplus funds consultation and provides a formal response to be submitted on behalf of Wokingham Borough Council.

## BACKGROUND

The Department for Transport Street works: fines and lane rental surplus funds presents a series of reforms to street works regulations, which include:

- requiring at least 50% of any surplus lane rental funds to be spent on repairing potholes
- raising the level of fixed penalty notices that can be issued for 5 street works offences
- allowing overrun charges to apply at weekends and bank holidays

This consultation has been introduced following the government announcing its Plan for Drivers. In support of smoother journeys for drivers, measures were included to help fix roads faster and encourage efficient street works.

There were 2.2 million street and road works carried out in England in 2022 to 2023. These can cause significant disruption to people's journeys and congestion, which is estimated to cost the economy around £4 billion. Street works are carried out by utility companies (for example, water, gas, electricity and telecommunications, which are also known as statutory undertakers) to install, repair or maintain the vital services on which we all rely. Road works are carried out by highway authorities to maintain the roads or, for example, to install cycle or bus lanes.

The government has been working across the sector in recent years on a range of measures to help ensure that works are planned, managed and coordinated as effectively as they can be to improve consistency and communication across the sector and to make accurate and up-to-date information available to road users.

The government is focused on ensuring that the most modern and effective methods possible are being used by highway authorities, utility companies and their contractors to plan and manage works. This is not just to minimise the impact that works have on congestion, but to ensure that our systems:

- are fit for the challenges of the future, including the digital transport agenda support innovation
- are able to deal with the rising demands for transport services and for utility infrastructure

The full consultation document can be found at [Street works: fines and lane rental surplus funds - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/street-works-fines-and-lane-rental-surplus-funds)

### Consultation Questions and our response

1. *We (central government) are proposing that a minimum of 50% of surplus lane rental funds should be spent by highway authorities on repairing potholes, regardless of the cause of the pothole.*

*Do you support or oppose our proposal that a minimum 50% of surplus lane rental funds are spent, by highway authorities, on repairing potholes?*

Wokingham Borough Council Supports this proposal

## *Why?*

Wokingham Borough Council is broadly supportive of surplus lane rental funds to be used for highway maintenance works, however, we believe that the use of the word 'pothole' is too specific and instead should reference highway maintenance. Potholes are not the only frustration that driver's face as a result of third party Street works (for example, regulations requiring that only the area of road markings affected by an excavation be reinstated, rather than the entire symbol.) Central government should amend the regulation that third party street works are required to reinstate the whole symbol of road markings.

The Council remains concerned, however, that adding this requirement into Lane Rental schemes takes away from the purpose of lane rental i.e. to manage the highway network and encourage better works planning by works promoters more effectively. Local Authorities may use this as a funding opportunity to the detriment of essential utility installation and maintenance. Specific guidance and frameworks should be included in Lane Rental scheme documents to ensure that this income is used appropriately.

The Council would also ask whether funding pothole repairs (highway maintenance) from lane rental income risks future maintenance funding from central government. Given the objective of lane rental is to reduce disruption on the road network, the objective should be to have zero surplus funds and therefore, there should be no additional money for pothole repair. Like Fixed Penalty Charges and Overruns, such income could only ever be considered an 'extra', not to be relied upon to meet the gap between road maintenance needs and funding.

### *2. We want to raise the limit of fixed penalty notices which have not been amended since 2007, relating to street works offences:*

- *failing to send work start - stop notices on time*
- *failing to send notice of reinstatement being completed on time*
- *working without a permit*
- *breaching permit conditions*

*We are asking for your views on whether increasing fine levels would provide a greater deterrent and improve general compliance.*

*If FPNs had been linked to the level of inflation, but not including the high levels that have been in place up until winter 2023, we calculate the appropriate FPN fines (rounded) would now have risen from:*

- *£500 to £700*
- *£300 to £425*
- *£120 to £170*
- *£80 to £115*

*We (government) are proposing 2 options for raising the amount of fixed penalty notice (FPN) charge that is payable, these options are:*

- *option A would raise fines in line with inflation since 2007, which was the last time levels were raised, this would mean would mean FPNs amounts of £170 full charge and £115 discounted charge for offences and*

*breaching permit conditions. FPNs would be £700 full charge and £425 discounted charge for working without a permit*

- *option B would double the level they are now meaning FPNs of £240 full charge and £160 discounted charge for offences and breaching permit conditions – raising them from £120 and £80. FPNs would be £1,000 full charge and £600 discounted charge for working without a permit – raising them from £500 and £300*

Wokingham Borough Council supports Option B

*Why?*

The current levels of Fixed Penalty Notices, even including any amendments made as a consequence of this consultation, remain too low. Fixed Penalty Notices are designed to promote changes in the behaviour of works promoters and the only way to realistically achieve this is financially. At the present, a significant amount of effort is expended during both the assessment of permit applications and wider planning activities for it to be rendered pointless when national permit conditions are not adhered with. FPNs are so low (and can only be applied once) that works promoters will decide to ignore the permit conditions and pay the FPN because it is more cost effective than utilising manual control, for example. This makes the effort made pointless and frustrates motorists hugely. Further escalation beyond the initial fine needs to be included whether that is exponential fines or permit revocation. Whilst not directly part of this consultation, Wokingham Borough Council also feels that this also applies to defect fees as well as the timescales associated with completing the rectification.

Given the introduction of performance-based inspections, has performance based FPN levels been considered? This would punish poor performance (assessed across the Country using Street Manager) and promote real change whilst not penalising those work promoters who work in line with the conditions applied to them.

3. *We propose amending the 2009 charges regulations to allow overrun to be applied at weekends and bank holidays.*

*We are subsequently proposing applying FPNs to late submission of works start and stop notices at weekends and bank holidays.*

*Do you support or oppose:*

Wokingham Borough Council supports the following;

	<i>at weekends?</i>	<i>at bank holidays?</i>
<i>overrun charges being applied:</i>	Support	Support
<i>FPNs being available for late submission of works start and stop notices:</i>	Support	Support

*Why?*

The Council supports applying overrun at weekends and bank holidays but are concerned that this would require extra resource and raises the expectation on Local

Authorities to operate during these periods; many Local Authorities will not be resourced to operate during these traditionally out of hours periods. We would also like clarity on whether primary legislation regarding the definition of the working day needs to be amended.

**FINANCIAL IMPLICATIONS OF THE RECOMMENDATION**

***The Council continues to face severe financial challenges as a result of reductions to public sector funding and growing pressures in our statutory services. It is estimated that Wokingham Borough Council will be required to make careful budget decisions and all Executive Member decisions should be made in this context.***

	How much will it Cost/(Save)	Is there sufficient funding – if not quantify the Shortfall	Revenue or Capital?
Current Financial Year (Year 1)	NIL	-	-
Next Financial Year (Year 2)	NIL	-	-
Following Financial Year (Year 3)	NIL	-	-

<b>Other financial information relevant to the Recommendation/Decision</b>
<p>The changes implemented because of questions 2 and 3 of this consultation will result in more income being brought into the Council from Fixed Penalty Notices and s74 overrun charges. However, the aim should be to have zero income from these fines and charges as this would show complete compliance from all works promoters. Whilst income can be estimated based upon trends, this cannot become a target.</p> <p>Wokingham Borough Council does not operate a Lane Rental scheme so any changes made as a result of question 1 will not immediately affect the Council. Should a decision be made to proceed with a Lane Rental application, assessment of the scheme will be made in line with current legislation.</p>

<b>Cross-Council Implications</b> (Does this decision impact on other Council services, including property and priorities?)
Not immediately as the Council does not operate a lane rental scheme.

<b>SUMMARY OF CONSULTATION RESPONSES</b>	
<b>Director Corporate Services</b>	
<b>Monitoring Officer</b>	
<b>Leader of the Council</b>	

<b>List of Background Papers</b>
Open Consultation – Street works: fines and lane surplus funds

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