

Report of the Strategic Director of Place to the meeting of Executive to be held on 6 February 2018

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Subject:

Petition in relation to the operation of Oastler Road Car Park, Saltaire

Summary Statement:

This report provides Executive with an update on the actions taken by the Council in resolving the situation of the illegally operated car park at Oastler Road, Saltaire together with updates on the discussions with the land owner (Saltire Investments Ltd) and the options available to the Council in supporting the recommendations contained within the petition which was formally received by Council regarding the operation of Smart Parking Limited.

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Portfolio:

Regeneration, Planning & Transport

Overview & Scrutiny Area:

Environment & Waste Management

1. SUMMARY

- 1.1 This report provides Executive with an update on the actions taken by the Council in resolving the situation of the illegally operated car park at Oastler Road, Saltaire together with updates on the discussions with the land owner (Saltaire Investments Ltd) and the options available to the Council in supporting the recommendations contained within the petition which was formally received by Council regarding the operation of Smart Parking Limited.
- 1.2 *The report seeks Executive's endorsement of the actions taken to date and invites comments as to the preferred solution of the reintroduction of a pay and display car park at this location.*

2. BACKGROUND

- 2.1 The land on which the former Oastler Road Car Park is situated is currently owned by a private company (Saltaire Investments Limited and Saltaire Investments (No.2) Limited). Following the surrender of the Council's tenancy in April 2017 under which it operated a pay and display car park the land owner appointed a management company, Smart Parking Limited, to set up and operate a private pay and display car park.
- 2.2 The terms and conditions of the operation of this car park permitted the first 20 minutes parking to be free with charges becoming payable thereafter. However in a departure from the previous Council approach users of the car park were required to enter their registration details and obtain a ticket for parking, even for the 'free' 20 minute period. This change in operation led to a significant number of car park users receiving parking charge notices from Smart Parking for £100 and promoted the issue being raised with local ward members and the local MP.
- 2.3 Investigations into this matter by officers revealed that Oastler Road was adopted highway (being dedicated in two phases dated July 1990 and May 1992) and therefore the private car park was actually operating illegally. These investigations also revealed that the Council had failed to implement an appropriate traffic regulation order for on-street parking places during its tenure of the site.
- 2.4 Given the above situation the Council arranged for the immediate refund of any fines which had been charged during its tenure and to address the repayment of parking income made a contribution to the local Saltaire festival. Officers also contacted the land owner and management company to advise them to cease operations until this matter could be regularised.
- 2.5 Unfortunately, despite a number of attempts at communication with the landowner and his agents to cease operations compliance was not forthcoming. Therefore, in an attempt to resolve this issue highways officers resolved to serve notice of enforcement action under Section 143 of the Highways Act 1980 in October 2017 requiring removal of all items of pay and display infrastructure (ANPR cameras, signs and machines) from the adopted highway within 28 days of the notice. All such equipment was removed within the prescribed period prior to the end of November 2017.

- 2.6 Since this time the car park has effectively operated as an un-controlled parking area.
- 2.7 A petition containing 250 signatures in relation to the operation of Oastler Car Park in Saltaire was formally received by Full Council on 12 December 2017 and referred to Executive for consideration. The issues presented in the petition were:
- a) A call for Smart Parking to remove their fines for parking less than 20 minutes, reduce their fines for other offences and adhere to industry grace periods.
 - b) Bradford Council to publicise the company's disrespect of the District's residents and businesses, warn other Councils, and offer the land-owner to run the car park again.
 - c) Government to remove access to DVLA from companies who make indecent profit out of a public service.

3. OTHER CONSIDERATIONS

- 3.1 The following paragraphs outline the Council's response as well as describe the scope of the powers and options available to the Council to assist or achieve the action requested:

Smart Parking to Remove their Fines for Parking less than 20 Minutes

- 3.2 Smart Parking Limited are a member of the British Parking Association's Approved Operator Scheme (AOS) which applies to people and organisation that carry out parking control and enforcement on private land. As such Smart Parking have agreed to comply with the Association's Code of Practice in terms of the operation of any car parks it manages.
- 3.3 The British Parking Association's Code of Practice does not specifically dictate the charging regimes for sites but does require operators to allow appropriate grace periods for users entering sites and perhaps deciding not to park either due to lack of space or for any other reason. On the basis of some of the complaints which have been received from residents it appears that Smart Parking have not been granting appropriate grace periods at this site which is contrary to the Code of Practice recommendations.
- 3.4 As described above the previous arrangement of the first 20 minutes parking being free was retained in Smart Parking's charging policy. However, as enforcement was undertaken by way of ANPR cameras the operation of this policy required drivers to obtain a ticket from the pay and display machine by entering their registration details. Those drivers doing so and leaving within the 20 minute period were not charged for parking. Those drivers who failed to first provide their registration details upon parking, or overstayed this 20 minute period without paying the appropriate fee became liable for the parking charge notice of £100. Nationally there are examples of such schemes operating by other management companies where by the initial period of free parking still requires users to obtain a parking ticket.

3.5 These terms and conditions of operation were appropriately detailed on the signs located around the car park and therefore in legal terms the approach of Smart Parking in enforcing these requirement, however given the apparent inconsistent approach to grace periods the practices of this company towards providing a fair and equitably operated car park appear doubtful.

Bradford Council to publicise the company's disrespect, warn other Councils, and offer the land-owner to run the car park again.

3.6 Since the initial story of complaints from residents receiving fines broke in the local press there have been a number of articles about the practices of Smart Parking Limited in the press including calls from councillors for a resolution to this matter. As Highway Authority the Council has written to Saltaire Investments to seek a resolution to this situation (operation of an illegal P&D car park on adopted highway). A meeting has subsequently been arranged on 23 January 2018 with the land owners to try to resolve this issue and return the car park to operational status.

3.7 The complaints about the operating practices of Smart Parking Ltd raised by local residents / car park users is of sufficient concern and volume that positive action by the Council to support local residents is being taken within the limits of its powers. The Council's concerns have been raised with the landowner directly.

3.8 Fundamentally, the legal status of Oastler Road will require resolution before either a Council or management company car park can be operated at this location. The choice of which operator (Council or Management Company) ultimately takes responsibility for the site will be a matter for discussion with the landowner and will influence the legal approach necessary to regularise the situation. However, it is worth reminding members that the Council decided to surrender its operation of the car park following a request to regularise the tenancy by the new land owners in July 2016 and receipt of a claim for mesne profits (loss of income through unlawful occupation). This claim continues to be resisted by the Council together with a claim from the landowner for terminal dilapidations costs of £116,878.

3.9 On the basis of these facts the Council is reluctant to recommence parking operations at this site.

Removal of Access to DVLA information for Companies Making Indecent Profit.

3.10 Regulation 27(1)(e) of the Road Vehicles (Registration and Licensing) Regulations 2002 provides the power for the Secretary of State to allow access to information relating to vehicle ownerships "*by any persons who can show to the satisfaction of the Secretary of State that he has reasonable cause for wanting particulars to be made available to him*". It is under such powers that companies, such as Smart Parking Limited, are able to access information held by the DVLA on payment of a fee. There are currently two methods of accessing this information:

- a) Through paper application using form V888/3; and
- b) Electronically in the form of the being given Approved Conditional Access (ACA) to the Register Keeper database at the DVLA.

- 3.11 To be granted ACA rights a company must first serve a six month probationary period using manual enquiry forms which require each access request to demonstrate by way of evidence why the data is required and ultimately what the data will be used for. During this period all complaints are logged and closely monitored by the DVLA. On satisfactory completion of this period an electronic link can be established. All companies or organisations that do not have a statutory regulator are required to be a current member of a DVLA Accredited Trade Association (ATA); the sole ATA for private parking companies is the British Parking Association. Therefore so long as a private company becomes a member of the British Parking Association Approved Operator Scheme and agrees to comply with the requirements of their Code of Practice there is a presumption that the company will benefit from demonstrating the necessary 'reasonable cause'.
- 3.12 The BPA's Code of Practice does contain provisions for an audit of operations to be undertaken of any AOS member however the BPA is not set up to deal with disputes from members of the public about parking or control and neither is it a regulatory body. Under the BPA's annual audit scheme of AOS members where non-compliance with any aspect of the Code is found companies are issued with non-compliance points. Where these points exceed twelve in any assessment period an operator may be referred to the BPA Council for disciplinary action which could lead to suspension or revocation of AOS membership. Beyond this though, the Code does not provide a way for drivers or other bodies to challenge how a landowner or operator has applied parking control and enforcement on private land. Any challenge or appeal is a matter for the landowner's or operator's own procedures.
- 3.13 Regretfully whilst the issue of access to DVLA information by third parties has been the subject of parliamentary debate there has been no change in this process despite concerns being raised about the ability of unscrupulous companies to use such access for financial gain.
- 3.14 In spite of the above, the operation of Smart Parking Limited at this location has raised such concerns in sufficiently large numbers that the full compliance of Smart Parking with the BPA's Code of Practice appears to be doubtful. As such the Council's concerns will be raised with the BPA calling on this national body to undertake a detailed audit of the company's practices. Sanctions which may be called for by the Council were the findings of this audit show deviation from the Code of Practice standards could include calling on the BPA to remove the company's AOS membership and by virtue of doing so their access to DVLA records.

4. FINANCE & RESOURCE APPRAISAL

- 4.1 The Council has refunded all fines which it received as a result of its enforcement action on the former Oastler Car Park which was found to be operating without the requisite Traffic Regulation Order being in place. A contribution has been made to the Saltaire Festival by way of mitigation for payments made by local residents equivalent to the income from parking charges which were received during this time.

4.2 Until such time as the adopted highway status is revoked from this location the Council remain responsible for the maintenance of the site under its general duties as Highway Authority.

4.3 There are no HR issues arising from this report.

5. RISK MANAGEMENT AND GOVERNANCE ISSUES

5.1 The enforcement action taken by the Council as Highway Authority to remove illegal structures from the Oastler Road car park is consistent with its powers and duties under the Highways Act 1980 to protect the right of the public to unhindered access to the highway.

5.2 Until such time as the adopted highway status of Oastler Road is resolved the Council as Highway Authority remains responsible for the maintenance of the highway at this location as well as being responsible for protecting the public's right to pass and re-pass.

6. LEGAL APPRAISAL

6.1 All the actions proposed are within the Council's powers and/or duties as Highway Authority under the Highways Act 1980, Section 6 of the Road Traffic Regulation Act 1984 and Section 247 of the Town and Country Planning Act 1990.

7. OTHER IMPLICATIONS

7.1 Equality & Diversity

None.

7.2 Sustainability Implications

None.

7.3 Greenhouse Gas Emissions Impacts

None.

7.4 Community Safety Implications

None.

7.5 Human Rights Act

None.

7.6 Trade Union

None.

7.7 Ward Implications

None.

7. NOT FOR PUBLICATION DOCUMENTS

7.1 None.

8. OPTIONS

8.1 There are limited options available to Executive in relation to the contents of this report. However, one issue which does need to be considered is whether the Council wishes to pursue a return to its operation of the pay and display car park at this location, rather than that of a management company.

- a) Were the Council minded to again take on this responsibility the land owner would need to cease its claims against the Council for dilapidation costs and mesne profits as an initial pre-requisite to a future operation agreement. A formal agreement in relation to the disbursement parking income would similarly need to be reached, although as the Council would anticipate the full receipts to be received into Council funds this may be fundamentally unacceptable to the land owner. Legally, the Council would then need to ensure that the appropriate traffic regulation order was secured to permit pay and display operations on-street at this location.
- b) If the site is again to be handed to a management company to operate a private pay and display car park the adopted highway status of Oastler Road would first need to be revoked through the powers in Section 247 of the Town & Country Planning Act. This process would be subject to the landowner securing planning permission for change of use to private land. Such a planning application would be subject to the usual level of public consultation as would the subsequent application to the Secretary of State for permission to extinguish the highway. It is important to stress that there is no guarantee that either the planning permission or extinguishment will be granted by the respective regulatory bodies. Once the removal of this status had been secured it would be a matter for the landowner alone to appoint a management company and agree the terms of operation of the car park with that company; the Council would not have a role in this process.

9. RECOMMENDATIONS

9.1 That Executive note the actions taken to date to address the illegal operation of a pay and display car park on Oastler Road, Saltaire and the potential approaches available to it to regularise the legal situation in relation to the adopted highway status of Oastler Road.

9.2 That officers continue negotiations with the landowner about the future operation of the car park to reach a satisfactory resolution and that based on these negotiations implementation of the appropriate legal mechanism be delegated to the Strategic Director: Place in consultation with the Portfolio Holder.

- 9.3 That the Executive call upon the British Parking Association to audit Smart Parking Limited's practices both at this location and nationally. That appropriate action is taken on the findings of the audit including but not limited to revocation of their membership of the Approved Operator Scheme where infringements of the Code are identified.
- 9.4 That the lead petitioner be advised accordingly.

10. APPENDICES

- 10.1 Appendix A – Copy of petition speech in relation to operation of Oastler Road car park.

11. BACKGROUND DOCUMENTS

- 11.1 None