

Agenda Item No:

Report to: Charity Committee

Date of Meeting: 10 December 2012

Report Title: Parking Place Order On Foreshore Trust Land

Report By: Richard Homewood
Director of Environmental Services

Purpose of Report

To seek the authority of the Charity Committee on proposals to seek authority to introduce a Parking Place Order on the Winch Hut Road, the Stade Open Space and surrounding areas as defined in the plan at Appendix A, to enable the effective management and control of vehicles accessing and parking in the area.

Recommendation(s)

- 1. That the Charity Committee authorises the proposed introduction of Parking Place order under Section 35 of the Road Traffic Act 1984 to Winch Hut Road, the Stade Open Space and surrounding area as defined in the plan at Appendix A.**

Reasons for Recommendations

There has been an ongoing problem with unauthorised vehicles accessing and using the area for many years. In the past some control has been possible by using a permit system and the local authorities powers to clamp and remove vehicles. As from 1st October 2012, the Protection of Freedom Act, Section 54, made it a criminal offence to immobilise or remove a vehicle parked on private land. This has significantly impaired the Council's ability to manage the use of the area by motor vehicles. It is therefore considered that the introduction of a Parking Place Order will enable the Foreshore Trust to manage the use of the area by motor vehicles more effectively.

Background

1. There has been an ongoing problem with unauthorised vehicles accessing and using the Winch Hut Road and Stade area for many years. This has caused serious congestion and obstruction and has adversely impeded the legitimate use of the area by the fishing community and other authorised users.
2. In the past some control has been possible by barrier systems but these fell into disrepair and failed. More recently limited control has been exercised by using a permit system and the local authorities powers to clamp and remove vehicles.
3. Following the development of the Stade open Space and the Jerwood Gallery new rising bollards and blockers have been installed to replace the previous barriers. There are however still significant numbers of unauthorised vehicles accessing and parking in the area.
4. As from 1st October 2012, the Protection of Freedom Act, Section 54, made it a criminal offence to immobilise or remove a vehicle parked on private land.
5. The ban on removal is expected to cause serious problems in some locations where there will be no immediate remedy for obstructive vehicles. But these problems could be mitigated by ensuring that all relevant parking areas in the local authority ownership/control are either covered by orders under Section 35 of the Road Traffic Regulation Act 1984 (RTRA), or else are barrier-controlled car parks. Local authorities are also permitted to make Section 35 orders on private land, so long as the land owner agrees (by way of section 33 of the RTRA). This would enable full local authority enforcement in the usual way, which might also provide a net income for the Foreshore Trust and the Council.

The Protection of Freedom Act

6. Chapter 2, Section 54 of the Act relates to vehicles left on private land:
 - (1) A person commits an offence who, without lawful authority—
 - (a) immobilises a motor vehicle by the attachment to the vehicle, or a part of it, of an immobilising device, or
 - (b) moves, or restricts the movement of, such a vehicle by any means, intending to prevent or inhibit the removal of the vehicle by a person otherwise entitled to remove it.
 - (2) The express or implied consent (whether or not legally binding) of a person otherwise entitled to remove the vehicle to the immobilisation, movement or restriction concerned is not lawful authority for the purposes of subsection (1).
 - (3) But, where the restriction of the movement of the vehicle is by means of a fixed barrier and the barrier was present (whether or not lowered into place or otherwise restricting movement) when the vehicle was parked, any express or implied consent (whether or not legally binding) of the driver of the vehicle to the restriction is, for the purposes of subsection (1), lawful authority for the restriction.

- (4) A person who is entitled to remove a vehicle cannot commit an offence under this section in relation to that vehicle.
- (5) A person guilty of an offence under this section is liable—
 - (a) on conviction on indictment, to a fine,
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (6) In this section “motor vehicle” means a mechanically propelled vehicle or a vehicle designed or adapted for towing by a mechanically propelled vehicle.

Discussion

- 7. The provisions in Section 54(3) effectively provide an exception for barrier operated car parks. Where a driver has given express or implied consent to the movement of his or her vehicle being restricted by a fixed barrier, no offence will be committed where the driver is prevented from leaving the car park by a fixed barrier which remains in place because the driver has not paid the requisite parking charges
- 8. In the majority of cases the existence of barriers will assist the prevention of unauthorised entry to the trust land. Barriers are mechanical devices however and there would be times where they will malfunction and could be out of order for some time. There may also be occasions where inappropriate use is made of current access fobs and permits, to allow ‘unauthorised’ vehicles to enter the area and park. A case in point is the difficulty in controlling the number of visitors to the Angling Club, resulting in vehicles parking outside of the designated area for the club, on the Blue Stade land.
- 9. It is therefore considered that the most effective means of managing parking and unauthorised vehicle access on to Foreshore Trust land would be by introducing a Parking Place Order under Section 35 of the Road Traffic Regulation Act 1984 (RTRA). This would give the Authorised Officers (the existing Civil Enforcement Officers or the new Street Scene Enforcement Officers after 31 March 2012) the authority to issue Excess Charge Notices (ECNs) to unauthorised vehicles. Authorised users of the area would be issued with permits for their vehicles and systems are in place for issuing these.
- 10. All leaseholders and organisations occupying the land included in the proposed Parking Place Order area have been written to and asked to confirm their agreement to the making of the order. The Charity Committee is requested to authorise the making of the Parking Place Order for the Winch Hut Road, Stade Open space and surrounding area as indicated in the plan at Appendix A.

Wards Affected

Old Hastings

Area(s) Affected

East Hastings

Policy Implications

Please identify if this report contains any implications for the following:

Equalities and Community Cohesiveness	No
Crime and Fear of Crime (Section 17)	No
Risk Management	No
Environmental Issues	No
Economic/Financial Implications	Yes
Human Rights Act	No
Organisational Consequences	No
Local People's Views	No

Background Information

Appendix A - Plan of area covered by proposed Parking Place Order

Officer to Contact

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Note: The Appended Plan of area covered by proposed Parking Place Order are published on the Hastings and St Leonards Foreshore Charitable Trust web pages, or from the following link:

http://www.hastings.gov.uk/community_living/foreshore_trust/