

## URGENT BUSINESS AND SUPPLEMENTARY INFORMATION

### Executive

15 June 2009

Agenda Item Number	Page	Title	Officer Responsible	Reason Not Included with Original Agenda
8.	(Pages 1 - 6)	<p>Roadside Sale of Cars in Banbury</p> <p>Report of Strategic Director Environment and Community</p> <p><b>Summary</b></p> <p>To consider the actions the Council is taking regarding any vehicles parked illegally on highway land, particularly for trading and sale purposes and to consider any further action.</p> <p><b>Recommendations</b></p> <p>The Executive is recommended to:</p> <ol style="list-style-type: none"> <li>1) Note the action already taken by the District Council and support its continuation.</li> <li>2) Urge Oxfordshire County Council Trading Standards to step up its enforcement and prosecution activity</li> <li>3) Agree to designate specific parts/whole entry and arterial roads and lay-bys in Banbury as prohibited streets for trading according to current trading activity and to authorise the Portfolio Holder for Environment, Recreation and Health to agree the final details.</li> </ol>	Ian Davies	Information not available at time of agenda dispatch

## Executive

### Road Side Sale of Cars in Banbury

15 June 2009

### Report of Strategic Director Environment & Community

#### PURPOSE OF REPORT

To consider the actions the Council is taking regarding any vehicles parked illegally on highway land, particularly for trading and sale purposes and to consider any further action.

This report is public

#### Recommendations

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The Executive is recommended to:

- (1) Note the action already taken by the District Council and support its continuation.
- (2) Urge Oxfordshire County Council Trading Standards to step up its enforcement and prosecution activity
- (3) Agree to designate specific parts/whole entry and arterial roads and lay-bys in Banbury as prohibited streets for trading according to current trading activity and to authorise the Portfolio Holder for Environment, Recreation and Health to agree the final details.

#### Executive Summary

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##### Introduction

- 1.1 There is clear evidence of vehicles parked illegally and for sale on highway land around Banbury. This occurs primarily on 12 roads. Coordinated action by this Council, Trading Standards of the County Council and the Police has been taken for many years. This report reviews that action.
- 1.2 Following local member and officer initiative, Cherwell District Council has and continues to take action where it can in the fight against cars for sale parked on the roadside. Its actions consist of:
  - contacting registered keepers where cars are parked on grass verges requesting removal.

- liaising with the DVLA and police to ensure correct insurance is in place for the vehicles.
- removal of vehicles after the proper legal process if the owner does not respond in a timely manner.
- undertaking weekly patrols in known problem roads and collecting information to pass to Oxfordshire County Council which is the relevant authority for trading matters.

### **Proposals**

- 1.3 Proposals include considering making enforcement easier through designating some main Banbury roads and lay-bys as prohibited streets for trading and encouraging a stronger enforcement regime.

### **Conclusion**

- 1.4 Current enforcement action is effective if undertaken jointly, in a timely manner and with resolve. The greatest deterrent to avoid the problem occurring is through prosecution where offenders are penalised.

## **Background Information**

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### **Introduction**

- 2.1 Cars parked illegally on highway verge or for sale on highway land in Banbury has been recognised as an issue in the town. There has been local District Councillor activity regarding this matter for some time where local elected Members inform Council officers of particular hot spots, largely in 12 roads, and that intelligence supplements what officers use as a matter of course. This report examines what action the Council has taken to date, both on its own and with others.
- 2.2 There are a number of issues associated with this matter. The first is cars parked for sale on highway land and second is improper use of grass verges and amenity areas for residential parking. The 'cars for sale' issue is largely a Trading Standards County Council matter whilst parking on grass verges is more of a District Council matter. If cars are left in locations which create a highway safety issue, or do not have the correct insurance, then this is a matter for the police

### **District Council Powers and Activity**

- 2.3 For vehicles that are regularly parked on the grass verges, the Council writes to the registered keepers and requests their removal. The Council has no other course of action as there are no byelaws preventing this parking. If the cars are being offered for sale, then checks are made with DVLA and Thames Valley Police to ensure that the correct insurance is in place. Unless the person is offering 2 or more cars for sale within 500 metres on the highway, as part of a business, there is nothing further the District Council can do as this then becomes a trading standards matter.
- 2.4 Over the last 2 years, weekly patrols by Council Environmental Protection officers have been undertaken in the areas known to be used for offering cars for sale and as much information as possible collated. Where the Council has been able to enforce, it has by way of warning letters and if it is considered that a trader has been active, then information has been passed on to Trading Standards. This information has actually assisted them with a conviction in April whereby a trader was fined £1,200 plus costs.
- 2.5 The District Council's Landscape Management and Environmental Protection teams liaise over offending vehicles and action as above using the Clean Neighbourhoods and Environment Act 2005 as the legal basis of doing so when cars are parked for sale. The issue of Fixed Penalty Notices under this act requires the District Council to have Civil Parking Enforcement powers which are unlikely to be in place in 2009.
- 2.6 The Council's Street Wardens are also active in securing the removal of illegally parked cars and cars parked on the roadside for sale. This is particularly so in relation to cars parked on grass verges eg Queensway.
- 2.7 The basis on which the District Council requests removal of cars from highway verges arises from the need to adequately maintain all landscaped areas and from the Highways Act on behalf of the County Council which precludes the selling of anything from highway land unless otherwise

authorised. This is the principle tool applicable to both private and trade car sales and is supported by DVLA regulations where a SORN declared vehicle (i.e. an untaxed vehicle) cannot be kept on the highway or a grass verge which forms part of the highway.

### **County Council Powers and Activity**

- 2.8 The Oxfordshire County Council's Trading Standards service focus has been on the legislation for which it is responsible – originally the Business Advertisements (Disclosure) Order 1977 and now the Consumer Protection from Unfair Trading Regulations 2008. The Regulations effectively prohibit traders from posing as private sellers, and require that their advertisements make their trade status clear.
- 2.9 During 2008/09 a large number of visits were made to locations in Oxfordshire where cars are left for sale. A number of undisclosed car traders were identified by monitoring selling hot-spots and via complaints from which some individuals were identified who had advertised 3 or more vehicles over the course of a year. Each one was contacted and offered written advice. Some cases lead to prosecution as was the case in April this year. The 2008 Regulations affect only those acting in the course of a business; private individuals disposing of their own vehicles are not caught

### **Key Issues for Consideration/Reasons for Decision and Options**

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- 3.1 The key issues in addressing this matter effectively are:
- regular local monitoring of highways trading and illegal parking activity
  - collaboration and information sharing between relevant agencies when this occurs
  - effective enforcement leading to prosecution for persistent offenders
  - restrictions on trading
- 3.2 The District Council does monitor the town on a regular basis and liaises with all the key agencies i.e. Trading Standards, Police and DVLA. The introduction anticipated for 2010 of Civil Parking Enforcement powers will provide greater enforcement and prosecution capability to the District Council. Both the timing and nature of this is however subject to further consideration by the Executive following negotiation with the County Council.
- 3.3 The recent successful prosecution by Trading Standards using information provided by District Council officers is a good example of the cooperation between these bodies. This approach should continue to be adopted as a matter of course and prosecution pursued more regularly to act as a deterrent.
- 3.4 One means of restricting trading ability is via the Local Government (Miscellaneous Provisions) Act 1982. This act allows the Council to establish prohibited streets for the purposes of trading. This has been applied to laybys on the A34 to stop mobile catering units trading and could be applied to specific major roads and lay-bys in Banbury which suffer from the sale of cars. In this respect, it would apply equally to both private and trade sales.

3.5 Under the Local Government (Miscellaneous Provisions) Act 1982 Section 10, it is an offence with a £1,000 maximum fine for a person:

- to engage in street trading in a prohibited street or
- to engage in street trading in a licence street or a consent street without being authorised to do so under the schedule or
- contravene any of the principal terms of a street trading licence or
- being authorised by a street trading consent to trade in a consent street, to trade in that street from a stationary van, cart, barrow or other vehicle or from a portable stall without having been granted permission to do so by this Act or
- to contravene a condition imposed by a street trading consent

Street trading is defined in the Act as 'selling or exposing or offering for sale' any article in a street. The offer for sale of a car in a prohibited, licensed or consent street (without the appropriate licence) would constitute an offence.

*The following are not classed as street trading under the Act:*

- Trading by a person as a pedler under authority of a pedlar's certificate granted under Pedler Act 1871*
- Anything done in market or fair where right acquired by virtue of grant*
- Trading in a trunk road picnic area provided by the Secretary of State under section 112 of the Highways Act 1980*
- Trading as a news vendor*
- Trading carried out on premises used as petrol filling station or as a shop or in street adjoining premises so used and part of the business of the shop*
- Selling things or offering/exposing items for sale as a roundsman*
- Use for trading under Part VIIA of Highways Act 1980 of object/structure placed on/in/over a highway*
- Operation of facilities for recreation or refreshment under Part VIIA of Highways Act 1980*
- Doing of anything authorised by regulations made under section 5 of the Police, Factories etc (Misc Prov.) Act 1916*

3.6 The Council was presented with a 308 person petition at its Executive meeting on 11 May 2009. The petition states:

"We the undersigned urge Cherwell District Council (Street Licensing Department) to do something about cars for sale being parked all over the town. There are a large number of cars parked on the road and grass verges. These are becoming an eye sore in our beautiful town".

The content of this report and the recommendations do adequately address this petition.

The following options have been identified. The approach in the recommendations as per Option 4 is believed to be the best way forward

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|---------------------|--|
| <b>Option One</b>   | Do nothing.  |
| <b>Option Two</b>   | Continue with present multi agency activity.                       |
| <b>Option Three</b> | As Option 2 but with greater enforcement and prosecution activity. |

**Option Four** As Option 3 but with selected prohibited streets and lay-bys for trading established for Banbury's main roads as determined by current trading activity.

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**Consultations**

**[Consultee]** None

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**Implications**

**Financial:** There are no financial consequences arising from the recommendations in this report which cannot be contained within 2008/09 approved Revenue Estimates.

Comments checked by Karen Muir, Service Accountant 01295 221545

**Legal:** This Council has few enforcement powers in relation to cars for sale on highway verges. Trading Standards, the DVLA and the police have prime responsibility. Civil parking enforcement will make this issue easier to tackle.

Comments checked by Liz Howlett, Head of Legal and Democratic Services 01295 221686

**Risk Management:** There are no notable risks arising from this report  
Comments checked by Rosemary Watts, Risk Management & Insurance Officer 01295 221566

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**Wards Affected**

All Banbury Wards

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**Corporate Plan Themes**

A Cleaner, Greener Cherwell

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**Executive Portfolio**

**Councillor George Reynolds**  
Portfolio Holder for Environment, Recreation and Health

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**Document Information**

Appendix No	Title
	None
Background Papers	
None	
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