

**BRIERLEY HILL AREA COMMITTEE – 7 JULY 2005**

**REPORT OF THE DIRECTOR OF LAW AND PROPERTY**

**SALE OF CARS ON HIGHWAY AND PRIVATE LAND**

**1.0 Purpose**

1.1 In response to a question raised at a previous Brierley Hill Area Committee, to advise the Committee of the legal position with regard to the sale of cars on highway and private land and to advise of any way in which the Council can take action to prevent this, if necessary.

**2.0 Background**

2.1 Concerns have been raised in respect of the number of vehicles which are seen on grass verges or land at the side of the road with signs offering them for sale. The Directorate of Law and Property has been asked to advise as to whether anything can be done to have these vehicles removed and the owners of the vehicles prosecuted.

2.2 Where vehicles are parked on privately owned land, the landowner needs to be contacted to ascertain whether the vehicle owner has his permission to park the vehicles on his land. If permission has not been given, the landowner may well be considering action himself for trespassing.

2.3 Land which forms part of the Highway is covered by Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982. This gives the Council the power to regulate street trading by, for example, categorising streets where street trading is prohibited or where trading may only take place with a licence or consent. The definition of “street” includes “any road, footway, ..... or other area to which the public have access without payment”. This definition could arguably include

grass verges. Any person breaching the conditions of the street (i.e. trading without a licence in a licence street, or at all in a prohibited street) may be prosecuted and will be liable on conviction to a fine not exceeding £1,000. This may only be used in areas where the step of categorising a street has already been taken. In streets which are not already subject to these restrictions, the time and expense involved in making an order so that prosecution can take place may be such that, when taking into account the outcome of the prosecution, this may not be an efficient way of dealing with the matter.

2.4 In respect of vehicles which are parked on grass verges, it may be possible to use the provision of section 7 of the Local Government (Miscellaneous Provisions) Act 1976 which deals with control of roadside sales. This legislation regulates the sale of, or offering for sale of, anything which is displayed within 15m of the highway. Prosecution, however, is dependent on a “control order” existing in respect of the relevant stretch of the highway. The making of a control order involves consultation with the chief officer of police of any police area in which any road or other place to which the order is to relate is situated. As respects orders of a local authority, the Secretary of State may make regulations for providing the procedure to be followed in connection with the making of such orders and shall make such provision as he considers appropriate with respect to the publication of any proposal for the making of such an order, the making and consideration of objections to any such proposal and the publication of notice of the making of the order and of its effect. If a control order is in place and a person contravenes that order, a notice may be served on that person requiring him not to contravene the order after a specific date.

2.5 If a person contravenes the order he may be prosecuted and, if found guilty, will be liable for a fine not exceeding £1,000. If the offence continues, a person would then be guilty of a further offence and liable on summary conviction to a fine not exceeding £10 per day for every

day that the contravention continues after the first conviction. This would appear to be quite an effective way of dealing with the issue, as long as a control order is already in place. In the majority of cases, delay will be caused by the need to put a control order into place before any prosecution can occur.

- 2.6 Sandwell MBC has recently agreed to adopt a new bye-law to help curb the sale of vehicles on the highway. The bye-law will give the council the power to prosecute people who sell, expose or offer for sale vehicles on the highway in the course of a business. It remains to be seen, however, whether the bye-law will provide sufficient flexibility to enable effective prosecutions. In particular, the wording “in the course of a business” may be problematical because a seller may argue that the sale is a private deal and not part of a business.
- 2.7 The penalty for breach of a bye-law will normally be a fine recoverable upon conviction by magistrates. In the case of a breach of a bye-law made under the procedure set out under section 236 of the Local Government Act 1972, the bye-law may provide for fines not exceeding such sum as may be fixed by the enabling statute or, if no such sum is fixed level 2 on the standard scale (up to £500).
- 2.8 The Clean Neighbourhoods and Environment Act 2005 should be of some assistance. Section 3 of the Act makes it an offence for a person to offer for sale two or more motor vehicles parked on a road. “Road” has the same meaning as in the Road Traffic Regulation Act 1984 where it is defined as “any length of highway or of any other road to which the public has access, and includes bridges over which a road passes”. This is not aimed at an individual selling a car privately, rather someone acting as part of a business. Further, there is no reference to vehicles parked on waste ground or land adjacent to the highway. The penalty for this offence is a fine not exceeding level 4 on the standard scale (up to £2,500). This provision became law on 7 June 2005.

2.9 The Directorate of the Urban Environment is arranging for someone to visit Brierley Hill Road to take the registration numbers of any vehicles parked and marked 'for sale' and to check these numbers with the DVLA to see if the registered keepers can be ascertained. This can then be followed up accordingly. It should be noted however that there can be difficulties with enforcement in as far as the full name and address of an offender is required in order to proceed with a prosecution. There is also the issue as to who will identify the locations where vehicles are being parked for sale.

2.10 It is suggested that in the first instance, the Directorate of the Urban Environment tackle known car dealers/garage owners who are placing vehicles for sale off their garage forecourts (i.e. onto grass verges and highways). However, with regard to the wider issue, the Area Committee may wish to consider requesting the Select Committee for the Environment to examine the most appropriate and effective statutory means of regulating, and enforcing against, the sale of cars on highway land, and to make a recommendation to the Cabinet Member for the Environment.

### **3.0 Proposal**

3.1 That the Committee note the action being taken and refer this matter to the Select Committee for the Environment in accordance with paragraph 2.10.

### **4.0 Finance**

4.1 There are no direct financial consequences arising from this report.

## **5.0 Law**

5.1 The Clean Neighbourhoods and Environment Act 2005 makes it an offence for a person to offer for sale two or motor vehicles parked on a road.

5.2 Schedule 4 of The Local Government (Miscellaneous Provisions) Act 1982 gives the Council the power to regulate street trading.

5.3 Section 7 of the Local Government (Miscellaneous Provisions) Act 1976 regulates the sale of, or offering for sale of, anything which is displayed within 15m of the highway.

## **6.0 Equal Opportunities**

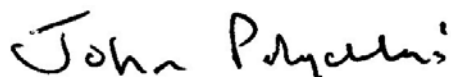
6.1 This report takes account of the Council's Equal Opportunities Policy.

## **7.0 Recommendation**

7.1 That the Committee note the action being taken and refer this matter to the Select Committee for the Environment in accordance with paragraph 2.10.

## **8.0 Background Papers**

8.1 None.



DIRECTOR OF LAW AND PROPERTY

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