

## **COMMUNITIES AND LOCAL SERVICES SCRUTINY COMMITTEE 25 FEBRUARY 2020**

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### **MANAGEMENT OF GRASS VERGES**

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#### **SUMMARY REPORT**

##### **Purpose of the Report**

1. The purpose of this report is to set out the current position adopted by the Council in relation to the management of grass verges and to agree a process of reviewing the current arrangements.

##### **Summary**

2. Verge parking is a common issue across the borough that is increasingly causing problems, and a matter for both members and officers to deal with in the community. This report provides members with:
  - (a) Some background information and legal context in relation to verge parking.
  - (b) Identifies some of the reasons why this is becoming more of an issue.
  - (c) Describes some common circumstances experienced across the borough.
  - (d) Explores the impact that this issue can have on communities.
  - (e) Explains approaches to the problem that the Council has taken in the past and the current approach the Council takes.
  - (f) The Council's position regarding residents taking unauthorised action to protect grass verges.
  - (g) An oversight of some practice undertaken elsewhere.
  - (h) Examples of the options that are available to Deter, Prevent or Accommodate parking on grass verges.
3. The Council does receive complaints regarding the current approach to grass verge damage and as such it is recommended that a review of the current arrangements is undertaken.
4. It is recommended that the best approach to this is a cross cutting Task and Finish Group be formed with Members and Officers. A draft format for a review is proposed to members for consideration. Some draft outcomes of the review have also been recommended to Members for consideration:
  - (a) Introduction of an operational policy on the management of grass verges enabling a clear and consistent approach to the problem that will set expectations on what the Council can and cannot provide and how an issue will be considered.
  - (a) Information on the website to assist Members and Residents understand the Council position.
  - (b) Upon completion a Members Briefing and Toolkit to assist with issues within their wards.

5. The implications on resources must be an integral part of the review as both financial and officer resources have been significantly reduced over recent years to deal with this matter and any proposed changes to the current arrangement would need to be carefully assessed.

### Recommendation

6. It is recommended that:
  - (a) Members agree and select a Task and Finish Group to assist development of a new operational policy in relation to the management of grass verges.
  - (b) Members agree the format of the review based on the proposed format in this report. (As outlined in paragraph 73)
  - (c) Members agree the outcomes expected from the review based on the proposal in this report. (As outlined in paragraph 74)

### Reasons

7. The recommendations are supported to develop an operation policy setting out the expectations on what can be expected in relation to verge parking issues and how the Council will address them.

**Ian Williams**  
**Director of Economic Growth and Neighbourhood Services**

### Background Papers

No papers

DW : Extension 6618  
 LC

S17 Crime and Disorder	The review and development of a new operational policy will consider the implications for Crime and Disorder.
Health and Well Being	The review and development of a new operational policy will consider the implications.
Carbon Impact and Climate Change	This will be considered as part of the development of the policy and procedures.
Diversity	An Equalities Impact Assessment will be completed as part of the process.
Wards Affected	All wards.
Groups Affected	This will be considered as part of the development of the policy and procedures.
Budget and Policy Framework	This report does not represent a change to the budget and policy framework.
Key Decision	This is not a key decision.
Urgent Decision	This is not an urgent decision.
One Darlington: Perfectly Placed	The report contributes to the Sustainable Community Strategy through the involvement of Members in contributing to the development of operational policy that helps manage the Place.

Efficiency	The review will seek to provide a consistent approach between Members, services areas and residents.
Impact on Looked After Children and Care Leavers	This report has no impact on Looked After Children or Care Leavers.

## MAIN REPORT

### Background and Legal Context

8. A well-kept grass verge can be an attractive feature of the street we live and a yet a damaged verge can bring down the feel and attractiveness of the street and detract from a culture of caring for your area, that the Council is trying to encourage.
9. Parking on grass verges can result in damage to the verge, particularly in winter that can be a potential hazard to road users and lead to damage to underground utilities.
10. The Council has a duty to ensure the highway is kept in a safe condition. The Council can be exposed to third party claims if an incident results in damage or injury where the Council has failed to maintain the highway.



*One of the many locations in Darlington where there is severe damage to the verge.*

11. Verges form part of the Highway and are subject to legislation and regulation, which means what can be allowed and not allowed is also subject to legislation.
12. Under current legislation and guidance there is no national prohibition on pavement parking except in relation to heavy commercial vehicles. However, enforcement options are covered later in this report.
13. The highway is not only used for the movement of traffic but is also the conduit for all of the public utility infrastructure that serves the community. Verges can contain significant infrastructure that if damaged by excavation or overrun can present a danger to the public or a loss of supply.

### Sources of the Problem

14. Verge parking has been a persistent problem for numerous years, but it is also a growing problem in Darlington and across the Country that is being exacerbated by a combination of:
  - (a) Increasing vehicle ownership.

- (b) Changing shopping patterns in terms of more home delivery.
  - (c) Reducing Council budgets to resolve or encourage better behaviour.
  - (d) An increase in the size of cars and the fact some driveways cannot accommodate the vehicle.
  - (e) Difficulty to manoeuvre on/off driveways with the parking that exists on the road or the tightness of driveway.
  - (f) An increasing tendency for works vehicles or resident's business vehicles to park in the street; with driveways unable to accommodate the vehicle or difficulty to manoeuvre on and off street.
  - (g) Travel Behaviour and the "school run"
15. The increase in sources of the problem and the reduction in resources to try and manage these scenarios is compounding the situation for both those impacted and the Council.

### **Common Circumstances Across the Borough**

16. There are many different scenarios where verge parking creates issue with the most common reported to the Council described below.

#### Residential Streets

17. Residential streets that simply cannot accommodate the parking demand placed upon it by residents, their families and visitors. This results in residents converting front gardens, requesting parking bays or verge conversion.
18. Where residents convert their front garden and do not arrange for an authorised drive crossing to be installed this can result in damage across the verge that the Council has to manage. It can also reduce the amount of on-street space available.
19. The narrowness of some streets that have limited or no off-street parking can result in vehicles being parked on the verge either wholly or partially to allow cars to pass along the highway, often restricting traffic to give way scenarios. This can lead to concerns regarding access for emergency service vehicles.
20. Parking displacement from neighbouring streets to other areas i.e. drivers who cannot park near their property, park on verges away from their homes causing damage to verges outside other people's property. This can also lead to tensions in the community.
21. On busy roads, delivery drivers, residents and visitors sometimes choose to park either wholly or partially on the verge to avoid congesting the road, avoid damage to their vehicle or make it easier to deliver.

#### School Parking

22. Parking near schools can create a high demand for parking at the start and end of the day. This can lead to inconsiderate and verge parking albeit on a temporary basis at certain times of the day. This can lead to tension between residents and drivers regarding access and damage to verges that residents wish to keep in good condition.

### Delivery and Service Vehicles

23. Shopping patterns have changed significantly with more retailers offering delivery to the doorstep. This can add to the issue of verge damage either when parking on verges to deliver or driving down verges to get through streets that are constrained by parked cars.
24. In some cases, this can apply to service vehicles such as emergency services, utility company vehicles and Council vehicles that require access but are also constrained by parked vehicles.

### Inconsiderate Parking

25. Arising from all of the above there is also inconsiderate and unsafe parking. This can be parking at junctions, crossing points, blocking access or visibility. Inconsiderate parking in streets can also force cars to have to drive along verges to pass vehicles.

### **Impact**

26. In all of these circumstances the views, reaction and opinions of residents, business, the Council and road users can be very different depending on how they are impacted. Some residents wanting action and others not because of the impact it may have on themselves.
27. Similarly, tolerance levels across the borough vary. The Council can receive complaints for relatively minor damage to verges (tyre tracks across a verge) and not receive any complaints where there is significant damage and potential hazardous situations.
28. The Council receives common concerns from residents regarding:
  - (a) Being able to park close to their property.
  - (b) The visual impact of damage to verges.
  - (c) Access to property blocked.
  - (d) Access hindered along streets for themselves and emergency vehicles.
29. The circumstances described above can range in both time and duration from:
  - (a) A long-term problem happening all of the time.
  - (b) A situation that may occur for a short period regularly around specific things such as events or school start/finish times.
  - (c) To one off occurrences – e.g. delivery vehicles damaging verges, works in the verge.
30. All of these factors influence how an issue can be approached as regulation and intervention can potentially result in less parking being available. The primary function of the Council as highway authority is to ensure vehicles can pass along the road safely and as such this must be considered first. The provision for parking is on the basis that it is considered safe to allow parking.
31. The physical layout of the street also has a bearing on any potential options; thus, it is extremely difficult to identify a single method that can be applied universally to

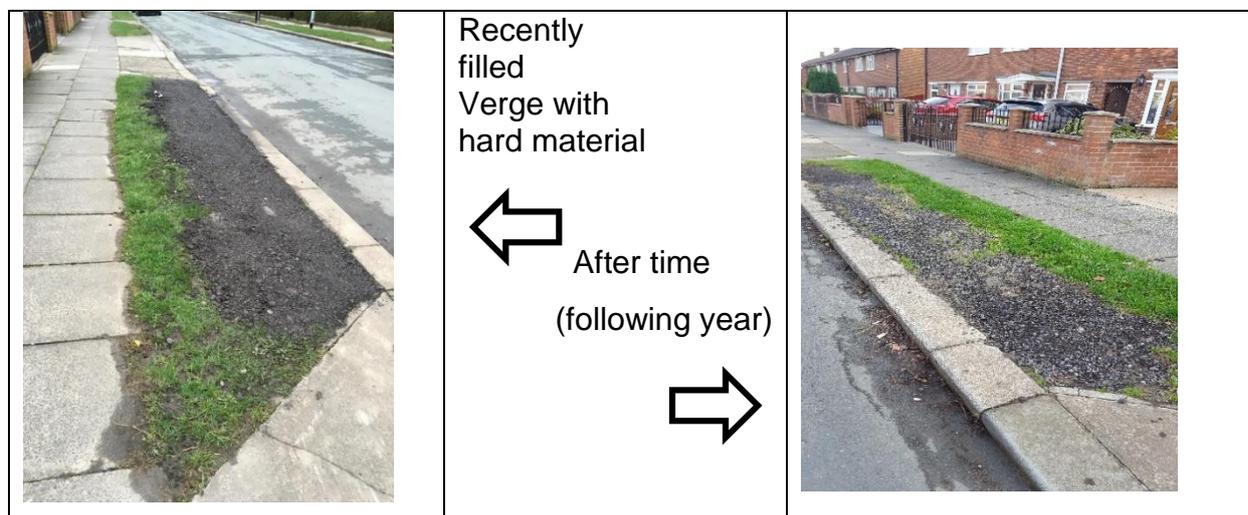
alleviate a situation and treatment of a single issue may simply displace the problem requiring a holistic view to be taken.

32. The impact on verges is very much seasonal, with more pronounced impacts after long periods of adverse weather or when verges are saturated during the winter months. Verges tend to recover well during the summer months. However, it should be noted damage is not just limited to grass verges, there is also significant damage to paved footways.
33. The increase in sources of the problem and the reduction in resources to try and manage these scenarios is compounding the situation for both residents and the Council and achieving a more coordinated and sustainable way forward would be beneficial.

### **Approaches the Council has Taken in the Past and the Current Approach**

34. The Council has previously taken several approaches to try and alleviate the issues associated with verge parking, including:
  - (a) Undertaking assessments of verges and verge hardening
  - (b) Installing bollards
  - (c) Fencing
  - (d) Other physical measures
35. There was a relatively small budget available previously for verge conversions and other type of physical works and scrutiny committee created a scoring system which prioritised requests. This resulted in an extremely long waiting list given the amount of financial resources available at the time. Unfortunately, this budget is no longer available as the Council is limited to a service level that meets statutory obligations only. There remains many streets where we get requests for this type of treatment.
36. In terms of verge damage, the Council continue to regularly inspect and respond to reports of damage and undertake repairs where the situation is such that it presents a safety hazard to vehicles and/or pedestrians and/or utility apparatus. The Council will only consider physical measures to prevent parking where the parking is causing a serious road safety concern in accordance with our statutory duty.
37. The solution the Council currently delivers when dangerous ruts are found in the verge is to fill them with a hard material to keep them in a safe condition for pedestrians and other road users. Unfortunately, refilling with topsoil and re-seeding does not resolve the problem through the winter months.
38. The Council uses recycled road surfacing materials (planings) that generally keeps the area hazard free, clear of mud. The grass does start to grow through the edges softening the visual aspect after time. However, it is accepted that that this is no substitute aesthetically for a well-maintained grass verge, but it does address the immediate hazard in the highway. In some cases, residents do not object to this and welcome it to assist with parking but in other areas this is not well received, and the Council does receive complaints.

39. The Council cannot ignore a hazard as failure to do deal with defects could result in people tripping and injuring themselves, damage to vehicles or damage to utility apparatus. This in turn could expose the Council to compensation claims placing further pressure on public spending.
40. There have been some suggestions that if this solution is to be used the whole verge should be removed and replaced to avoid issues with grass cutting of the remaining verge and from an aesthetic perspective.



### Review of Practice Undertaken Elsewhere

41. The issue of trying to manage verges is not local to Darlington. Some research has been undertaken to understand different approaches by local authorities to help inform the review. Stockton Borough Council have recently undertaken a similar review and their findings will be provided to the Task and Finish Group as background.
42. A summary of these different approaches is outlined at **Appendix 1**. The approaches are generally along the following themes:
- (a) Considerate parking initiatives i.e. encouragement.
  - (b) Provide clearer information on approach and rationale.
  - (c) Combination of clearer information and encouraging residents to park more considerately.
  - (d) Offer residents the option to pay for works.
  - (e) Full assessment of all enquiries followed by action where certain criteria are met.

### Possible Options Available to the Council

43. There are a wide range of solutions available that can be categorised from two perspectives:
- (a) Options that **Deter** or **Prevent** parking
  - (b) Options that **Accommodate** parking

44. **Deter** or **Prevent** parking options available include:

- (a) Soft Planting
- (b) Tree Planting
- (c) Verge Markers (Permanent)
- (d) Verge Markers (Temporary)
- (e) Bollards
- (f) Raised Planting beds
- (g) Low Level fencing
- (h) Planters
- (i) Traffic Cones
- (j) Notices – in highway, residents gardens, boundary walls and fences or lamp posts
- (k) Notices, Letters and Leaflets
- (l) Traffic Regulation Orders and Enforcement. (covered in more detail later in the report)

45. More details of the above options are provided at **Appendix 2** with a summary of the potential positive and negative considerations of each option.

46. **Accommodate** parking options available include:

- (a) Laybys
- (b) Verge hardening
- (c) Promote Pavement Crossings

47. More details are provided at **Appendix 3** with a summary of the potential positive and negative considerations of the option. These are the most expensive solutions to resolving issues with no specific budget currently available. The current Council approach of filling ruts and hazards with hard material is also included.

48. In terms of promoting pavement crossing the Council does on occasions identify unauthorised crossings of the footway or verge that is causing damage. In the case of illegal drive crossings the Council will enter into dialogue with the resident to have an authorised crossing constructed. If the resident fails to comply measures may need to be considered to either provide and recharge or prevent unauthorised access across the verge and footway. This a measure of last resort where the resident is unwilling to cooperate.

Over-Arching Considerations when Considering Options

49. In considering any solution the following also needs to be considered:

- (a) There needs to be agreed standards and consistency applied across the Borough to try and ensure acceptable treatments or approaches are permitted/delivered.
- (b) The location and suitability of any proposals on the road type. E.g. suitability of options on high speed roads.
- (c) The impact of solutions in terms of displacing the issues and possible equality issues.
- (d) In developing any solution, the Council must remain mindful of intended function of the verge and the access to utilities that may be beneath the surface.

- (e) The resources available to the Council and especially the impact on maintenance of any initiative.
- (f) The impact on existing tree-lined verges.
- (g) The impact on the potential loss of verge and the impact in terms of flood risk

### **Residents Taking Unauthorised Action**

50. Verges form part of the highway and it is the highway authority's duty to keep the highway safe. In some areas where residents take pride in their area they want to protect the appearance of a well-maintained verge and it can put the Council in a confrontational position with well-intentioned residents.
51. Unfortunately, placing rocks/stones, plant pots, posts or anything on the verge is not permitted and this is legally classed as a nuisance in terms of the national highway legislation. Whilst best intentions are recognised, from a legal perspective they pose a similar trip hazard for pedestrians as a rut or pothole. There have been more serious incidents across the country, which has highlighted this issue. Vehicles can be damaged or items have caused vehicles to overturn when hit at speed, injuring drivers and pedestrians. We are therefore obliged to act when we identify rocks, stones or other items being placed on the highway for the safety of highway users.
52. The Council takes action to protect both the Council and residents from any legal action that may arise by writing to residents to ask them to remove them. If the Council has written to residents advising them on the legal perspective of their action this information could be declared in any legal claim against the Council or the resident. If advice to residents is ignored, the Council may remove the items. The Councils inspection regime could be considered flawed if we chose to ignore certain matters.
53. Therefore, we strongly advise residents not to place rocks, stones or any other items on the highway. As a Council we are encouraging residents to take pride in the borough and we sympathise with the fact some residents feel penalised by trying to help to maintain the verge in their area.

### **Can Residents and the Public do More?**

54. The majority of measures to address verge parking problems must be undertaken by the Council. However, the Highways Act has been modified to contain powers in section 142 for the Highway Authority to grant licences to adjoining owners to maintain and plant shrubs, plants or grass in the highway. Planting is restricted to soft landscaping and as such may not deter some parking.
55. The legislation does not allow the erection of concrete bollards or other hard objects in the verge by the public. The Council does not presently offer licenses to residents to undertake this type of activity. However, some research has been undertaken and some examples are included at **Appendix 5**. Some authorities also charge for these licenses.
56. The research has shown that a license can be onerous and place significant responsibility on the licensee, which could be a deterrent to participation. It also places a resource demand on the Council for the assessment of licensing requests, processing of licenses, recovering costs and the ongoing monitoring of licensed

and unlicensed activity. There is presently no spare capacity to absorb additional duties associated with licenses.

57. A fundamental issue to consider is in relation to the Safety and Safeguarding of the public:
- (a) Verges are corridors for utility apparatus and as such excavating in a verge can pose a risk. Before any excavation the Council will apply for details of all known utilities in the area, then undertake scans of the ground using specialist equipment. When excavating specialist tools will be used, even then apparatus strikes can occur, if apparatus is uncharted or shallower than expected.
  - (b) Working in the highway requires specific approvals, guidance and training and must comply with the associated Health and Safety requirements. Residents would also need to comply.
58. These matters are reflected in license conditions to mitigate liability against the Council for any incident, but there would be some requirement to monitor/check licensees to ensure compliance with the terms and conditions of the license. On surrender of license, if there was no ongoing person to adopt responsibility, the Licensee would need to bear costs of removing the planting and restoring the verge to grass for the Council to re-commence maintenance.
59. This should be considered as to whether the costs of this outweigh an approach of the Council dealing with localised issues on a programmed basis. At this stage in the review it is recommended that licenses are not considered given their limited scope and relative complexity and resource intensiveness to develop. It is recommended that the Council develop options to try and deliver solutions.

### **Option Appraisal**

60. In all potential solutions there needs to be an assessment of the circumstances to understand the implications that might arise and the consequences. There may be an exacerbation of problems or a simple displacement of the issue.
61. Some residents have enquired whether it is possible to pay for measures to prevent parking and protect verges. As part of the review Members could explore the potential for a service charge where the solution proposed is considered appropriate and it will not exacerbate or displace the problem to a neighbour who may not be willing to pay a service charge.
62. A table is attached at **Appendix 4** that presents the delivery options in terms of who CAN legally deliver options and who COULD deliver options based on three scenarios:
- (a) The Council fund and deliver options
  - (b) A service charge option is developed and then the Council deliver.
63. Generally, the Council can deliver most of the solutions if the funding was available. However, that is not the current financial position and as such a service charge could be considered as an option.

64. The introduction of any of these measures could create tensions amongst neighbours that could ultimately increase demand on the Council/Police to manage.
65. A draft assessment process has been developed and is attached at **Appendix 6** to gather information which Members of the task and finish group would be asked to help develop and test on some potential pilot areas to help inform the Council Policy on verge management.
66. It is envisaged that this would form a toolkit that Members could use to assess issues within their community. This evidence could then be submitted to officers to assess and provide feedback to the community on a way forward or not.
67. If resources were available, the Council would need to consider a prioritisation system based on risk and condition. An approach was developed by Scrutiny Committee, following a task and finish process in 2007. This may need to be reviewed to determine whether it needed modifying if schemes were to be considered.

### **Enforcement**

68. The Civic Enforcement service includes Parking Enforcement functions. In some circumstances enforcement may be an option or could form part of the solution and this may require Traffic Regulation Orders (yellow lines) to be considered.
69. Other enforcement measures not currently used by the Council could be considered in the future including the issue of Community Protection Notices to individuals or the introduction of Public Space Protection Orders in specific areas. These new approaches are being used in other Local Authority areas.
70. There is the potential for co-ordinated approaches that can be taken to encourage and enforce better parking behaviour. The review recently undertaken by Stockton Borough Council considered enforcement in more detail and a specific task suggested for the Task and Finish group is to review enforcement options available to the Council and potentially consider some trials or pilot areas.

### **Conclusion and Proposed Way Forward**

71. There is no clear one-size-fits-all solution to address the problem across the borough. Many of the options available to deter or accommodate parking are resource-intensive and can also result in unforeseen consequences and displacement. These are also resource intensive with communities in terms of engagement.
72. It is recommended that a Task and Finish Group be formed to develop a new operational policy in relation to the management of grass verges that provides Members, Officers across various services and the public with a clear position on how issues with verge parking will be considered by the Council.

### **Proposed Review Actions**

73. A draft format of the review for the Task and Finish Group is proposed below for consideration by the Committee:

- (a) A Task and Finish Group is formed with the relevant officers from various services to:
- (i) Familiarise themselves with the background provided in this report and practice in other Local Authorities. (Appendix 1 and other reviews identified in the report).
  - (ii) Identify some of the current issues within the borough.
  - (iii) Review the options available to the Council to DETER or PREVENT. (Appendix 2)
  - (iv) Review the options available to the Council to ACCOMMODATE parking. (Appendix 3)
  - (v) Review Enforcement options available to the Council and consider where this may be appropriate.
  - (vi) Consider the delivery and funding options. (Appendix 4)
  - (vii) Review and develop the draft Assessment Process. (Appendix 6) including the development of an Equality Impact assessment on the policy and processes.
  - (viii) Test the assessment process on a small number of pilot areas and follow the process through to a conclusion.
  - (ix) Review the outcomes from any trials and modify the process.
  - (x) Review and develop a prioritisation system to inform use of resources.
  - (xi) Implement the process developed.

### **Proposed Outcomes**

74. The proposed outcomes of the review for the Task and Finish Group are suggested below for consideration by the Committee:
- (a) Introduction of an operational policy on the management of grass verges enabling a clear and consistent approach to the problem that will set expectations on what the Council can and cannot provide and how an issue will be considered.
  - (c) Information on Website to assist Members and Residents understand the Council position.
  - (d) Members Briefing and Toolkit to assist with issues within their wards.