

<h1>BRIEFING</h1>	TO:	Judith Badger Strategic Director, Finance & Customer Services Paul Woodcock, Strategic Director Regeneration & Environment
	DATE:	1st July 2021
	LEAD OFFICER:	Helen Barker Head of Customer Services Customer Information & Digital Services (CIDS) Martin Beard Parking Services Manager Regeneration & Environment
	TITLE:	Blue Badge Parking Scheme – Review of Enforcement arrangements

1. Background

- 1.1 The Blue Badge (Disabled Persons' Parking) scheme was introduced in 1971 under Section 21 of the Chronically Sick and Disabled Persons Act 1970.
- 1.2 The Department for Transport (DfT) is responsible for the legislation that sets out the framework for the scheme.
- 1.3 The Council is responsible for the day-to-day administration and enforcement of the scheme and for ensuring badges are only issued to residents who satisfy one or more of the eligibility criteria set out in the legislation that governs the scheme.
- 1.4 Customer Services administer the scheme on behalf of the Council. Parking Services (Regeneration & Environment) are responsible for enforcing the scheme.
- 1.5 Effective from 30th August 2019, the DfT introduced a number of legislative changes to the Blue Badge parking scheme; requiring the Council to change its administrative processes and applicants to provide more detailed and descriptive responses. When necessary, applicants also now need to provide additional evidence they would not have previously been asked for when making an application prior to 30th August 2019.
- 1.6 All customers, regardless of whether they have previously held a Blue badge or are applying for the first time are required by the DfT to go through the same application process.
- 1.7 Central government state that Councils will usually make a decision as to whether or not to award a Blue Badge within 12 weeks of receiving an application. This can cause anxiety for customers who have reapplied for a Blue Badge but not received a new one

<p>1.8</p> <p>1.9</p> <p>1.20</p>	<p>as they worry that their current badge will expire before a new one is received.</p> <p>The Council subsequently took steps to mitigate the adverse impact this might otherwise have on existing Blue Badge holders, by implementing a permissible local discretionary arrangement in November 2019.</p> <p>This discretionary arrangement was last reviewed in September 2020. SLT Gold (1st October 2020) subsequently approved the continuation of the discretionary arrangement until 31st July 2021.</p> <p>SLT Gold were also asked to note the intention to present a further report in June 2021 regarding the recommended arrangements that will be effective from 1st August 2021 after the current discretionary arrangement comes to an end.</p>
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Key Issues

<p>2.1</p> <p>2.2</p> <p>2.3</p> <p>2.4</p> <p>2.5</p>	<p>During the period 1st April 2020 to 31st March 2021, the Council received 5,900 Blue Badge applications. Of these:</p> <ul style="list-style-type: none"> • 70% (4,130) were reapplications from existing Blue Badge holders with a badge due to expire. (Customers can re-apply up to three months before their badge expires) • 68% (2,808) of customers who re-applied were in receipt of a benefit and/or PIP points that meant they were eligible for a new Blue badge without further assessment. <p>The remaining 32% (1,322) are considered by the DfT to be 'eligible subject to further assessment' requiring the Council to request additional information and evidence from the applicant.</p> <p>This can take time particularly where there is a need for the applicant to contact other organisations; potentially leaving the customer with an expired Blue Badge whilst waiting for an award decision. The current discretionary enforcement arrangement was introduced to extend the use of an expired badge by three months (subject to specific conditions) thereby enabling existing Blue badge holders to continue to undertake journeys they might otherwise have struggled to complete.</p> <p>The Council is required by the DfT to ensure appropriate and DfT compliant enforcement actions are in place. The discretionary arrangement currently in place satisfies this requirement but will expire 31st July 2021.</p> <p>Two options have been considered for implementation from 1st August 2021:</p> <p>Option 1 – recommended</p> <p>Retain the local discretionary arrangement on an ongoing basis whereby:</p> <ul style="list-style-type: none"> • RMBC enforcement officers continue to avoid issuing a Penalty Charge Notice (PCN) purely on the grounds of an expired blue badge being displayed; subject to this being no more than three months out of date. • Customers reapplying for a Blue Badge before their current one expires, continue using their existing badge in Rotherham Council owned car parks and when using 'on street' parking, as though it had not expired; subject to their
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badge being no more than three months out of date and only until they either receive a new badge or are informed that their re-application has not been successful.

- In areas outside the Rotherham Borough, enforcement activity is undertaken in accordance with that particular local authority's own arrangements which means that customers should expect the expiry date to be enforced. Likewise, as set out by the DfT ([Rights and Responsibilities](#)), other off-street car parks, such as those provided by shopping centres, hospitals or supermarkets are covered by separate rules; which vary site by site and are unlikely to accept use of an expired Blue Badge .
- All other regulations in relation to the use of Blue Badges continue to apply and hence, abuse of these regulations would be subject to potential prosecution in the normal way.

Rationale for recommendation

- The previous rationale (October 2020) put forward to support the recommendation that the Council apply a local discretionary parking enforcement remains valid:
 - Section 7.7 of the '[DfT Blue Badge Scheme Local Authority Guidance \(England\)](#)' continues to advise that 'it is important that local authorities have the freedom and ability to develop an enforcement strategy suitable for their own particular circumstances.'
 - [Gov.uk](#) continues to state that in respect of Blue badge applications, Councils will usually make a decision in 12 weeks.
 - the Council can still legally apply leniency for existing blue badge holders should the Council wish to continue to allow a period of grace beyond the expiry date.
- Furthermore:
 - 22% of existing Blue Badge holders who reapplied during 2021/22 were considered to have met the 'eligible subject to further assessment' criteria. As a result of the legislative changes introduced in August 2019, the majority of these customers were subsequently asked for information and evidence they would not have previously needed to provide. This can take time, particularly where the input of an expert assessor is required. ie. a medically qualified professional (not a GP) who is involved in the ongoing care and treatment of the applicant.
 - The current discretionary arrangement provides a temporary and local extension of three months beyond the date of an expired Blue Badge which helps minimise the impact any delay in obtaining this kind of evidence/information might have on the customer and their ability to make an essential journey. It is considered that a three month grace period is sufficient but this will be kept under review.
 - Prior to the application of local discretion in October 2019, the enforcement team rarely issued PCNs for out of date Blue Badges;

estimating this to be no more than 2 to 3 per week. Since the introduction of the discretionary arrangement only one PCN has been issued to a vehicle displaying an out of date blue badge. In this case, the badge was out of date by in excess of 3 months. It is considered by the Parking Services Manager that the continuation of this arrangement presents low potential risk of abuse; but this will be kept under review.

It should be noted that the enforcement of out-of-date Blue Badges is carried out under the Traffic Management Act 2004 and this is known as “civil” parking enforcement i.e. parking contraventions are not criminal offences. Parking Service however also take action against fraudulent use of Blue Badges, for example badges being used whilst the badge holder is not present. The action can be up to and including criminal proceedings in the Magistrates Court and therefore those found guilty of this type of offence are deemed to have committed a criminal offence.

The discretion remaining in place will have no influence on the continuing investigations and action being taken against criminal use of Blue Badges.

- There is no indication that the DfT plan to introduce any new and/or significant changes to the Blue Badge Parking scheme in the near future.

Option 2 – not recommended

Remove the local discretionary arrangement which would mean that:

- Vehicles displaying an out of date Blue Badge will be issued with a Penalty Charge Notice (PCN). (this may later be cancelled if it is verified that the customer has a pending application for renewal of the blue badge).

Rationale for not recommending this option:

- It is considered that removing the current discretionary arrangement will reintroduce similar issues to those first experienced in September and October 2019 before the local parking enforcement arrangement was applied because:
 - There have been no changes to scheme or the type of information/evidence the Council is required to collect to be able to assess an applicant’s eligibility for a Blue badge parking permit.
 - Customers have continuously reported difficulties/delays when trying to obtain the appropriate information/evidence to support their application. Whilst the Covid-19 crisis exacerbated the situation, customers were already experiencing issues prior to the first lockdown. The varying nature of individual health conditions and related professions means such delays are always likely to occur for some people.
- The DfT make it clear that it is the Council’s responsibility to ensure that badges are only issued to residents who satisfy one or more of the eligibility criteria set out in the legislation that governs the scheme; and that under no circumstances should anyone who does not satisfy at least one of the criteria receive a badge. As such, the Council needs to be satisfied that all appropriate and substantiated evidence and information has been received before making an award decision.

The time it takes for an applicant to be able to provide this information will vary but it is likely there will always be some re-applications awaiting a decision whilst ever current DfT assessment requirements remain in place.

3. Key Actions and Timelines

3.1 Actions Required to implement Option 1 (recommended): Retain the local discretionary arrangement on an ongoing basis

Timeline	Action
By 31.7.21	<ul style="list-style-type: none"> • Implement recommended option 1 • Review and update website content accordingly • Update customer service staff and enforcement officers of decision • Provide information update to partner agencies and other organisations. Eg. Parkgate shopping centre
From 1.8.21	<ul style="list-style-type: none"> • Regularly review the impact of implementing local discretion arrangements • Continue to review scheme administration and identify/implement opportunities to improve (in line with DfT requirements). • Customer Services and Enforcement team to continue working closely together to monitor impact; escalating any worrying issues/trends.

Recommendations

4.1 It is recommended that the Council:

- Retain the Blue Badge local discretionary enforcement arrangement currently in place on an ongoing basis whereby, as set out in this paper:
 - the enforcement team are instructed to avoid issuing a PCN purely on the grounds of an expired blue badge being displayed; subject to the displayed badge being no more than three months out of date.
- Notes that:
 - this is a local discretionary arrangement which only applies to use of an expired Blue Badge within the Rotherham Borough and only when using 'on street' parking or when parked in a Council owned car park.
 - the arrangement will be kept under regular review to ensure continued compliance with the Council responsibilities as set out by the DfT.

5.	Cabinet Member and Leader Comments
5.1	Leader (1.7.21): Agree with the recommendations of the report
5.2	Cabinet Member, Cllr Lelliott (12.7.21): Agree with the recommendations of the report

5. Briefing consultation / sign off

5.1	Has the above information be considered by:			
	Legal	Officer: Liz Anderton	Date: 21 June 2021	Comments: It is necessary to ensure that the Council continues to comply with the relevant legislation and the guidance issued by the DfT in order to avoid any legal challenge around any decisions or processes. The three-month grace period does not appear to contravene any legislation or guidance; however, there is a risk of abuse of the process i.e. someone using the three-month period when they know they are no longer eligible. Where an expired badge is displayed further checks should be conducted before making a decision in relation to enforcement. This is so that the blue badge scheme is not open to abuse and therefore undermined. Allowing a grace period is not something that is specifically addressed in the guidance and the customer is able to apply 3 months before expiry. It is therefore suggested that this is kept under review and that a review is conducted to address how long such applications do take to inform any future decisions i.e. is the 3 month period before expiry sufficient time. Any enforcement action relating to the use of a blue badge must only be considered where there is sufficient evidence and it is in the public interest to take action. Due consideration needs to be given to the public sector equality duty at all times, particularly where decisions impact upon a service that is relied upon

				by those with a protected characteristic. <i>Addressed in section 2.5 (rationale for making recommendation)</i>
	HR	Officer: Theresa Caswell	Date: 28/06/2021	Comments: Happy to sign off on the basis that there are no HR implications identified
	Finance	Officer: Richard Young	Date: 26/09/20	Comments: The rationale for retaining the extended grace period around renewals is of greater significance than the low level financial aspects on enforcement.
	Enforcement	Officer: Martin Beard	Date:	Comments: Supportive of continuing the 3 month grace period