

## BRIEFING NOTE FOR ALL MEMBERS UPDATE ON CONGESTION CHARGING

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Mr Justice Maurice Kay announced his decision on the Judicial Review of the City Council's case against the Mayor's proposed congestion charging scheme for central London on 31 July. The Council's case was unsuccessful and as a result it is expected that the congestion charging scheme will "go live" on 17 February 2003.

### **Background**

On 26 February 2002 the Mayor announced his decision to go ahead with proposals to introduce congestion charging in central London.

The scheme will charge drivers £5.00 per day, Monday to Friday to be within the area bounded closely by the Inner Ring Road (which in Westminster consists of Vauxhall Bridge Road, Grosvenor Place, Park Lane, Edgware Road and Marylebone Road) between 7.00 am and 6.30 pm. The Congestion Charging Zone, together with further information about the scheme, is shown in the attached leaflet from Transport for London. The leaflet contains a telephone number and a web address on the inside back page for members of the public seeking further information.

The City Council is opposed to the Mayor's proposals for congestion charging. Its view, as expressed in the Unitary Development Plan (as agreed for Revised (Second) Deposit on 29 October 2001) is as follows :-

*That if the Mayor decides to pursue congestion charging or workplace parking charges:*

- it is considered essential that adequate increases in public transport capacity and reliability are provided in advance or at the same time as the introduction of new restraint powers; and*
- if the point above is addressed, the Council will wish to carefully consider the details of a charging scheme with particular regard to concerns on boundary issues, technology, enforcement, pricing, exemptions, townscape, residents and local businesses. Such measures should be accompanied by hypothecation of the surplus revenue from these measures to allow improvements to be made to other forms of transport and to pursue transport related initiatives to improve air quality, such as vehicle emissions testing.*
- congestion charging is untested in this country and to use central London as a pilot could pose a significant number of risks to its ongoing competitiveness. It is considered more appropriate that the technology should be piloted in a regional centre where the consequences and scale of any operational problem would be of a lesser impact and any remedial measures could be more easily implemented.*

*There is concern about the congestion charging scheme proposed for central London at the time of writing because :-*

- there is no evidence that there will be a reduction in congestion*
- it will damage the quality of life of residents and local businesses*
- congestion charging will do very little to achieve improvement in air quality*
- it will set neighbour on neighbour as a result of the zoning adopted and force residents and key workers out of the charged area*
- any zoning adopted will cut through established residential and business communities and "penalise" some residents / businesses for being on the wrong side of the zone and thereby distort competition as to costs of running a business and attracting custom*
- it would bring pressure to bear on the Inner Ring Road and those streets immediately outside the charging zone*
- it will have an adverse impact on the City Council's road hierarchy, which seeks to ensure that traffic is carried on the most appropriate roads and routes*
- there are worries over the impact on City Council provided services (e.g. cleansing vehicles, meals on wheels, social workers)*
- there are other ways of reducing traffic congestion which would address the points above*

### **The Council's Case for Judicial Review**

Officers considered the detailed documentation, which formed the basis of the Mayor's decision on 26 February 2002, and consulted with both leading and junior Counsel.

The advice which Counsel provided, as to the lawfulness of the Mayor's decision to confirm the Order, and as to the prospects of a successful challenge, is summarised at Appendix 1.

The Cabinet on 20 May 2002 endorsed action already taken by the Director of Legal and Administrative Services under delegated authority and agreed that the Opinion provided sufficient justification in legal terms for the City Council to begin proceedings for Judicial Review and that the application for Judicial Review should be pursued to a full hearing.

The case was joined by the Royal Borough of Kensington and Chelsea. A separate case for Judicial Review by the Kennington Residents' Association was heard at the same time.

### **The Court's Decision**

Westminster's application for Judicial Review was refused and the Kennington residents' application for permission to apply for judicial review was also refused.

### **What has followed?**

Following the Court's decision, a legal agreement was drawn up with the Mayor and Transport for London, which was signed on 2 September 2002.

Whilst the City Council remains opposed to the Mayor's proposals for the implementation of congestion charging in central London officers are now working in co-operation with officials of Transport for London to try to ensure that the scheme is implemented with as few adverse effects on the City Council's residents as possible.

The legal agreement and related documents cover the following issues. Updates are provided under each heading.

- **Appeal** – The City Council agrees not to appeal the decision of the High Court.
- **Costs** – each side will meet its own costs of the court case.
- **Signing** – several meetings have already been held with Transport for London to discuss ways of limiting the number and size of signs associated with the scheme and the City Council has been successful in reducing them and therefore in reducing street clutter. Transport for London has also agreed to combine some of the signposts and lamp columns and replace them with strengthened columns. This will be done after the congestion charging scheme has been introduced because of the time needed to put in special lamp columns.
- **Traffic Signals** – Transport for London has undertaken to provide information on proposed traffic signal changes and to discuss them with the City Council at regular meetings. Transport for London will use a combination of (i) Real Time Traffic Management (RTTM) operators, who will watch traffic conditions on CCTV monitors and be able to alter signal timings on-screen at anytime, to react to any build up of queuing traffic; (ii) Automatic Number Plate Recognition cameras, which will be used for enforcement purposes, but will also be able to track vehicles' progress and thereby provide information on journey times / general congestion in the network. Such information could again be used to make decisions on possible changes to traffic signal timings (iii) SCOOT / UTC systems – all traffic signals in Westminster operate under these computer based systems, which link sets of signals to neighbouring signals and tries to ensure that there is some sort of progression through the network. These systems also collect continuous data about traffic flows to enable decisions to be made on likely future signal timings. Fixed time plans are also available as back up systems. The equipment is currently being improved which in many cases has involved digging up roads to implement new detectors.

Transport for London has undertaken to brief officers on any significant proposed changes (other than those which the RTTM operators will make to respond to very short-term problems). It should be noted that it will not be in Transport for London's interests for significant queuing to form at any location because of the tremendous public reaction that would cause. Nevertheless, it might be expected that Transport for London will seek to give priority to keeping the Inner Ring Road moving, which will be the obvious diversionary route for any traffic seeking to travel around the congestion charging zone.

The above systems produce reams of data on each location. Officers have asked Transport for London to provide an example of the amount of data collected for an individual junction and will consider how the data might be translated into a legible form to enable Members to be briefed on individual traffic signals and proposed changes to them.

- **Monitoring** – Transport for London has agreed to undertake continuous monitoring of nine further sites in Westminster, which it had previously refused. This information will be shared with the City Council throughout the life of the scheme.
- **Amelioration / Complementary Works** – Transport for London has confirmed that money is still available for amelioration works (also known as complementary works), such as traffic calming in streets immediately outside the congestion charging area which might experience increased traffic levels – if after surveys and consultation it is apparent that residents want such measures. A preliminary bid for funding was submitted to TfL in the week commencing 7th October 2002. This includes the Star Street scheme that was due to be implemented as part of the LTVA schemes. Ward Councillors will be briefed separately on these schemes.

### **Bus Priority**

Although not part of the legal agreement, the Leader of the Council has informed the Mayor that the City Council intends to use its best endeavours to ensure that four key bus priority schemes are introduced on the following routes before the “go live” date in February. It will be for the City Council to apply its own design standards and to decide what measures are appropriate.

These routes, which will be brought in using experimental traffic orders, are:

- Kensington Road / Knightsbridge
- Maida Vale
- Harrow Road
- Bayswater Road

Consultation leaflets on these schemes are in the process of being prepared and issued following the agreement of Tim Mitchell, the Cabinet Member for Transport and Infrastructure.

In addition, the City Council will continue to progress a number of other bus priority measures in conjunction with Transport for London, but once again using the City Council’s standards and procedures.

The criteria being applied are that proposals :-

- should not increase congestion (it is acknowledged that queue lengths may increase as one lane is taken for a bus lane, but journey times will only be affected by the minimal impact of being overtaken by buses and taxis);
- should take due account of the needs of frontagers for parking and loading;
- should not encourage traffic to divert to routes via less suitable residential streets;
- should give benefits to buses (i.e. a proposal for a bus lane will not be acceptable just because the road width makes a bus lane possible);
- should improve road safety (including safety schemes and facilities for pedestrians and cyclists as appropriate as part of a ‘package’ of measures).

## **Borough Operational Vehicles**

The congestion charging order includes a list of “borough operational vehicles” that will receive a 100% discount from the charge. The full list of functions to which the borough operational vehicles concession will apply is as follows:

- Street Cleaning;
- Road maintenance;
- Waste collection;
- Waste disposal;
- The management or maintenance of parks and open spaces;
- Mobile libraries;
- Dog wardens;
- Pest control;
- Meals on wheels;
- Parking enforcement; and
- Schools transport

Nevertheless, the City Council is concerned about the operational costs of congestion charging as there are a number of vehicles that it uses which will **not** get the discount. These include vehicles engaged in commercial waste collection (which the Mayor has decided should not qualify for the discount as they are in competition with other private contractors who will not qualify) and the private vehicles of staff who need to use them in order to be able to carry out their jobs effectively.

## **Council's Website**

There is a page on the Council's Website which provides a link to the Transport for London Congestion Charging Website.

## **Area Forums**

Transport for London has been invited to attend the next round of Area Forums to help ensure that our residents are made fully aware of how the scheme will affect them.

## **Residents' Discount**

The City Council sought a 90% discount for all residents in its formal letters of objection to the scheme on 19 October 2001 and 16 January 2002. Officers have repeated the request for concessions for those residents living in the Controlled Parking Zones (D&F), which straddle the Congestion Charging zone boundary. These requests have not been accepted and officers were advised on 26 September 2002 that there is insufficient time for Transport for London's contractor to implement further changes.

Options to overcome this problem are being considered by the Transportation and Infrastructure Overview and Scrutiny Committee on 16 October 2002.

CARL POWELL  
DIRECTOR OF PLANNING AND TRANSPORTATION

Enc. Transport for London leaflet on Congestion Charging  
cc Colin Wilson, Director of Legal and Administrative Services

**APPENDIX 1**  
**SUMMARY OF COUNSEL'S OPINION**

- (i) There are good grounds to challenge the decision on the basis of serious omissions in the decision making process. In Counsel's view permission to review the Mayor's decision should be granted by the Court, and the substantive challenge should succeed.
- (ii) The central basis of any challenge would be that the Mayor could not lawfully confirm the Order because he did not have the information necessary to enable him to do so. In order to obtain that information he should have required an Environmental Impact Assessment to be undertaken, as required by the relevant EC Directive, and/or arranged for a public inquiry to be held. Counsel consider that although the Mayor's power to hold a public inquiry is framed in the legislation as a discretion, in the circumstances of this case this discretion amounted on balance to a legal obligation.
- (iii) There is in addition a good argument that the Mayor as a public body has acted in a way which was incompatible with the right of individuals and businesses under the European Convention on Human Rights – particularly residents and businesses at and beyond the zone boundary. The Scheme is likely to have significant adverse effects on the living conditions of residents in those areas, and would thus arguably constitute an interference with their right to the peaceful enjoyment of their homes and private and family lives. Such an interference without due justification constitutes a breach of their human rights, and accordingly the Mayor's decision to confirm the Order is unlawful in the absence of any adequate justification or balancing exercise. Accordingly, the arguments with respect to human rights support the proposition that an environmental assessment or a public inquiry should have been held.