

ABERDEEN CITY COUNCIL

COMMITTEE	Enterprise, Planning and Infrastructure
DATE	13 September 2011
DIRECTOR	Gordon McIntosh
TITLE OF REPORT	Disabled Persons; Parking Places (Scotland) Act 2009 – Eligibility
REPORT NUMBER	EPI/11/131

1. PURPOSE OF REPORT

- 1.1 This report provides information to members of the Committee on implications for disabled persons' parking places arising from the Disabled Persons' Parking Places (Scotland) Act 2009. (DPPPA 2009) and recommends an approach to be followed

2. RECOMMENDATION(S)

- 2.1 It is recommended that the Committee:
1. Note the content of this report;
 2. Instruct officers that all requests for the making of disabled street parking orders in respect of street parking places shall be dealt with in accordance with the new Disabled Persons Parking Places (Scotland) Act 2009 and as outlined in report EPI/10/194 which was approved by the Enterprise Planning and Infrastructure Committee at its 7 September 2010 meeting.
 3. Instruct officers to retain those advisory disabled street parking places awarded under clause 7 of the Council's previous criteria for so long as they are required by the individual(s) concerned.

3. FINANCIAL IMPLICATIONS

- 3.1 There are no financial implications as a result of this report.

4. OTHER IMPLICATIONS

- 4.1 The City Wardens are responsible for the enforcement of any disabled parking bay which has been implemented following the coming into force of the DPPPA 2009. If advisory spaces were to remain alongside the new enforceable spaces, they must be clearly identified and wardens must be clearly briefed on which ones are enforceable.

5. BACKGROUND / MAIN ISSUES

5.1 Report

- 5.1.1 Prior to the DPPPA 2009 coming into effect Aberdeen City Council had approved and installed a small number of on-street disabled parking spaces (up to 25No) where the applicants didn't qualify for a Blue Badge.

These advisory parking spaces were awarded following discussions with the local Councillor and where the child or adult suffered from learning difficulties or such an illness as Dementia or Alzheimer's. In these circumstances the applicant could not be left unattended at the kerbside while the driver found a suitable parking space.

They were approved as they met the Council's criteria for an advisory on-street parking place which were in place at that time (see appendix A, point 7).

- 5.1.2 It should be highlighted that Aberdeen City Council was one of the very few, if not the only Scottish Authority that tended to look favourably on child applicants or adults with learning difficulties that did not hold a Blue Badge where road safety was a concern. Under the previous advisory disabled parking scheme there was no legislative requirement for the disabled motorist to display a Blue Badge in their vehicle whilst it occupied the advisory space and as a result, the fact that the applicant was not in possession of a Blue Badge was not an issue.

5.2 Implications of the Disabled Persons' Parking Places (Scotland) Act 2009 (DPPPA)

- 5.2.1 The DPPPA 2009 came into force in October 2009. The Act provides for the enforcement of disabled persons' parking places and removes local authorities' powers to designate on-road advisory disabled parking spaces, that is a disabled parking space which is not subject to an order made under section 45 of the Road Traffic Regulation Act 1984.

- 5.2.2 As members may be aware from previous reports the DPPPA requires local authorities to identify every advisory disabled on-street parking space and decide which of the spaces are to be retained. All retained

spaces and all new disabled parking spaces must now be subject to a Traffic Regulation Order. As a result, any vehicle which parks in one of these designated on-street parking spaces without displaying a Blue Badge can be issued with a Penalty Charge Notice. It should also be noted that all remaining disabled parking spaces will no longer be specific to an individual but will be useable by any other Blue Badge holder.

- 5.2.3 Under the terms of the DPPPA, only persons (i.e. individuals or organisations) who hold a Blue Badge and have a suitable vehicle registered at their address can request the local authority to make a disabled street parking order in respect of a street parking place which is in the authority's area and from which there is convenient access to the person's address. Some disabled persons will not be able to make such a request because they do not meet the criteria for a Blue Badge (usually because they are not in receipt of the higher rate of the mobility allowance, nor do they meet the secondary qualification in that they don't have a disability which affects their walking ability).

5.3 Consultation with Scottish Government

- 5.3.1 Officers have written to the Scottish Government to inform them of the anomaly that exists within Aberdeen in relation to the new DPPPA and whether they were minded to permit the retention of advisory spaces in situations such as this.
- 5.3.2 The Scottish Government have responded to officers and indicated that:
- The Act improves the previous position by creating powers to take action against individuals parking in disabled bays without displaying a valid blue badge.
 - Guidance was issued to all local authorities on 17 May 2010, including advice that under the Act, local authorities had until 30 September 2010 to begin putting in place arrangements to make all disabled parking spaces within their area enforceable.
 - In the particular case of on-street disabled parking, any such advisory parking spaces (historic) should either be made enforceable, if close to the residence of a Blue Badge holder or if not, removed.
 - In that regard, advisory spaces have no legal backing and any on-street disabled parking bays should only be made available to valid blue badge holders.

5.4 Proposals

- 5.4.1 As the Council are duty bound to follow the above procedures as a result of the coming into force of the DPPPA all new disabled persons' parking place requests are being considered in accordance with the procedures outlined in report EPI/10/194 and approved by the Enterprise Planning and Infrastructure Committee at its 7 September 2010 meeting.

- 5.4.2 Officers would not wish to see persons who were previously granted an on-street advisory disabled parking place be disadvantaged by the removal of such a facility if there is still a genuine need for it. However under the terms of the DPPPA, any vehicle using a disabled parking place which is included within a Traffic Regulation Order must display a Blue Badge otherwise a PCN may be issued.

To remove this small number of on-street advisory disabled persons' parking spaces would in some cases cause these individuals and families considerable distress.

- 5.4.3 It is therefore proposed to retain these existing advisory disabled street parking places until at least such time as the up to date position in each case is further evaluated, if necessary with input from Social Care and Wellbeing staff. Those spaces which continue to be required by the individuals concerned would remain as advisory spaces until such time as they are no longer required through changes in circumstances.

However Members should be aware that this proposal would be in breach of the legislation. As regards existing advisory disabled street parking places, section 4 of the DPPPA provides that the authority "*must remove any road-markings or sign posts indicating that the parking place is for the use only by a disabled persons' vehicle*" Where the authority ;

- (i) decide that the parking place is not one from which there is convenient access to the address of a person who holds a Blue Badge; or
- (ii) decides that it has no power to make a disabled street parking order in respect of the parking place; or
- (iii) starts the statutory procedure for the making of such an order in respect of the parking place and the result is that no such order is made.

Failure to remove such road-markings or sign posts where any of the above three circumstances apply amounts to a breach of the legislation. Indeed, in terms of section 4(7) of the DPPPA, such removal ought to have been undertaken by 30 September 2010 where circumstances (i) or (ii) apply.

This proposal accordingly leaves the Council open to the risks of public criticism and reputational damage. The advisory places would have no legal effect and would be unenforceable, as at present.

The alternative approach would be to instruct officers to secure compliance with the section 4 duty to remove road-markings and sign posts in respect of existing advisory disabled street parking places as detailed above.

6. IMPACT

- 6.1 The Single Outcome Agreement sets out a priority of tackling inequalities in society. The provision of the Blue Badge scheme and parking places provides an equality to people with mobility difficulties with respect to access around the City.
- 6.2 The content of the report meets with the local Community Plan objectives to continually improve road safety and maximize accessibility for pedestrians and all modes of transport.

Consultees comments

Council Leader – **Councillor Callum McCaig** - email sent 29/07/11

Enterprise, Planning and Infrastructure Committee

Convener: Councillor Kate Dean - email sent 29/07/11

Vice Convener: Councillor John Corall - email sent 29/07/11

Local Members

Councillor George Adam	email sent 29/07/11
Councillor Yvonne Allan	email sent 29/07/11
Councillor Marie Boulton	email sent 29/07/11
Councillor Bill Cormie (Depute Provost)	email sent 29/07/11
Councillor Barney Crocket	email sent 29/07/11
Councillor Martin Greig	email sent 29/07/11
Councillor Muriel Jaffrey	email sent 29/07/11
Councillor Alan Milne	email sent 29/07/11
Councillor George Penny	email sent 29/07/11
Councillor Richard Robertson	email sent 29/07/11
Councillor John West	email sent 29/07/11
Councillor John Stewart	email sent 29/07/11
Councillor Kevin Stewart	email sent 29/07/11
Councillor Jillian Wisely	email sent 29/07/11
Councillor Ian Yuill	email sent 29/07/11
Councillor Irene Cormack	email sent 29/07/11
Councillor Alan Donnelly	email sent 29/07/11
Councillor James Kiddie	email sent 29/07/11
Councillor Neil Cooney	email sent 29/07/11
Councillor Mark McDonald	email sent 29/07/11
Councillor Jennifer Laing	email sent 29/07/11
Councillor Len Ironside	email sent 29/07/11
Lord Provost Peter Stephen	email sent 29/07/11
Councillor Wendy Stuart	email sent 29/07/11
Councillor Gordon Townson	email sent 29/07/11
Councillor Neil Fletcher	email sent 29/07/11
Councillor Kirsty West	email sent 29/07/11
Councillor Aileen Malone	email sent 29/07/11
Councillor Neil MacGregor	email sent 29/07/11

Councillor Jackie Dunbar	email sent 29/07/11
Councillor Gordon Graham	email sent 29/07/11
Councillor Andrew May	email sent 29/07/11
Councillor James Hunter	email sent 29/07/11
Councillor Norman Collie	email sent 29/07/11
Councillor Jim Noble	email sent 29/07/11
Councillor Gordon Leslie	email sent 29/07/11
Councillor John Reynolds	email sent 29/07/11
Councillor Jim Farquharson	email sent 29/07/11
Councillor Jennifer Stewart	email sent 29/07/11
Councillor Willie Young	email sent 29/07/11

Council Officers

Barry Jenkins, Head of Finance, Resources *has been consulted and has no comments related to finance.*

Jane MacEachran, City Solicitor, Continuous Improvement *has been consulted and the report amended to make members aware that the recommendation proposed by officers does not comply with the legislation.*

Ciaran Monaghan, Head of Service, Office of Chief Executive has been consulted

Gordon McIntosh, Director of Enterprise, Planning and Infrastructure has been consulted

Hugh Murdoch, Head of Service, Shelter and Environment – has been consulted

Margaret Bochel, Head of Planning & Infrastructure, Strategic Leadership – *has been consulted and agrees with the recommendations*

Mike Cheyne, Roads Manager has been consulted

Neil Carnegie, Community Safety Manager has been consulted

Margaret Jane Cardno, Community Safety Manager has been consulted

Colin Walker, Community Safety Manager has been consulted

Dave Young, Account Manager, Service, Design and Development has been consulted

Kathryn McFarlane, Service Co-ordinator

Allison Swanson, Committee Services

7. BACKGROUND PAPERS

Report No EPI/10/194 – “Disabled Persons’ Parking Places (Scotland) Act 2009 Implementation Update;

Minute of Enterprise, Planning & Infrastructure Committee meeting, 7 September 2010;

8. REPORT AUTHOR DETAILS

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Appendix A



CRITERIA FOR APPROVAL OF A REQUEST FOR A PARKING FACILITY FOR PERSONS WITH A DISABILITY

In order to implement the policy, approval of applications for a parking facility is generally only given when the following conditions are met: -

- a) Either (1) the person with a disability is the **DRIVER** of the vehicle
Or (2) able bodied drivers with a disabled person living with them should be granted a disabled space if the disabled person meets the following criteria;
- b) Either (1) the person with a disability receives the **HIGHER RATE** of the **MOBILITY COMPONENT** of the **LIVING ALLOWANCE**
(2) the person with a disability, if **NOT** the driver has been awarded a blue badge
- c) There is **NO SUITABLE OFF-STREET PARKING FACILITY** available near the disabled person's home.
- d) The vehicle is **NORMALLY KEPT** at the home address of the applicant

IN ADDITION IT SHOULD BE NOTED: -

- 1) The **HIGHER RATE** of the **MOBILITY COMPONENT** of the **DISABILITY LIVING ALLOWANCE** is the best criteria based on independent medical assessment. Consideration should be given to an applicant in full-time employment.

However in 2007 the disabled persons (Badges for Motor Vehicles)(SCOTLAND)(Amendment) Regulations came into force and introduced a more stringent eligibility criterion. These badges will only be issued to those with genuine walking difficulties. Applicants should be physically unable to visit shops etc. unless there is suitable parking. This disability must be permanent and not intermittent or temporary.

THEREFORE THE HOLDING OF A 'BLUE BADGE' SHOULD BE CONSIDERED AS A CONTRIBUTORY PRIMARY QUALIFICATION TO RECEIVE A PARKING SPACE, IF THE APPLICANT IS THE DRIVER OF THE VEHICLE

- 2) Reserved spaces are not provided to allow vehicles to park while assisting or collecting a disabled person if the vehicle is **NOT NORMALLY PARKED** at the address concerned.

Neighbours, who also have parking problems may resent seeing an empty vacant space laying empty most of the time, hence bringing the system into disrepute.

- 3) It is felt that a vehicle collecting or delivering a disabled person may double park if necessary for the time required for the disabled person to get out of the vehicle.

Similarly, if the driver of the vehicle is a member of the family, taking the applicant out occasionally but not using the space all the time then neighbours may feel aggrieved at the situation.

- 4) To date members of the public generally respect reserved spaces although they have no legal standing, but if people feel that they are not warranted then they may start parking in them and the police would be powerless to prevent this.
- 5) Any establishment for the elderly or disabled persons may apply for a reserved space for ambulances and this is considered favourably when ambulances visit the establishment regularly.
- 6) It may also be noted that as the number of applicants increases, other members of the public are complaining that, in their view, certain people should not be considered applicable for a space. Therefore in order to accelerate the process for general applications and prevent time wasting caused by insubstantial applications criteria must be strictly adhered to prevent the system falling into disrepute.

- 7) Consideration should be given to installing a disabled parking space for a disabled applicant who is **NOT** the driver **ONLY** if the applicant;

- Is a child, aged 2 – 16 inclusive, with disabilities that can be confirmed by their General Practitioner
- Is a sufferer of Dementia that can be confirmed by their General Practitioner
- Is a person that has learning difficulties that can be confirmed by their General Practitioner
- Is a person who has a mobility vehicle that is normally kept at the address

The above applicants would only be considered if there are road safety concerns when the applicant is left unattended at the roadside.

- 8) If the disabled parking applicant meets the criteria above then a disabled parking space will be allocated at the nearest appropriate location to their property once a site visit has been carried out by a representative from Aberdeen City Council.
- 9) If the disabled applicants situation changes after they initially applied they should notify Aberdeen City Council immediately.
- 10) Applicants are requested to reapply for the parking facility for person with a disability every three years as per the policy approved by Aberdeen City Council Environment & Infrastructure Committee 23 March 2005.
If the application does not meet the criteria the parking facility will be removed to prevent the system falling into disrepute.
- 11) An appeal will only be recommended if there are special circumstances that are out-with the above criteria and the local Councillors for the area are all in agreement with the special circumstances of the applicant a disabled parking space will be installed, once a site visit has been carried out, at the nearest available location.
- 12) In order to accelerate the process for general applications caused by insubstantial applications criteria must be strictly adhered to prevent the system falling into disrepute.