

## **Section 121B Road Traffic Regulation Act 1984/Section 301A Highways Act 1980**

### **Guidance on the use of the Mayor's power to consent to borough proposals**

#### **Purpose**

1. The purpose of this note is to set out guidance which can be applied when the Mayor is requested to exercise his power to approve disputed borough proposals using the power in section 121B Road Traffic Regulation Act 1984 (RTRA) or section 301A Highways Act 1980 (HA). Although each such request will be considered on a case by case basis, regard will in general be had to the matters set out in this note. This will help to ensure a consistent and fair approach to decisions about when the Mayor should intervene in what are generally local issues between boroughs. The Mayor's power, if exercised, must be exercised in accordance with public law principles, namely fairly, reasonably (taking account of relevant considerations) and lawfully.

#### **Statutory context**

2. Section 121B Road Traffic Regulation Act (RTRA) and section 301A Highways Act (HA) are set out in full in Appendix 1. They set out a procedure which applies when a London borough council proposes to exercise any powers under the legislation in a way which will or will be likely to affect a road in another London borough (or a GLA/strategic road). Note that there is no threshold for the level of impact required – on the natural wording of the legislation, *any* effect on a road in another borough will trigger the process.
3. The RTRA gives borough councils a range of powers, including the following:-
  - Making traffic regulation orders for controlling or regulating vehicular and other traffic (including pedestrians) (including experimental traffic orders)
  - Imposing temporary restrictions or prohibition of the use of roads
  - Establishing, altering, or removing pedestrian crossings
  - Providing parking places on roads or off-street
  - Designating paying parking places on highways and determining applicable charges
  - Imposing speed limits
4. Section 301A HA contains a provision in virtually identical terms to section 121B RTRA.
5. The HA gives borough councils powers to do the following in their capacity as highway authorities:-
  - Enter into agreements regarding the carrying out of works on highways
  - Consent to the re-designation of roads as GLA roads
  - Carry out works to effect the division of carriageways, provision of roundabouts and variation of the relative widths of carriageways and footways;
  - Construct cycle tracks
  - Carry out traffic calming works (including road humps)

- Stop up/divert highways
  - Acquire land for the purpose of construction/improvement works either by agreement or CPO
  - Regulatory functions e.g. granting of scaffolding licenses and the licensing of buildings overhanging the highway, prosecuting for obstructions
6. Section 121B/section 301A, in summary, have the following effect.
- The borough cannot exercise its powers unless the following requirements have been met:-
    - The borough has given notice of the proposal to TfL/the affected borough (depending on what category of road it is); and **either**
      - The proposal has been approved by TfL/the affected borough; **or**
      - A 1 month period since receipt of the notice has elapsed with no objection having been received from TfL/the borough; **or**
      - An objection has been made but withdrawn.
    - Where an objection has been made and not withdrawn, **the GLA has given its consent to the proposal after consideration of the objection.**
7. The relevant functions of the Greater London Authority under the RTRA/HA are exercisable by the Mayor of London acting on behalf of the Authority.

### **Guiding principles/relevant considerations**

The matters set out below are those which the Mayor will in most cases expect local boroughs to have had regard to before requesting his intervention.

#### *(i) Local resolution*

- It is considered that in most cases, it will be preferable for issues to be resolved at a local level, without recourse to the Mayor. A request for Mayoral intervention should be regarded as a last resort after the relevant boroughs have demonstrated that genuine efforts have been made to come to a resolution between them.

#### *(ii) Mayor's Transport Strategy*

- The Mayor is under a statutory duty (section 141 GLA Act) to develop and implement policies for the promotion and encouragement of **safe, integrated, efficient and economic** transport facilities and services to, from and within Greater London. He is under a further duty (section 142 GLA Act) to prepare and publish a transport strategy, setting out those policies and his proposals for implementing them.
- In considering a request to exercise the power in section 121B RTRA/section 301A HA, the Mayor will consider whether the proposals would contribute to the achievement of all or any of the objectives comprised within the general transport duty – namely the promotion and encouragement of safe, integrated, efficient and economic transport facilities and services to, from and within Greater London.

- A further relevant factor for consideration will be the extent to which the proposals engage policies set out in the version of the Mayor's Transport Strategy (MTS) which is current at the time.

*(iii) Local Implementation Plans*

- London borough councils are required by section 145 GLA Act to prepare a local implementation plan (or LIP) setting out their proposals for the implementation of the MTS in their area. The LIPs are submitted to the Mayor for approval. He can only approve a LIP if it is consistent with the MTS; if the proposals contained in it are adequate for the purpose of implementing the MTS; and if the timetable for implementation of the proposals is adequate for the purpose of implementing the MTS.
- The Mayor will therefore consider whether a disputed proposal forms part of proposals that he has already approved as part of a LIP.

*(iv) Local consultation*

- The views of local people and others who would be affected by the proposals are a key consideration. Before the Mayor considers using his power, he will expect the proposing borough to have carried out appropriate public consultation or engagement and reviewed the proposals in light of the feedback received.
- In some cases, if proposals were first advanced some time ago, it may be necessary to update the consultation to ensure that the views of those affected are captured and that the consultation takes account of any relevant changes in the interim period (e.g. the implementation of other schemes, or other proposals in the area which may have an impact).

*(v) Public Sector Equality Duty*

- The Mayor is subject to the Public Sector Equality Duty set out in section 149 Equality Act 2010 (EA) which provides as follows:-

*(1) A public authority must, in the exercise of its functions, have due regard to the need to—*

*(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*

*(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;*

*(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.*

- In other words, in deciding whether to consider the objection and approve the proposals, the Mayor should consider whether the proposals are likely to engage any of the objectives set out in section 149 EA. Where the proposals are likely to contribute to the achievement of any of these objectives, this is a factor which would support a decision to use the power.

(vi) *Public Inquiry*

- Section 121B (4) and section 301A (4) provide that before deciding whether to give any consent, the Greater London Authority *may* cause a public inquiry to be held. Therefore, in deciding whether to exercise his power to consider the proposals the Mayor must consider whether it would first be appropriate and/or necessary to hold a public inquiry. He will seek the boroughs' views on this.

**Proposed process**

Although there may need to be some flexibility to ensure fairness in decision-making, the following is the proposed general approach to the Mayor's consideration of whether to exercise his statutory powers to consider proposals under section 121B RTRA or section 301A HA.

1. Mayor receives request from proposing borough for intervention and approval of proposals
2. Mayor refers to TfL officers for investigation and assessment of the request against the principles set out in this guidance: TfL officers request sight of all relevant documentation including notice of proposals; consultation materials and summary of feedback from consultation; and any correspondence with objecting authority
3. TfL officers meet with proposing authority to raise any queries and obtain further information about the proposals
4. TfL officers contact objecting authority and request any relevant evidence about the rationale for their objection to the proposals; TfL officers meet with objecting authority to discuss
5. TfL explore with both boroughs whether there have been any attempts at a resolution of the issues between them; TfL officers facilitate further attempts at local resolution as necessary
6. In the event that no local resolution can be achieved, TfL officers require each borough to set out as fully as possible their respective positions, to inform consideration of whether the Mayor should exercise his discretionary power
7. TfL and GLA officers consider the material provided by the boroughs and apply the guidance set out in this document in making a recommendation to the Mayor as to whether he should use his powers to intervene
8. Following consideration, decision communicated to the boroughs in writing with brief reasons

**Appendix 1 – Section 121B Road Traffic Regulation Act 1984 & Section 301A  
Highways Act 1980**

**121B London borough council exercising powers so as to affect another traffic authority's roads.**

(1) No London borough council shall exercise any power under this Act in a way which will affect, or be likely to affect,—

(a) a GLA road, or

(aa) a strategic road,

(b) a road in another London borough, other than a GLA road or strategic road

unless the requirements of subsections (2) and (3) below have been satisfied.

(2) The first requirement is that the council has given notice of the proposal to exercise the power in the way in question—

(a) to Transport for London; and

(b) in a case where the road concerned is in another London borough, to the council for that borough.

(3) The second requirement is that—

(a) the proposal has been approved

(i) in the case of a GLA road, by Transport for London;

(ii) in the case of a strategic road, by Transport for London and, where the road concerned is in another London borough, the council for that borough;

(iii) in the case of a road within subsection (1)(b), by the London borough council concerned; or

(b) the period of one month beginning with the date on which Transport for London and, where applicable, the council received notice of the proposal has expired without Transport for London or the council having objected to the proposal; or

(c) any objection made by Transport for London or the council has been withdrawn; or

(d) where an objection has been made by Transport for London or a London borough council and not withdrawn, the Greater London Authority has given its consent to the proposal after consideration of the objection.

(3A) References in paragraphs (b) to (d) of subsection (3) to objections are to objections made by a person who, in the circumstances, has the power to give an approval under paragraph (a) of that subsection.

(4) Before deciding whether to give any consent for the purposes of subsection (3)(d) above, the Greater London Authority may cause a public inquiry to be held.

(5) If Transport for London has reason to believe—

(a) that a London borough council is proposing to exercise a power under this Act in a way which will affect, or be likely to affect,

(i) a GLA road,

(ii) a strategic road, or

(iii) a road in another London borough other than a GLA road or strategic road, and

(b) that notice of the proposal is required to be, but has not been, given in accordance with subsection (2) above,

Transport for London may give a direction to the council requiring it not to proceed with the proposal until the requirements of subsections (2) and (3) above have been satisfied.

(6) If a London borough council exercises any power in contravention of this section, Transport for London may take such steps as it considers appropriate to reverse or modify the effect of the exercise of that power.

(7) For the purposes of subsection (6) above, Transport for London shall have power to exercise any power of the London borough council on behalf of that council.

(8) Any reasonable expenses incurred by Transport for London in taking any steps under subsection (6) above shall be recoverable by Transport for London from the London borough council concerned as a civil debt.

(9) The Mayor of London may issue a direction dispensing with the requirements of subsections (2) and (3) above in such circumstances as may be specified in the direction.

(10) A direction under subsection (9) above may, in particular, dispense with those requirements as respects—

(a) all or any of the London borough councils;

(b) all or any of the GLA roads or strategic roads;

(c) all or any of the roads which are not GLA roads, strategic roads or trunk roads;

(d) the exercise of such powers as may be specified in the direction in such manner or circumstances as may be so specified.

(11) Any direction under subsection (9) above may be varied or revoked by a further direction under that subsection.

(12) For the purposes of this section—

(a) the City of London shall be treated as if it were a London borough;

(b) the Common Council shall be treated as if it were the council for a London borough; and

(c) the Inner Temple and the Middle Temple shall be treated as forming part of the City.

(13) In this section “strategic road” has the meaning given by section 60 of the Traffic Management Act 2004.

**301A Highways Act 1980 London borough council exercising powers so as to affect another authority's roads.**

(1) No London borough council shall exercise any power under this Act in a way which will affect, or be likely to affect,—

(a) a GLA road, or

(aa) a strategic road,

(b) a road in another London borough other than a GLA road or strategic road ,  
unless the requirements of subsections (2) and (3) below have been satisfied.

(2) The first requirement is that the council has given notice of the proposal to exercise the power in the way in question—

(a) to Transport for London; and

(b) in a case where the road concerned is in another London borough, to the council for that borough.

(3) The second requirement is that—

(a) the proposal has been approved

(i) in the case of a GLA road, by Transport for London;

(ii) in the case of a strategic road, by Transport for London and, where the road concerned is in another London borough, the council for that borough;

(iii) in the case of a road within subsection (1)(b), by the London borough council concerned;  
or

(b) the period of one month beginning with the date on which Transport for London and, where applicable, the council received notice of the proposal has expired without Transport for London or the council having objected to the proposal; or

(c) any objection made by Transport for London or the council has been withdrawn; or

(d) where an objection has been made by Transport for London or a London borough council and not withdrawn, the Greater London Authority has given its consent to the proposal after consideration of the objection.

(3A) References in paragraphs (b) to (d) of subsection (3) to objections are to objections made by a person who, in the circumstances, has the power to give an approval under paragraph (a) of that subsection.

(4) Before deciding whether to give any consent for the purposes of subsection (3)(d) above, the Greater London Authority may cause a public inquiry to be held.

(5) If Transport for London has reason to believe—

(a) that a London borough council is proposing to exercise a power under this Act in a way which will affect, or be likely to affect,

(i) a GLA road,

(ii) a strategic road, or

(iii) a road in another London borough other than a GLA road or strategic road, and

(b) that notice of the proposal is required to be, but has not been, given in accordance with subsection (2) above,

Transport for London may give a direction to the council requiring it not to proceed with the proposal until the requirements of subsections (2) and (3) above have been satisfied.

(6) If a London borough council exercises any power in contravention of this section, Transport for London may take such steps as it considers appropriate to reverse or modify the effect of the exercise of that power.

(7) For the purposes of subsection (6) above, Transport for London shall have power to exercise any power of the London borough council on behalf of that council.

(8) Any reasonable expenses incurred by Transport for London in taking any steps under subsection (6) above shall be recoverable by Transport for London from the London borough council concerned as a civil debt.

(9) The Mayor of London may issue a direction dispensing with the requirements of subsections (2) and (3) above in such circumstances as may be specified in the direction.

(10) A direction under subsection (9) above may, in particular, dispense with those requirements as respects—

(a) all or any of the London borough councils;

(b) all or any of the GLA roads; or strategic roads

(c) all or any of the roads which are not GLA roads, strategic roads or trunk roads;

(d) the exercise of such powers as may be specified in the direction in such manner or circumstances as may be so specified.

(11) Any direction under subsection (9) above may be varied or revoked by a further direction under that subsection.

(12) Any reference in this section to a GLA road includes a reference to a GLA side road, within the meaning of the Road Traffic Regulation Act 1984 (see sections 124A(9) and 142(1) of that Act).



(13) In this section “ road ” means any length of highway or of any other road to which the public has access and includes bridges over which a road passes.

(14) Subsection (13) above is without prejudice to the construction of references to GLA roads or GLA side roads.

(15) The functions of the Greater London Authority under this section shall be functions of the Authority which are exercisable by the Mayor of London acting on behalf of the Authority.

(16) For the purposes of this section—

(a) the City of London shall be treated as if it were a London borough;

(b) the Common Council shall be treated as if it were the council for a London borough; and

(c) the Inner Temple and the Middle Temple shall be treated as forming part of the City.

(17) In this section “ strategic road ” has the meaning given by section 60 of the Traffic Management Act 2004.