

## Merton Council - call-in request form

### 1. Decision to be called in: (required)

<b>Emissions Levy – Statutory Consultation</b>
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### 2. Which of the principles of decision making in Article 13 of the constitution has not been applied? (required)

Required by part 4E Section 16(c)(a)(ii) of the constitution - tick all that apply:

(a) proportionality (i.e. the action must be proportionate to the desired outcome);	X
(b) due consultation and the taking of professional advice from officers;	X
(c) respect for human rights and equalities;	X
(d) a presumption in favour of openness;	X
(e) clarity of aims and desired outcomes;	
(f) consideration and evaluation of alternatives;	X
(g) irrelevant matters must be ignored.	

### 3. Desired outcome

Part 4E Section 16(f) of the constitution- select one:

(a) The Panel/Commission to refer the decision back to the decision making person or body for reconsideration, setting out in writing the nature of its concerns.	X
(b) To refer the matter to full Council where the Commission/Panel determines that the decision is contrary to the Policy and/or Budget Framework	
(c) The Panel/Commission to decide not to refer the matter back to the decision making person or body *	
* If you select (c) please explain the purpose of calling in the decision.	



**4. Evidence which demonstrates the alleged breach(es) indicated in 2 above (required)**

Required by part 4E Section 16(c)(a)(ii) of the constitution:

We – the signatories – are in favour of the principle that the polluter should pay. We fully recognise the seriousness of the air pollution problem in Merton and would wish to see this urgently addressed. We also recognise that diesel vehicles, particularly older ones, are now widely accepted as being the most polluting vehicles. We agree that the council should therefore encourage a transition away from diesel/petrol towards electric cars. However, we are concerned about the making of the relevant Traffic Management Orders in order to implement Recommendation A in the officers' report and would question the motivation of the decision making process on the following grounds:

**(a) proportionality (i.e. the action must be proportionate to the desired outcome);**

The Cabinet Member's decision to proceed with the emissions levy following the results of the statutory consultation is disproportionate to the desired outcome. The claimed outcome is a reduction in diesel pollution in the borough and the council claims this could be done by targeting diesel car owners who live in Controlled Parking Zones (CPZs) and have purchased a permit. However, nowhere in the officer report does it state categorically that by specifically reducing the number of Merton residents living in a CPZ who purchase a permit for their diesel vehicle there would be a drop in air pollution.

The decision does not establish the principal sources of the air pollution in Merton. It is not clear what proportion of air pollution is coming from the vehicles affected and what proportion is emanating from either diesel vehicles in other parts of the borough without a CPZ or from vehicles simply travelling through the borough but whose owners live elsewhere.

There is no mechanism proposed to charge through users, including heavy goods vehicles etc., nor even to charge all diesel vehicle owners in Merton. The only non-residents potentially to be charged the levy are teachers working at the borough's schools and this itself is a new proposal which was not muted by Cabinet when it took its policy decision last year.

Furthermore the council admits on page 88 of the report that 'it is hard to evidence change in behaviour'. It then says 'the Council **hopes** that this new charge will incentivise borough residents to consider moving away from polluting vehicles'. There is no empirical evidence provided however to show the number of residents who might be incentivised nor the timescales involved.

The risk remains that this levy will have no significant impact on air pollution on the key road networks in the borough where air pollution is worst and therefore is a disproportionate measure to impose on a minority of residents.

Furthermore, some concern has been raised that the relevant street management law is aimed at avoiding obstructions to traffic. It is not intended as a measure to improve air quality. There is a leading judgement directly addressing the matter in that stresses the need for delegated legislation to address – and delegated powers to be exercised – for the purposes of the empowering Act. Yet this is not properly addressed in section 7 of the officer report.

**(b) due consultation and the taking of professional advice from officers;**

The statutory consultation undertaken earlier this year was the only public consultation to have taken place on the introduction of a diesel emissions levy in Merton. This was presented as a technical consultation as the council was legally obliged to consult in order to make the relevant Traffic Management Orders required for implementation of a levy in CPZs.

There is real concern that the consultation was not widely promoted by the council and, as such, many residents who will potentially be affected are still unlikely to be aware of the proposed diesel emissions levy. For a start, the consultation only lasted three weeks and one day. It was also not included on the council's e-consultations portal as managed by the Consultation and Community Engagement team.

In her email to councillors of 6<sup>th</sup> January 2017, the Future Merton Commissioning Manager stated:

*"Due to the extent of the consultation area (across all roads subject to a CPZ) the Council will not be erecting yellow notices and we will not be sending residents / businesses any newsletters."*

This is also stated in 3.3 of the officer report. The above only reiterates residents' existing concern at the extent to which this consultation was promoted by the council. Despite the fact that the council holds the data for all diesel vehicle owners who purchase a residents' parking permit, it is clear that no effort was made to write to each of these permit holders to

publicise the consultation to them and give residents some notice of the introduction of the proposed levy (as Members had discussed at pre-decision scrutiny last year).

Moreover, regardless of the quality or otherwise of the consultation conducted, it appears that the Cabinet Member has not taken due notice of the views received as part of the consultation. Paragraphs 3.4 and 3.5 of the report set out the results of the consultation. Of 150 representations received, only **nine** are in favour of the council's proposed changes. Of these nine we are told that even some of these 'have raised some concerns'. In addition to the 141 representations firmly against the council's proposal, there are a further 165 signatures on a petition opposing the implementation of a diesel levy of this kind. Yet, despite this very clear majority in opposition to the levy, the Cabinet Member's decision scarcely even refers to the results of the consultation, stating only 'it is acknowledged that there are some residents who feel that the levy is unfair'.

**(c) respect for human rights and equalities;**

It is not clear what assessment has been made of the impact of the Cabinet Member's decision on the elderly or disabled who may need to use their diesel vehicles on a regular basis. Similarly there is no assessment included in the report of the impact of this decision on residents on low incomes who may have an older and more polluting vehicle and yet cannot easily or quickly afford to upgrade this to one which would not be subject to this new levy.

At 8.1 the report states that bodies representing motorists have been included in the statutory consultation. Yet there is no reference to organisations or community groups representing older or disabled residents or those on lower incomes. It can therefore only be assumed that these organisations were not consulted.

**(d) a presumption in favour of openness;**

There is a clear lack of openness with regard to the intention to undertake a statutory consultation on applying the diesel levy to teachers' permits and also to apply a reduction of £40 to business and trade permits with electric vehicles. No mention of this was made when the policy decision came before Cabinet nor when Cabinet's decision was called in for further scrutiny. As such, there has been no consideration of how many teachers and businesses might be impacted by this nor what the revenue implications are likely to be for the council. It is not clear where the proposal on business and trade permits came from and why - if this was not included as part of the statutory consultation - it now forms part of the Cabinet Member's decision.

There is also no indication in the report or decision notice of the specific clean air measures on which the council will spend the money generated

from the diesel levy. It appears to go into the general funds of the E&R department to spend on whatever transport or environmental items it determines. The report should set down precisely what anti-pollution measures would be implemented with this additional revenue, i.e. new tree planting, cycle and walking infrastructure improvements, pollution abatement outside key school sites etc.

The risk is that the perception of residents is that this decision has been taken predominantly in order to generate revenue for the council and to deliver on the savings proposal included in the MTFs.

This is reiterated by the information that officers have chosen to incorporate into their report at section 6. Detail is provided on the revenue that will be generated by the Cabinet Member's decision yet no information at all is included on the cost of the implementation of the Cabinet Member's decision and the making of the relevant Traffic Management Orders.

**(f) consideration and evaluation of alternatives;**

The decision notice at section 8 does not offer any other alternative options, and only states that the council must do something with parking permits. If the aim is to reduce air pollution then the report should state alternative options and demonstrate why alternatives would not work as successfully as the proposed diesel levy.

For example, Conservative councillors called on Merton council back in September last year to introduce anti-idling measures to help tackle air pollution from stationary vehicles and improve public health for both children and adults. This has already been implemented in neighbouring Wandsworth. Yet, Merton council has still not progressed this. This is a clear alternative option yet is not referred to in the decision notice.

Similarly the council has not progressed action on tackling air pollution from its own vehicle fleet. Page 89 of the officer report admits that the majority of the council's 185 vehicles are diesel powered. The report states that so far one pool car has been replaced with an electric vehicle. Whilst officers do say that fleet vehicles are '**gradually** being replaced with the latest low emissions engines', a further alternative would be to accelerate this process and yet this is not seemingly considered as an alternative to increasing parking permit fees for residents.

Finally, this decision has seemingly been taken without input from the air quality task group that was established by Merton's Sustainable Communities scrutiny panel. This cross-party task group has been looking across the board at a range of measures that could help address air pollution and yet there is no reference in the decision notice to this review

and how it could develop a holistic approach to tackling the serious challenge of air pollution in Merton and across London. Instead the Cabinet Member's decision appears to have been taken in isolation without considering the full range of alternatives available to the council.

## **5. Documents requested**

All papers provided to the Director of Environment and Regeneration and the Cabinet Member for Regeneration, Environment and Housing prior to, during and subsequent to the decision making process on the implementation of the diesel emissions levy.

All emails, reports and associated documentation relating to the decision on implementation of the diesel emissions levy provided to the relevant Cabinet Member, Leader of the Council, Chief Executive, Director of Environment and Regeneration, Director of Corporate Services and other council officers.

All emails, reports and associated documentation relating to the decision potentially to apply the diesel emissions levy to teachers' permits provided to officers in the Children, Schools and Families department.

Meeting notes of all meetings between officers / Cabinet Members and any third parties on the implementation of the diesel emissions levy.

Any correspondence between the relevant Cabinet Member and external organisations on the implementation of the diesel emissions levy.

Any correspondence between relevant council officers (including those in Children, Schools and Families) and external organisations on the implementation of the diesel emissions levy.

The Equality Impact Assessment (or any other equalities analysis carried out) in relation to the Cabinet Member's decision.

The risk analysis conducted in relation to the Cabinet Member's decision.

Detailed financial analysis of the Cabinet Member's decision, including costs of implementation and the impact on council revenue over the medium term.

Analysis undertaken of a) the age and b) the emissions level of the vehicles impacted by the Cabinet Member's decision compared to the age and the emissions level of all vehicles recorded on Merton's roads in general (including red routes and outside of CPZs).

A list of all the resident and business associations who were advised of the statutory consultation (as per paragraph 3.2 of the report)

A list of all the bodies who were included in the statutory consultation (as referred to in paragraph 8.1 of the report).

A breakdown of precise details of how the revenue generated from the diesel emissions levy will be spent.

An independent public health assessment of the impact of the Cabinet Member's decision on the health of Merton's residents

## **6. Witnesses requested**

Cllr Martin Whelton, Cabinet Member for Regeneration, Environment and Housing

Paul McGarry, Future Merton Manager, LB Merton

Paul Walshe, Head of Parking and CCTV Services, LB Merton

Mitra Dubet, Future Merton Commissioning Manager, LB Merton

Kris Witherington, Consultation & Community Engagement Manager, LB Merton

Representative of Merton businesses e.g. Merton Chamber of Commerce

Representative of Merton's teachers (and particularly those likely to be impacted by the proposed diesel levy)

Representative of Wimbledon Union of Residents' Associations (WURA)

Representative from Wimbledon East Hillside Residents' Association (WEHRA)

Representative from the St John's Area Residents' Association

Representative from the Raynes Park and West Barnes Residents' Association

Representative from the Edge Hill Residents' Association

Representative from each residents' association which submitted a response to the statutory consultation prior to the Cabinet Member's decision

All residents who submitted a public question on the diesel levy at the last two ordinary Council meetings

An independent public health expert

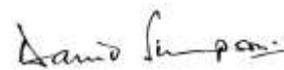
**7. Signed (not required if sent by email):**



**Cllr Daniel Holden**



**Cllr Abdul Latif**



**Cllr David Simpson**

**8. Notes – see part 4E section 16 of the constitution**

Call-ins must be supported by at least three members of the Council.

The call in form and supporting requests must be received by 12 Noon on the third working day following the publication of the decision.

The form and/or supporting requests must be sent:

- **EITHER** by email from a Councillor's email account (no signature required) to [democratic.services@merton.gov.uk](mailto:democratic.services@merton.gov.uk)
- **OR** as a signed paper copy to the Head of Democracy Services, 7<sup>th</sup> floor, Civic Centre, London Road, Morden SM4 5DX.

For further information or advice contact the Head of Democracy Services on

020 8545 3864

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