

**Report for: Portfolio Holder  
Decision**

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**Subject: The Mayor of London's decision to extend the Ultra Low Emission Zone to the London Borough of Harrow**

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**Responsible Officer:** Director of Legal & Governance Services

**Portfolio Holder:** Leader of the Council

**Key Decision:** Yes, as the expansion of the ULEZ affects all wards in the Borough

**Power to be exercised:** Paragraph 3 of the Appendix to the Executive Procedure Rules

**Exempt:** No, but appendix 3 is confidential by virtue of paragraph of paragraph 5 of Schedule 12a of the Local Government Act 1972 in that it contains information in respect of which a claim for legal professional privilege could be maintained in legal proceedings

**Urgent:** Yes

**Wards affected:** All Wards

**Enclosures:**

Appendix 1 Pre Action Protocol Letter  
Appendix 2 The Mayor of London and Transport for London's response to the Pre Action Protocol letter  
Exempt Appendix 3 Confidential Legal Advice (to be tabled)

**Section 1 – Summary and Recommendations**

This report explains the decision to expand the Ultra Low Emission Zone ('ULEZ') to Harrow, and sets out the route and possible grounds for challenging it in the High Court

**Recommendations:** That

The Leader of the Council is requested to consider:

Authorising the Director of Legal & Governance Services to immediately issue Proceedings in the High Court against the Mayor of London and Transport for London ('TfL') to challenge the decision made in November 2022 to extend the Ultra Low Emission Zone ('ULEZ') to the whole of Greater London from 29<sup>th</sup> August 2023.

**Reason:** If Harrow is to issue a legal challenge to the ULEZ decision, it must be submitted by no later than 24<sup>th</sup> February 2023.

**Section 2 – Report****Introductory paragraph**

Between May and July 2022, the public and stakeholders were consulted on the proposed expansion of ULEZ to the whole of Greater London, eliciting a significant number of responses.

The London Boroughs of Harrow, Hillingdon, Bexley and Bromley all responded to the consultation, objecting to the proposal on the grounds that:

- the data provided in the consultation was confusing and inconsistent;
- the details of the proposed scrappage scheme were not disclosed, but appeared to offer no benefit to residents outside London;
- no overall costs of implementing the scheme were given, nor any monetised social or economic benefits
- there was no specific assessment of the impact on individual boroughs; and
- there was no clarity about where revenues for the scheme would be spent.

A long report was produced seeking to summarise all consultation responses and making overall conclusions and recommendations to the Mayor.

In November 2022 the Mayor decided to extend ULEZ to the whole of Greater London.

There is concern in Harrow about the impact of the new charges on its Residents and Businesses, which has led to exploring ways of stopping it or mitigating its impact.

### **Options considered**

The first option is to do nothing, whereupon if there is no successful challenge to the decision by another stakeholder, the ULEZ will apply in Harrow from 29<sup>th</sup> August this year.

The second option is for Harrow to challenge the expansion decision alone, whereupon it will bear the risks and costs of litigation (set out in following paragraphs) alone.

The third and preferred option if Harrow is to mount a challenge is to do so jointly with other affected Boroughs. Bringing proceedings jointly does not materially increase costs but allows legal costs to be shared among the Boroughs bringing the challenge.

If the Council is to challenge the decision to expand the ULEZ to Harrow it must do so by 24<sup>th</sup> February.

## **Current situation**

### **Judicial Review**

Before a decision such as the one above may be challenged in the High Court, the claimant is required to explain their grounds of claim to the decision maker and give them the opportunity to respond in what is known as a Pre Action Protocol ('PAP') letter, with the aim of avoiding court cases and/or reducing the area of dispute where possible.

Having taken Leading Counsel's advice on the above, Harrow, Hillingdon, Bexley and Bromley submitted joint PAP letters to the London Mayor and Transport for London on 12<sup>th</sup> January 2023. The recipients were invited to respond by 27<sup>th</sup> January.

The PAP letter is at Appendix 1, and the responses at Appendix 2.

### **Grounds of Challenge**

The possible grounds of challenge are set out in the PAP letter, but in summary are as follows:

- It is unlawful for the extension to be introduced by way of a variation order, and without an explanation of where the net proceeds of the scheme would be applied
- The Mayor relied on incorrect assumptions for expected compliance rates in outer London
- The Mayor failed to consider the potential for inclusion of non-Londoners in the proposed scrappage scheme
- The Mayor failed to carry out any cost benefit analysis or have regard to the Green Book methodology

### **Response to the Grounds**

TfL have responded to the above as follows:

- The extension can be lawfully introduced by variation order, and there is no longer a requirement to explain how net proceeds will be applied
- The Mayor relied upon a forecast based upon Outer London ANPR data from May 2022
- It is TfL, not the Mayor who is responsible for determining the scrappage scheme rules
- The scheme considered environmental benefits and detriments, but many of these are difficult to reduce meaningfully to money terms. The Green Book methodology does not apply to the Mayor or TfL.

## Permission to Bring a Challenge

If a claimant remains dissatisfied following receipt of the response to their PAP letter, they may apply to the High Court for permission to bring a challenge. The aim of this filter is to only allow a claim to proceed where on the papers there is an arguable claim

If permission is given, the claim can proceed to a hearing. If permission is not given, then subject to any appeal the matter stops there.

Permission may be given on some or all of the Grounds of Challenge, and a review would be undertaken at that point on whether to proceed further with the Claim and further advice given.

## Timing

Any Judicial Review claim must be brought promptly and in any event within 3 months of the decision being challenged, here by 24<sup>th</sup> February 2023.

## Parties

The Portfolio Holder will be updated as to the intentions of the London Boroughs of Hillingdon, Bexley and Bromley to jointly bring the High Court challenge, and whether any other Boroughs or interested parties have also agreed to do so.

## Risk Management Implications

Risks included on corporate or directorate risk register? **No**

Separate risk register in place? **No**

The following key risks should be taken into account when agreeing the recommendations in this report:

Risk Description	Mitigations	RAG Status
Harrow's legal challenge may fail, in which event it would be ordered to pay the Mayor & TfL's legal costs	If the claim is brought with other London Boroughs, this would reduce Harrow's possible costs exposure	Red

Risk Description	Mitigations	RAG Status
	Harrow is being advised and would be represented by an experienced King's Counsel	
There is no budget to cover the costs of bringing a claim or for paying the legal costs of the Mayor and TfL if the claim fails (total approx. £400k) leading to a worsening of Harrow's financial situation.	Use of reserves	Red
If expansion of ULEZ goes ahead Harrow may fail to meet part of its Vision, Corporate Priorities and/or flagship actions and there may be a detrimental impact on Harrow's poorest and most vulnerable residents.	<ul style="list-style-type: none"> <li>▪ Proceeding with the Legal Challenge</li> <li>▪ Consideration of schemes to help those most impacted</li> <li>▪ Negotiation with TfL on possible mitigations</li> </ul>	Amber

## Procurement Implications

If Harrow decides to pursue a Judicial Review, and it is done with the London Borough of Hillingdon on behalf of all authorities supporting the Claim, they have retained Leading King's Counsel to advise and represent the parties in Court, and Harrow has and will reimburse Hillingdon for its share of the costs involved.

In these circumstances there are no procurement implications for Harrow.

## Legal Implications

A summary of the legal advice on the grounds of challenge is contained in a confidential Appendix 3. The Portfolio Holder will be updated if further advice is forthcoming

## Financial Implications

The total legal costs of all the parties in bringing and defending this claim are likely to be approx. £400,000 (under review). This includes the estimated legal costs incurred by Harrow Council, and other Councils if a joint challenge, and those of the Mayor of London/TfL if the challenge is not successful. The full costs will be borne by Harrow if submitted as an independent challenge or shared with other authorities if it is a joint action.

The normal rule for costs in legal proceedings is that the unsuccessful party pays the successful party's costs. If Harrow's challenge is successful therefore, most of its legal costs will be reimbursed by the Mayor of London/TfL.

Conversely if the challenge fails, Harrow will have to pay its share (determined by the number of Councils which join the challenge) of the Mayor of London/TfL's legal costs.

There is no provision in the budget / MTFs to cover such a cost if it materialises.

This report concentrates on the implications of the legal challenge. If the ULEZ is extended to the Borough as planned there would be cost implications for the Council, including costs for the Council's fleet and workforce visiting service users etc. Such implications are being worked up and considered by Officers.

## **Council Priorities**

Please identify how the decision sought delivers this priority.

1. **A council that puts residents first**

## **Section 3 - Statutory Officer Clearance**

**Statutory Officer: Dawn Calvert**

Signed by the Chief Financial Officer

**Date: 31 January 2022**

**Statutory Officer: Hugh Peart**

Signed by the Monitoring Officer

**Date: 31 January 2023**

## **Section 3 - Procurement Officer Clearance**

**Head of Procurement:**

Signed by the Head of Procurement  
Nimesh Mehta

**Date: 25<sup>th</sup> January 2023**

## **Section 3 - Contact Details and Background Papers**

**Contact:** Hugh Peart

Signature: .....

Director of Legal & Governance Services

Date: 1 February 2023

### **For Leader**

\* I do agree to the decision proposed

\* I do not agree to the decision proposed

\* *Please delete as appropriate*

Notification of disclosable non-pecuniary and *pecuniary* interests (if any):

[Should you have a *disclosable* pecuniary interest, you should not take this decision.]

Additional comments made by and/or options considered

Signature: .....  
Leader

Date: .....

### **Call-in waived by the Chair of Overview and Scrutiny Committee**

**YES**

If legal proceedings are to be issued, LB Hillingdon, who are liaising with other affected Boroughs, have requested confirmation of Harrow's intentions by 2<sup>nd</sup> February 2023.