

Decision Maker: Environment Portfolio Holder

Date: For Pre-decision Scrutiny by the Environment PDS Committee on
18th January 2012

Decision Type: Non-Urgent Executive Non-Key

Title: CRITERIA FOR APPROVAL OF FOOTWAY CROSSOVERS

Contact Officer: Iain Forbes, Head of Transport Strategy
Tel: 020 8461 7595 E-mail: iain.forbes@bromley.gov.uk

Chief Officer: Nigel Davies, Director of Environmental Services

Ward: All

1. Reason for report

To review and update the criteria for the approval of footway crossovers.

2. **RECOMMENDATION(S)**

- 2.1 That the revised Policy and Guidelines document attached at Appendix A be approved and brought into immediate effect.
- 2.2 That in the case of new crossovers, a non-returnable application fee be set at £100 per application, and that a minimum administration charge of £200 be applied to every installed application, with any administration costs over and above this figure being charged to the applicant.
- 2.3 That in the case of an application to extend (widen) an existing crossover, a non-returnable combined application and administration fee be set at £100, payable at the time of application.

Corporate Policy

1. Policy Status: New policy. (Revision of existing Guidelines)
 2. BBB Priority: Quality Environment.
-

Financial

1. Cost of proposal: No cost
 2. Ongoing costs: N/A.
 3. Budget head/performance centre: Highways
 4. Total current budget for this head: £68,510 Cr
 5. Source of funding: Existing revenue budget 2012/13
-

Staff

1. Number of staff (current and additional): Up to 8 staff depending on complexity of each application
 2. If from existing staff resources, number of staff hours: The service as described in this report is estimated to use 1,850 hours of staff time per annum (approx. 1.5 FTE).
-

Legal

1. Legal Requirement: Statutory requirement. There is a requirement under s184 of the Highways Act 1980 to consider applications for footway crossovers, but no requirement for policy or guidelines to be in a particular form.
 2. Call-in: Call-in is applicable
-

Customer Impact

1. Estimated number of users/beneficiaries (current and projected): Approximately 250 applicants a year
-

Ward Councillor Views

1. Have Ward Councillors been asked for comments? N/A.
2. Summary of Ward Councillors comments: N/A

3. COMMENTARY

3.1 The Council receives approximately 250 requests each year for the construction of private residential footway crossovers. About 90% of these applications result in the eventual construction of a crossover.

3.2 In some cases, planning permission is required before a crossover can be approved, even if the application only involves vehicular access and there are no proposed changes to the rest of the property. The main reasons why planning permission may be required are:

- the property has the affected frontage directly on to a classified road
- the property is a listed building or is in a conservation area
- the property is not a house for a single family, such as a flat or maisonette
- the access will serve more than one property
- it is proposed to construct a vehicle hardstanding which does not meet the requirements regarding permeability to rainwater runoff.

Many houses in residential streets do not fall into the above categories, and applications for crossovers are dealt with solely by the Council in its role as Highway Authority.

3.3 In order to ensure that applications are dealt with consistently and fairly, they are considered in accordance with policy and guidelines as determined by the Council from time to time. The last occasion this occurred was via a report to the then Environment and Leisure Portfolio Holder on 29th November 2006 (report ELS06272). It is expedient to review the policy and guidelines as a number of changes have occurred since 2006.

3.4 Appendix A sets out the existing and proposed Guidelines side-by-side in tabular form. All changes are indicated by italics. Some changes are minor and have been made to improve clarity. These are not discussed below. The key changes are as follows:

- Changes to the General Principles section to indicate that the Guidelines apply to crossovers where planning permission is not required, and to improve clarity (sections 1-4 in the new Guidelines).
- Insertion of a section to make it clear that all applications will be assessed to take account of safety and the free flow of traffic, as required by s.184 of the Highways Act 1980 (section 14).
- An indication that an application is likely to be refused if it is adjacent to existing parking bays, loading bays or zigzags (sections 14 and 15).
- Imposition of a moratorium on applications where a new on-street parking scheme is under active consideration (section 16) (see further discussion later in this report).
- Clarification that, where a crossover is redundant, the Council will reinstate the kerb and footway at its own expense during routine maintenance operations, but a charge will be made at other times if the adjoining property owner requests a reinstatement (section 19).
- Clarification of a **change in practice** whereby the Council will seek to recover the full costs of considering an application and subsequently carrying out agreed work (section 27). It should be noted that current practice does not recover the full costs of assessing an application, and this is discussed in more detail later in this report.

- Clarification that the Council will maintain a crossover once it is constructed (section 34).
- Explanation that a request for exemption from the Guidelines on medical grounds will be assessed to similar standards as an application for an on-street disabled bay (section 42).
- Adoption of a more detailed appeal procedure (sections 43 & 44).

3.5 In addition to the above, a paragraph has been removed (old paragraph xii) that implied that the design of new schemes involving street lighting or other street furniture should take into account conflicts with established and “possible future” crossings. Since any pre-existing crossovers would be taken into account when designing a new scheme, this paragraph appeared to suggest that good engineering design in the location of lighting columns and other road signs should somehow be subordinated to speculation about whether adjoining properties might apply for crossovers at some future date. The Guidelines already set out procedures for considering pre-existing street furniture or other apparatus. If it is possible for these features to be moved to accommodate a crossover, this is done at the expense of the applicant and not from the public purse.

Moratorium when new parking schemes go to consultation

3.6 From time to time the Council responds to increased local parking stress by consulting on proposals to introduce new areas of parking control, or to extend or amend controls in existing controlled areas. There will therefore be a temptation for some residents to try to pre-empt the effect of any new controls by applying for a crossover and creating a private off-street parking space before any new controls are introduced in their street. In practice, this would only be open to occupants of single family dwellings with adequate front gardens who also had access to sufficient funds to build a hardstanding and pay for a crossover. Other residents would not have the choice.

3.7 In addition, the design and consultation process for parking schemes seeks to identify available kerbside space and allocate it to particular uses, such as residents’ and visitors’ bays, passing areas in narrower streets and so on. The creation of new crossovers during this process would reduce the kerbside space to be shared between these other uses and might pre-empt decisions about how the space could be allocated.

3.8 In order that the Council is seen to treat all frontagers equitably, the proposed guidelines include a moratorium on the acceptance of applications from areas of parking review from the first occasion proposals appear in the public domain until a final decision is taken on which measures, if any, to implement. In practice, the “public domain” would mean either the date of issue of the first consultation document or, less commonly, the date when a consultation was first proposed in a published Council agenda paper. Once a scheme is agreed for implementation, but before it is implemented, the revised Guidelines suggest that any application will be considered as though the scheme had already been implemented.

The appeal process

3.8 A recent determination by the Local Government Ombudsman has criticised the Council for the way it handles appeals against a refusal of an application for a crossover. In effect, the appeals process has merely been to confirm that the Guidelines have been properly applied. The Ombudsman has said that the Council should not fetter its discretion in this way. The revised Guidelines clearly set out a two-stage process which firstly checks that the Guidelines have been applied properly and consistently, but which then allows for the consideration of any other matter which the applicant has cited as grounds for appeal,

including, but not limited to, matters contained in the Guidelines. It also specifically provides for an assessment of whether any proposed decision provides an appropriate balance of benefit between the applicant and the community, and for the communication of any reasons to the applicant..

Fees and charges

- 3.9 Current practice is to charge a fee of £25 for each application and to deduct this amount from the final construction invoice if the application is approved. This sum does not represent the full costs of processing an application and providing an estimate. Those costs are currently recovered via a variable administration fee which is charged to successful applicants as part of the construction cost. This fee is currently capped at £200, although this charge is rarely applied. There is a minimum charge of £50.
- 3.10 A review has been undertaken of the costs of processing applications and commissioning and administering works in the light of the revised processes described in this report. This indicates that, for an average crossover, the cost of processing an application is £200 and the cost of administering the works is £35. On the basis of current levels of applications (250 per annum of which 10% are unsuccessful), fees based on the above costs would generate an income of £58,000.
- 3.11 There is some concern that to increase the application fee to £200 could deter some genuine applications. This has to be set in the context of the cost to a resident of removing a wall or fence, constructing a hardstanding and paying for the cost of the crossover. (The current approximate construction cost of a basic crossover across a 2 metre footway in Bromley, excluding any administration or supervision costs, would be £560 in blacktop and £670 in concrete block paving.) It is suggested that it would be reasonable in this context to set the application fee at £100 and that it be non-returnable, since the costs are incurred whether or not the application is approved.
- 3.12 The income from this service was £48,950 in 2010/11. The current (2011/12) income target for this service is £65,560, and for 2012/13 it will be £68,510. While this target undoubtedly reflects pre-recession levels of demand, in the current financial climate it is not tenable to reduce potential income without adverse impacts on other services. A minimum administration charge of £200 per installed crossover plus the application fee of £100 would result in a total income of £70k, assuming that demand continued at present levels.
- 3.13 Where an existing crossover is being extended (widened), it is proposed to set a fee of £100, payable in advance, which would cover both the application fee and the administration charge. In practice the applicant would pay £100 at the time of application in the same way as an applicant for a new crossover.
- 3.14 The Local Authorities (Transport Charges) Regulations 1998 (SI 1998 No. 948) allow a charge to be made for this purpose. The amount of a charge is at the relevant authority's discretion and, in determining the amount, the authority "shall have regard" to the cost to them of dealing with the matters in question. There is no requirement to balance income and expenditure. It is therefore considered reasonable to set the charges as follows:

Application fee for new crossover	£100	Non-returnable, to be submitted at time of application.
Administration charge for installed crossover	£200	Minimum charge in addition actual to cost of construction. Any administration costs in excess of £200 to be met by the applicant. All charges to be payable in advance of execution of works. No maximum charge.
Combined application fee and administration charge for extended (widened) crossover	£100	Non-returnable, to be submitted at time of application.

3.15 Working practices and costs in other authorities vary widely, and it is difficult to make direct comparisons. A trawl of websites and conversations with officers in some other authorities has yielded the following results.

Borough	Application fee	Comments
Bexley	No separate application fee	Charges are recovered via a charge bands depending on the size of the crossover. Minimum charge £915.
Croydon	£150	Non-returnable
Greenwich	£34	Application fee is taken off the cost of a successful application. Installation charge is £984 plus £100 per foot for new crossovers.
Kent CC	£300	Covers administration (£150) and final inspection (£150) fees. If application is refused, the administration fee of £150.00 is non-refundable.
Lambeth	0	Considering an application currently appears to be without charge.
Lewisham	£100	Application fee is non-refundable. The minimum cost of a vehicular crossover is £1000. Crossovers on wide footways will cost more.
Merton	£75 (£125 in a CPZ)	Charges include two site visits for the preparation of a plan and an estimate. Additional site visits, if required, are charged at £30 per visit. Charges are non-refundable.
Surrey CC	£177	Non-returnable. Includes application and administration costs.

4. POLICY IMPLICATIONS

4.1 The revised Guidelines, if approved, would represent a change in Council policy.

5. FINANCIAL IMPLICATIONS

5.1 If agreed, the revised charges would generate income of approximately £70k per annum in line with current and expected budgets.

Non-Applicable Sections:	Legal Implications, Personnel Implications
Background Documents: (Access via Contact Officer)	None