

Decision Maker: GENERAL PURPOSES AND LICENSING COMMITTEE

Date: Thursday 14 February 2013

Decision Type: Non-Urgent Non-Executive Non-Key

Title: STATION SQUARE PETTS WOOD

Contact Officer: Greg Ullman, Team Leader, Planning, Litigation and Licensing
Telephone: 0208 461 7625
E-mail: greg.ullman@bromley.gov.uk

Chief Officer: Director of Resources

Ward: Petts Wood and Knoll

1. Reason for report

- 1.1 The Council has received complaints that what are claimed as established rights of way over forecourts at Station Square, Petts Wood are being obstructed. A petition has also been received from the Petts Wood and District Residents' Association seeking the confirmation of a right of way for the whole of Station Square, Petts Wood, including shop forecourts, which it is claimed, has existed continuously for 20 years without let or hindrance.
-

2. **RECOMMENDATION(S)**

The Committee

- 2.1 notes that a report will be presented by the Portfolio Holder to a future meeting of the Environment PDS Committee for pre-decision scrutiny concerning options in respect of privately owned forecourts over which it is claimed highway rights have arisen;
- 2.2 notes that the Portfolio Holder will be responding to the petition under the Council's petition scheme
- 2.3 subject to the outcome of the meeting referred to in 2.1 authorises the Director of Resources if necessary and subject to the evidence to take any necessary action under section 130 and/or 149 Highways Act 1980 in respect of the complaints made in respect of Station Square Petts Wood.
- 2.4 agrees that further reports will be presented to the General Purposes and Licensing Committee as required

Corporate Policy

1. Policy Status: New Policy
 2. BBB Priority: Thriving Town Centres
-

Financial

1. Cost of proposal: There are no costs in respect of the receipt of the petition. Further advice will be given in respect of the report to be presented to the Environment's PDS Committee and the Portfolio Holder.
 2. Ongoing costs: Not applicable
 3. Budget head/performance centre: Environmental Services
 4. Total current budget for this head:
 5. Source of funding: Existing revenue account
-

Staff

1. Number of staff (current and additional): Not applicable
 2. If from existing staff resources, number of staff hours: Not applicable
-

Legal

1. Legal Requirement: Statutory Requirement
 2. Call-in: Not applicable. A separate report will be presented to the Environmental Services' Portfolio Holder and the Environment PDS Committee, which will be subject to call-in.
-

Customer Impact

1. Estimated number of users/beneficiaries (current and projected): Borough-wide
-

Ward Councillor Views

1. Have Ward Councillors been asked for comments? As result of the date of receipt of the petition, it has not been possible to consult with Ward Councillors prior to the production of the report. However, Ward Members have been advised of the report and any comments received will be reported verbally.
2. Summary of Ward Councillors comments:

3. COMMENTARY

- 3.1 Several complaints have been received by the Council relating to alleged obstructions to the public right to pass and re-pass along forecourts outside premises in Station Square Petts Wood. The complaints include a petition received from the Petts Wood and District Residents' Association. The petition asks the Council to confirm that a right of way has existed, without let or hindrance, across the whole of Station Square, Petts Wood, including shop forecourts, for 20 years continuously.
- 3.2 Section 130 of the Highways Act 1980 provides that it is the duty of the Highway Authority to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the Highway Authority. It also provides that the Council may assert and protect the rights of the public to the use and enjoyment of any highway in their area for which they are not the Highway Authority.
- 3.3 The fact that a forecourt is privately owned is irrelevant as highway rights can be acquired over land in private ownership.
- 3.4 Section 149 Highways Act allows action to be taken to remove things deposited on the Highway as to cause a nuisance.
- 3.5 Sections 130 and 149 of the Highways act are listed as being non-executive functions in Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended).
- 3.6 There are other powers which are not so listed and fall to the Portfolio Holder. These include section 166 of the Highways Act enabling the Council to take action in relation to a stall or other erection on the forecourt of premises abutting on a street as well as section 137 which deals with the general offence of obstruction.
- 3.7 The Council's recent practice in respect of private forecourts over which highway rights may be enjoyed has been to normally take action only in cases of actual danger to the public. A report, however, will be presented to a future meeting of the Environment PDS Committee and the Environment Portfolio Holder to review that policy and to see whether any changes are appropriate either generally or in the context of the complaints raised. It should be noted that throughout the Borough it is common for items associated with shops, restaurants and other businesses to be placed on forecourts and similar over which the public have rights of way. Section 115E Highways Act includes a power to formally licence tables chairs etc on highways and a future meeting of this committee may want to consider the introduction of a formal licensing policy to regulate such matters.
- 3.8 The Portfolio Holder and the Environment PDS Committee will be asked to review the current practice of the Council in respect of enforcement on private forecourts over which highway rights may be exercised. When the results of this consideration are known, a further report will then be presented to the General Purposes and Licensing Committee, which may be the appropriate time to review the section 115E powers. The Portfolio Holder will also respond to the petition.

4. FINANCIAL IMPLICATIONS

- 4.1 There are no financial implications resulting from this report. The Environment PDS Committee and Portfolio Holder will be advised of any implications of a change in the Council's current practice.

5. LEGAL IMPLICATIONS

5.1 There are addressed in the report.

Non-Applicable Sections:	Personnel
Background Documents: (Access via Contact Officer)	