

Decision Maker: Environment Portfolio Holder

**For Pre-decision Scrutiny by the Environment PDS
Committee on**

Date: 16 April 2013

Decision Type: Non-Urgent Executive Non-Key

Title: **SERVICE ROAD TO SHOPS FRONTING SOUTHBOROUGH
LANE/THE FAIRWAY, BROMLEY - PROPOSED MAKING-UP
UNDER PRIVATE STREET WORKS PROCEDURE**

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Chief Officer: Nigel Davies, Executive Director of Environment and Community Services

Ward: Bickley

1. Reason for report

To advise Members of the findings of an investigation into the making-up of the service road in front of the shop premises at Nos. 187 and 239, Southborough Lane; to explain the process by which the footways forming part of these service roads could be made-up and adopted at the Council's expense; and to obtain both an approval of the proposed layout, and a First Resolution under the Private Street Works Code, to enable this to proceed.

2. **RECOMMENDATION(S)**

That the Environment Portfolio Holder:

- 2.1 Approves the layout for the footway in front of Nos. 187-211 Southborough Lane, as shown on drawing No. 11324-01-1;
- 2.2 Approves the layout for the footway in front of Nos. 213a-239 Southborough Lane, as shown on drawing No. 11324-01-2; and.
- 2.3 Makes a First Resolution under s.205(i) of the Highways Act 1980 in respect of the footways as follows:

The Council do hereby declare that the footway in front of Nos. 187-239 Southborough Lane is not levelled, paved, metalled, flagged channelled and make good to its satisfaction and therefore resolves to execute street works therein, under the provisions of the Private Street Works Code, as set out in the Highways Act 1980.

Schedule of Works

Part 1 – From a point in line with the Western flank boundary of No. 187 Southborough Lane to the west, to the western boundary of the highway known as The Fairway to the east.

Part 2 – From the eastern boundary of the highway known as The Fairway to the west, to a point in line with the eastern flank boundary of Nos. 237-239 Southborough Lane, to the east.

Corporate Policy

1. Policy Status: Existing policy.
 2. BBB Priority: Quality Environment.
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Financial

1. Cost of proposal: Estimated cost Part 1 £37.5k and Part 2 £35k
 2. Ongoing costs: Non-recurring cost.
 3. Budget head/performance centre: TfL LIP funding for town centres 2013/14
 4. Total current budget for this head: £95k of which the uncommitted balance is £72.5k
 5. Source of funding: TfL LIP funding 2013/14
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Staff

1. Number of staff (current and additional): 3
 2. If from existing staff resources, number of staff hours: 150
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Legal

1. Legal Requirement: No statutory requirement or Government guidance. No requirement at this stage, but should a scheme proceed then the procedures which must be followed are set out in legislation.
 2. Call-in: Call-in is applicable
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): All users of the shop and residential properties fronting onto the footway.
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Yes.
2. Summary of Ward Councillors comments: Any views expressed by ward Members will be reported to Environment PDS Committee and the Portfolio Holder

3. COMMENTARY

- 3.1 The service roads on either side of the The Fairway, serving Nos. 187-211 Southborough Lane to the west and 213a-239 Southborough Lane to the east, have not been made-up and adopted. As unadopted roads, the Council is not responsible for their maintenance.
- 3.2 There is a long history of complaints about the condition of these unadopted roads, particularly the slab-paved footways. The adjoining carriageway is only some 5-6 m wide and drivers often park their vehicles with two wheels up on the footway, rather than entirely on the carriageway which could cause an actual obstruction. Such parking is thought to be responsible for much of the damage to the footway.
- 3.3 In the 1980s, the owners of the majority of the shop premises fronting onto the two footways were persuaded to carry out extensive repairs to both footways. Since then there is no evidence of any maintenance works and the footways are in a very poor condition.
- 3.4 The Council is entitled to make-up the footways for adoption under the provisions of the Private Street Works Code, contained in the Highways Act 1980. S.236 of the Act enables the Council, as the Street Works Authority, to resolve to bear the whole of the cost of the works, rather than recharge most of the cost to the frontage owners. In this instance, it is proposed that the Council will meet the cost of the works.
- 3.5 It would be possible to restrict parking on the footways by physical means, such as bollards, but, as mentioned in Para 3.2, this could result in obstructive parking on the carriageway. It is therefore considered preferable to allow the practice of parking with two wheels on the footway and to safeguard against damage by reinforcing the footway as necessary.

4. POLICY IMPLICATIONS

- 4.1 Policy T14 of the Unitary Development Plan (UDP) adopted in July 2006 says that unadopted highways will normally be considered for making-up and adoption, as resources permit, only following a referendum conducted in each road, in which the owners of the majority length of frontage are in favour. In exceptional circumstances however, such a referendum may be dispensed with.
- 4.2 In this case, where there is a clear demand for the Council to take action and it is not proposed that the cost of making-up the footways for adoption will be passed onto the frontage owners, it is recommended that a referendum is not conducted.

5. FINANCIAL IMPLICATIONS

- 5.1 The estimated costs of the works for both Part 1 and Part 2 total £72.5. This will be funded from the 2013/14 TfL LIP budget for Town Centres which has an allocation of £95k for this scheme. An uncommitted balance of £72.5k is available to fund these works.
- 5.2 More specific details will be provided when approval is sought for the Resolution of Approval, together with a detailed estimate of the cost of constructing the scheme and funding.

6. LEGAL IMPLICATIONS

- 6.1 The Council must proceed under the requirements of the Private Street Works Code, which will involve serving Notices of Provisional Apportionment on the frontage owners. Because of the intention that the full cost of the scheme will be met without charge to the frontage owners, these Notices will show 'nil' street works cost. This means that the frontage owners will not be able to raise objections to the proposal on financial grounds, but may choose to pursue objections on other grounds.

- 6.2 Any objections which could not be resolved by negotiation would have to be referred to the Magistrates Court for determination, which could delay the scheme.
- 6.3 S.208 of the Highways Act 1980 sets out the grounds upon which the owner(s) of premises shown in a Provisional Apportionment of estimated expenses as liable to be charged with any part of the expenses of executing the proposed street works may, by notice, object to the proposed works.
- 6.4 There are six grounds in all, of which one, s.280 (b), allows the objection that there is some material informality defect, or error in the documents that have been proposed. In this case, it is anticipated that the cost of making-up the footway on the western side of The Fairway could give rise to a slightly different rate/metre frontage cost than that of making-up the footway on the eastern side.
- 6.5 Accordingly, although the nature of the works would be similar on both sides, it is not recommended that the estimated costs are combined to produce an overall rate/metre frontage, as this could give rise to an objection under s.280(b) from a frontager – irrespective of the intention that the Council will be meeting the full cost of the works. If the works are carried out as Part 1 and Part 2 as proposed, any variation in the cost/metre frontage could not be cited as an informality, defect or error in the documentation.

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