

Decision Maker: Environment Portfolio Holder

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

Date: 25th June 2013

Decision Type: Non-Urgent Executive Non-Key

Title: ACCESS ROAD TO DEVELOPMENT ADJACENT TO SITE OF
2, STATION COTTAGES, CHELSFIELD - PROPOSED LIGHTING
UNDER PRIVATE STREET WORKS PROCEDURE

Contact Officer: Mike Hammond, Highway Development Engineer
Tel: 020 8313 4667 E-mail: mike.hammond @bromley.gov.uk

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

Ward: Chelsfield and Pratts Bottom.

1. Reason for report

The Council has been approached by Robust Developments who wish to build 2 pairs of semi-detached houses adjacent to 2, Station Cottages and have a planning consent granted on appeal. The developer requires the Council to exercise its powers under the Private Street Works Code to facilitate the lighting of the access road, at the Developer's expense. The initial stage is to make a First Resolution which is the subject of this report.

2. **RECOMMENDATION(S)**

That the Environment Portfolio Holder:

2.1 **Makes a First Resolution under s.205(i) of the Highways Act 1980 in respect of the lighting as follows:**

The Council do hereby declare that the access road leading to 2, Station Cottages is not lighted 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.

The access road extends from the junction with Windsor Drive to the north-west, to the boundary of the site of 2, Station Cottages to the south-east.

Corporate Policy

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

1. Cost of proposal: No Cost
 2. Ongoing costs: Non-Recurring Cost
 3. Budget head/performance centre: Highways
 4. Total current budget for this head: £6.118m
 5. Source of funding: Nil cost to the Council as all costs will be fully funded by the developer
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Staff

1. Number of staff (current and additional): 3
 2. If from existing staff resources, number of staff The number of staff hours will depend on the number and type of responses received in respect of the serving of the Notice on the frontagers and whether the case is referred to the Magistrates Court. The costs will be borne by the developer:
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Legal

1. Legal Requirement: Non-Statutory - 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: Applicable
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): All users of the access way following the construction of the new houses.
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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 In 2011, Robust Developments Ltd applied for planning consent to build 2 pairs of semi-detached houses adjacent to the site of 2, Station Cottages, Chelsfield. (Planning reference 11/01628)
- 3.2 The site is only accessible by means of an unadopted access road which is narrow and unlit, so officers recommended refusal on safety grounds and the application was refused by the Development Control Committee. Drawing No WD/422/BP 01 is attached, showing the details of the proposal and access.
- 3.3 The developer appealed the Council's decision. The Planning Inspector subsequently allowed the development, but agreed with the Council in respect of the need for a passing bay and lighting. The Inspector placed conditions on the permission that these had to be in place ahead of the commencement of the development. It was expected that the developer would be able to negotiate with the owners of the access road (i.e the several owners of the various dwellings which front onto the road) to secure agreement to enable a passing-bay to be constructed and street lighting to be installed. Despite efforts extending over the last year, no agreement has been reached.
- 3.4 The issue of the passing-bay has now been dealt with by means of the Council providing a suitable area of land, upon which the developer will construct a passing-bay at his own expense. The matter of the street lighting could be addressed by means of the Private Street Works Code. Legal advice is that the Council should use its powers, albeit the lighting will not be adopted upon completion and the developer will be required to meet the Council's costs in full.

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, but 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, it is not proposed to make-up the road for adoption, but only to light it to enable the development to proceed. The Council can exercise its Private Street Works powers in this instance and it is not proposed that the cost of lighting the access road will be passed onto the frontage owners. The frontagers are well aware of the situation as a result of their contact with the developer, and in this case it is recommended that a referendum is not conducted.

5. FINANCIAL IMPLICATIONS

- 5.1 Because the developer will be required to meet all of the costs of a scheme to light the access road, including any costs involved with appearing in front of Magistrates to resolve any objections, no costs will fall upon the Council.
- 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 the scheme.
- 5.3 The future cost of the electrical energy involved with the lighting would not fall upon the Council, but would have to be met by the developer possibly by some arrangement involving the purchasers of his new houses.

6. LEGAL IMPLICATIONS

- 6.1 If the Council refused to use its powers under the Private Street Works Code, this could be seen as an attempt to frustrate the implementation of the award of planning consent by the Planning Inspector. The Council would then be vulnerable to legal challenge for wrongful use of its discretion.
- 6.2 The Council would need to proceed under the requirements of the Private Street Works Code, which would involve serving Notices of Provisional Apportionment on the frontage owners. Because of the intention that the full cost of the scheme will be met by the developer without charge to the frontagers, these Notices will show 'nil' street works cost i.e. the frontagers would not be able to raise objections to the proposal on financial grounds. S.208 of the Highways Act 1980 sets out the grounds upon which the owners of premises, shown in a Provisional Apportionment of Estimated Expenses as liable to be charged with any part of the expenses of executing street works, may by notice object to the proposed works. It is anticipated that the frontagers would choose to pursue objections on non-financial grounds.
- 6.3 If any objections are raised by the frontagers, it may not be possible to resolve these by negotiation, in which case they would have to be referred to the Magistrates Court for determination. This would not only increase the cost to the developer, but could delay the scheme. The developer has been made aware of this.

Non-Applicable Sections:	Personnel
Background Documents: (Access via Contact Officer)	Delegated Planning Report 20 th July 2011 Planning Inspectorate Appeal Decision 15 th January 2012