

Decision Maker: Environment Portfolio Holder

For Pre-Decision Scrutiny by the Environment PDS Committee on:

Date: 4th November 2014

Decision Type: Non-Urgent Executive Non-Key

Title: PRIVATE STREET WORKS REFERENDA - UPPER DRIVE AND SWIEVELANDS ROAD (PART), BIGGIN HILL

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

Ward: Biggin Hill;

1. Reason for report

To summarise the results of referenda conducted amongst the frontage owners in Upper Drive and part of Swievelands Road, Biggin Hill, concerning the making up of these streets for adoption and to make recommendations based on these results.

2. **RECOMMENDATIONS**

That the Environment Portfolio Holder agrees:

- 2.1 That a scheme to make up for adoption that part of Swievelands Road between its junction with Valley View and Bankside Close, under the Private Street Works Code, should proceed;
- 2.2 In view of the results of the referendum in Upper Drive, no provision be made for the making up of this street;
- 2.3 A bid for Capital funding is submitted for the Swievelands Road scheme to be included in the capital programme, for a total sum of £600k, of which up to £300k will be met from contributions from owners; and
- 2.4 A First Resolution report be submitted to the Environment Portfolio Holder.

Corporate Policy

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

1. Cost of proposal: Estimated Cost: For making up of Swievelands Road, £600k.
 2. Ongoing costs: Non-Recurring Cost On-going maintenance of the road will be met from within the highway maintenance revenue budgets
 3. Budget head/performance centre: Capital Receipts and Highways
 4. Total current budget for this head: Capital bid to be submitted and £2m
 5. Source of funding: Capital Programme and existing revenue budget 2014/15
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Staff

1. Number of staff (current and additional): 1
 2. If from existing staff resources, number of staff hours: The staff time involved with this scheme will depend upon whether or not objections are made to the provisional and final apportionments.
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Legal

1. Legal requirement; Statutory requirement
 2. Call-in: Applicable
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): All users of Swievelands Road.
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Yes
2. Summary of Ward Councillors comments: Ward Councillors have actively encouraged the referenda and are supportive of the making up of either street.

3. COMMENTARY

- 3.1 Upper Drive and Swivelands Road are in Biggin Hill ward. During recent years ward Councillors have received complaints regarding the condition and use of these roads, neither of which have been made up and adopted as a highway maintainable at the public expense. On several occasions the Council has been asked to exercise its discretionary powers to carry out urgent repairs to the street at its own expense, under S.230(7) of the Highways Act 1980, but currently there is no budget to enable such repairs to be considered.
- 3.2 To enable the unmade part of these streets to become highway maintainable at public expense, the Council would need to adopt them. The Council is only empowered to do this if the highway has been improved to an acceptable standard. The Council must follow the procedure set out in the Private Street Works Code, which allows for most of the cost of making up a private street to be recharged to the owners of premises fronting the street. It is the Council's policy to conduct referenda in private streets to determine the views of frontage owners on the making up of their streets, although such referenda do not form part of the statutory process and the results are not binding on the Council.
- 3.3 In order to be able to provide information to the frontage owners at the referendum stage, initial designs were undertaken and cost estimates obtained. Consideration was also given to the effects of Greenery Agreements (referred to in paragraph 6.2 below), degree of benefit, and the possibility of recharging a proportion of the costs to the owners of premises situated in the numerous cul-de-sacs served by these streets.
- 3.4 When recharging the costs of Private Street Works, frontage must be the overriding consideration. Where a property has a flank or rear frontage, the Council may agree a reduction in the standard charge. As part of the referenda, owners of premises having such frontages were informed that, subject to their particular circumstances, their charges could be reduced by between 20-67% of the standard amount.
- 3.5 Legal advice has been obtained which confirms that the Council is not allowed to charge a proportion of the cost of making-up the subject streets to the owners of premises situated in adjoining cul-de-sacs. Owners can be requested to make voluntary contributions and during the referenda it was made clear that any such monies collected would reduce the street works charges, should a Private Street Works Scheme go ahead.
- 3.6 Taking all these issues into account, the owners of premises in Upper Drive were told that the estimated cost to them of making up the street would be between £720-£740 per meter of frontage, and in Swivelands Road between £815-£835 per meter of frontage.

PRIVATE STREET WORKS CODE

- 3.7 To commence the process, the Council must pass two resolutions. The first comprises a statement as to those aspects of the street which are not to the Council's satisfaction and contains an instruction to prepare various documents regarding the necessary improvement of the street. The second resolution approves these documents and is therefore known as the Resolution of Approval.
- 3.8 Following the passing of the Resolution of Approval, Notices are served on the owners of all premises included in the Provisional Apportionment of estimated expenses and they are advised of the likely cost to them of making-up the street. At this stage, the owners have an opportunity to view the scheme drawings, together with a detailed specification of the works and may object to the Council's proposals, on specific grounds. If the Council cannot resolve any such objections, they would be referred to a Magistrates' Court for determination. If no objections are raised, or, if they are, once they have been resolved, the Council would commence the making-up of the street.

- 3.9 As soon as the street works have been completed and the costs determined, the Council must produce a Final Apportionment of actual expense and Notices are then served on owners, informing them of the actual amount they have to pay. This cannot exceed the estimated amount by more than 15% without sufficient reason. As with the Provisional Apportionment, objections to the Final Apportionment may be raised and, should they be, they must be resolved in a similar way.
- 3.10 Upon receipt of the Final Apportionment Notice, the owners may decide to pay-off their street works charges in full, or opt to pay them back in instalments, which will attract interest.
- 3.11 Finally, the Council will adopt the street, so that it can maintain and repair it in future, at the public expense.

RESULTS OF REFERENDA

- 3.12 A total of 46 referendum letters were delivered to properties in **Upper Drive**. 31 replies were received (67%). The results are shown in Table 1 below:

Table 1 – Upper Drive

| | No. of frontage owners | % of total number | Length of frontage owned (m) | % of total frontage |
|--|------------------------|-------------------|------------------------------|---------------------|
| In favour of making-up: | 7 | 15 | 51 | 8 |
| Not in favour of making up: | 24 | 52 | 230 | 35 |
| No reply or not expressing a view: | 15 | 33 | 105 | 16 |
| Extra commercium frontage (m) directly chargeable to Council | - | - | 102 | 16 |
| “Greenery Agreement” frontage (m) | - | - | 175 | 26 |

- 3.13 The results of the referendum in Upper Drive indicate that there is insufficient support from frontagers for the road to be made-up and adopted, with 69% of the total frontage, excluding ‘Greenery Agreement’ land, either not in favour or not expressing a view. It is therefore recommended that no further action is taken regarding a Private Street Works scheme.

3.14 A total of 57 referendum letters were delivered to properties in **Swievelands Road**. 28 replies were received (49%). The results are shown in Table 2 below:

Table 2 – Swievelands Road

| | No. of frontage owners | % of total number | Length of frontage owned (m) | % of total frontage |
|--|------------------------|-------------------|------------------------------|---------------------|
| In favour of making-up | 12 | 21 | 90 | 12 |
| Not in favour of making up | 16 | 28 | 199 | 27 |
| Not replying or not expressing a view | 29 | 51 | 215 | 29 |
| Extra commercium frontage directly chargeable to Council (m) | - | - | 115 | 15 |
| “Greenery Agreement” frontage (m) | - | - | 129 | 17 |

3.15 The results of the referendum do not show a majority of frontagers to be in favour of making-up and adopting Swievelands Road, with 67% of the total frontage, excluding ‘Greenery Agreement’ land, either not in favour or not expressing a view. However it is proposed that, due to the road’s location on the highway network and ward Members’ views, a Private Street Works scheme is progressed for this road and a first resolution report is submitted to the Portfolio Holder.

3.16 The likely cost of making-up Swievelands Road to an adoptable standard is £600k, with £300k being borne by LB Bromley. A more detailed estimate will be prepared once a design has been completed for consideration as part of the First Resolution.

4. POLICY IMPLICATIONS

4.1 Although it is the Council’s policy to conduct referenda in private streets to determine the views of the frontage owners on the making up of the streets, such referenda do not form part of the statutory process and the results are not binding upon the Council

5. FINANCIAL IMPLICATIONS

5.1 If it is decided to proceed with a Private Street Works Scheme for Swievelands Road and a resolution under s.205 of the Highways Act 1980 is subsequently made, the likely cost of the overall project is £600k, £300k of which will be payable by LB Bromley. At this stage the balance of £300k will be met by the owners.

- 5.2 Estimated costs of the works will be prepared on the basis of detailed drawings, following the passing of the Resolution of Approval. At that stage, the costs that will fall to the Council and frontagers will be established.
- 5.3 As highlighted in 3.9 above, actual costs expected to be paid by the owners cannot exceed the estimated amount by more than 15%.
- 5.4 Once the Final Apportionment Notice has been issued, the owners may pay the amount in full or by instalments with interest added.
- 5.5 It is proposed that a bid is submitted for Capital funding to cover the costs to be borne by LB Bromley.

6. LEGAL IMPLICATIONS

- 6.1 Before the Council could formally commence the making up of Swievelands Road, it would need to make a first resolution under s.205 of the Highways Act 1980, stating those aspects of the street which are not to the Council’s satisfaction. Should the Council decide to proceed it would also need to pass a second resolution which approves these documents and is referred to as the Resolution of Approval.
- 6.2 Some of the plots fronting both Upper Drive and Swievelands Road are subject to “Greenery Agreements”, which were entered into between B W Brazier (Anerley) Ltd and the former Urban District Council of Orpington. Inter alia, these Agreements prevented the owners of the plots from entering onto the plots, or using them for any purpose whatsoever and accordingly it was not thought that these owners could be recharged with any of the street works although they were technically frontagers. Should a PSW scheme go ahead the costs attributed to this frontage will be borne by the remaining frontagers.

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