

Decision Maker: Environment Portfolio Holder

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

Date: 29th September 2016

Decision Type: Non-Urgent Executive Non-Key

Title: ELMSTEAD LANE (PRIVATE STREET WORKS) – FIRST RESOLUTION

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

Ward: Chislehurst

1. Reason for report

To obtain a First Resolution under the Private Street Works Code contained in the Highways Act 1980, in respect of the adoption and making up of the eastern footway of Elmstead Lane, between Walden Road to the north, and Grange Drive.

2. **RECOMMENDATIONS**

The Environment Portfolio Holder:

- 2.1 Approves the layout of a footway on the eastern side of Elmstead Lane, between Walden Road and the northern boundary of number 36 Elmstead Lane as shown on drawing number 11429-03 Rev A.
- 2.2 Approves the layout of a footway on the eastern side of Elmstead Lane, between the northern boundary of number 36 to the junction with Grange Drive, as shown on drawing number 11429-05.
- 2.3 The Environment Portfolio Holder makes a First Resolution under S205 (1) of the Highways Act 1980 in respect of Elmstead Lane as follows:-

The Council do hereby declare that the eastern footway of Elmstead Lane, between the junctions with Walden Road and Grange Drive is not levelled, paved, metalled, flagged, channelled, made good and 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 Highway Act 1980.

Schedule of works

Part 1 - From the street junction with Walden Road, along the eastern side of the street to the northern boundary of number 36 Elmstead Lane, all as more particularly shown on drawing number 11429-03 Rev A.

Part 2 – From the northern boundary of number 36 Elmstead Lane, to the street junction with Grange Drive, all as more particularly shown on drawing number 11429-05.

Corporate Policy

1. Policy Status: Existing Policy
 2. BBB Priority: Quality Environment Safer Bromley Not Applicable
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Financial

1. Cost of proposal: Estimated Cost £20k
 2. Ongoing costs: Future maintenance costs will be met from existing highway maintenance budgets
 3. Budget head/performance centre: Section 106 funds
 4. Total current budget for this head: £20k
 5. Source of funding: Section 106 funds from the Ravensbourne College development
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Staff

1. Number of staff (current and additional): 2
 2. If from existing staff resources, number of staff hours: 50
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Legal

1. Legal Requirement: Non-Statutory - Government Guidance : Should a scheme proceed under the Private Street Works Code then the procedure is set out in the Highways Act 1980.
 2. Call-in: Applicable
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): All users of the footway in Elmstead Lane.
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Yes
2. Summary of Ward Councillor's comments: Cllr Boughey has reported that the Ward councillors had no objections. Cllr Payne expressed support for this proposal. Cllr Bosshard is supportive of the Scheme. Any other comments received will be reported to Members.

3. COMMENTARY

- 3.1 The footway to the eastern side of Elmstead Lane between its junction with Walden Road and Grange Drive, has not been made up to adoption standards and therefore the Council is not responsible for its maintenance, which includes repair.
- 3.2 For some years the Council has sought to provide the public with safer and continuous footways across the Borough, whenever appropriate. In this case footfall is high on the eastern side of Elmstead Lane between Walden Road and Grange Drive due to the proximity to the Elmstead Woods railway station, a school and the presence of a bus stop.
- 3.3 It was originally proposed to proceed with the construction of the footway on the basis that it fell within the corridor of the maintainable highway, but this has been challenged by the owners of premises fronting Elmstead Lane at this point. The residents instructed a solicitor who, inter alia, requested that a meeting be arranged between residents and officers, at which the Council's proposals could be discussed in detail.
- 3.4 This was agreed by the Council and the meeting took place on Tuesday 14 June 2016 and was attended by the owner/occupiers of 6 of the 8 properties fronting Elmstead Lane between Walden Road and Grange Drive. One owner did not attend as their property is currently for sale, but they have stated in writing via their solicitors that they have no objections to the footway improvements. Another owner sent her apologies that she could not attend, and it was stated in advance of the meeting that she was looking to those owners/occupiers attending to look after her interests. As a result of the discussions, it is believed that all but one of those owner/occupiers present and represented accepted that a new, paved footway is necessary and should be constructed.
- 3.5 Given the challenge to the status of the land upon which the new footway will be constructed and the ongoing opposition of the owner of one of the properties fronting this land, the legal advice is that the most appropriate action in these circumstances is to resort to the Private Street Works Code, which allows the Council to carry out works in a street which is not an adopted highway. This procedure will also provide an opportunity for any owner to raise an objection to the Council's proposals, on specific grounds contained in s.208 of the Highways Act 1980, if he/ she so wishes.
- 3.6 S.236 of the Highways Act 1980 permits the Council, as the Street Works Authority, to resolve to bear the whole of the cost of the street works, rather than recharge the whole or a portion of the cost to the frontage owners. In this instance, it is proposed that the cost of the works would be met from Section 106 funding.
- 3.7 It is expected that the works will cost £20k and will be fully funded from a contribution contained in a Section 106 legal agreement dated 7th August 2006 as amended in respect of the Ravensbourne College development.
- 3.8 Details of the Section 106 agreement and its proposed use are provided below: -

Planning Ref	Development	S106 Agreement Clause	Amount and how money will be allocated	Justification
178	Ravensbourne College, Walden Road, Chislehurst, Kent, BR7 5SN	Highways contribution of £20,000. The Council undertakes to (a) spend the highways contribution only on the provision of a bus stop or bus stops at Elmstead Lane/Walden Road and the improvement to the footpath on the east side of Elmstead Lane; and (b) return to the payer any unexpended part of the Highways contribution on the fifth anniversary of the payment.	The £20k is intended to meet the costs to upgrade the soft verge between Grange Drive and Walden Road, including improvements to the bus stop.	This section of Elmstead Lane on the eastern side, lacks a hard footway and is currently a well worn muddy verge, especially the alighting point at the existing bus stop. The proposed works will therefore meet the requirements set out in the S106 agreement.

4. POLICY IMPLICATIONS

- 4.1 Policy T14 of the Unitary Development Plan (UDP) adopted in July 2006 says that un-adopted highways will normally be considered for making-up and adoption, as resources permit, following a referendum. The referendum is not part of the statutory procedure however, and in exceptional circumstances, such as with this scheme, can 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 footway will be charged to the frontage owners, it is recommended that a referendum is not conducted.
- 4.3 The draft Environment Portfolio Plan 16-19 includes the aim “to reduce congestion and greenhouse gas emissions by promoting cycling, walking and public transport journeys”, which this report addresses in respect of the proposed footway in Elmstead Lane.

5. FINANCIAL IMPLICATIONS

- 5.1 The estimated cost of the works for Part 1 and Part 2 total £20k. This will be funded from the Section 106 funds from the Ravensbourne College development to improve the footway area between Walden Road and Grange Drive, including the alighting point at the bus stop.
- 5.2 As set out in the Agreement, the S106 contribution must be spent before the 5th anniversary of the payment, otherwise any unspent monies must be returned to the developer.
- 5.3 Future maintenance costs of the footpath will be contained within existing highway maintenance budgets.

6. LEGAL IMPLICATIONS

- 6.1 In this instance the legal advice is that the Council should proceed under the requirements of the Private Street Works Code, which will involve serving notices of provisional apportionment on the frontage owners. Given that the intention is that the full cost of the scheme will be met

without charge to them, the notices will show “nil” street works charges. This means that the frontage owners are unlikely to be able to raise objections to the proposal on financial grounds, but may choose to pursue objections on other grounds. Given the reaction of one of the frontage owners to the Councils’ proposals, this may be seen as a possible outcome.

- 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 The Highways Act 1980 s. 208 sets out six grounds upon which the owner(s) of premises shown in a Provisional Apportionment of estimated costs as liable to be charged with any part of the costs of executing the proposed street works may by notice, object to the proposed works.
- 6.4 S.208(b) allows the objection that there is some material informality, defect, or error in the documents that have been prepared. In this case it is anticipated that the cost of making-up the footway in front of number 36 Elmstead Lane and number 1 Grange Drive could give rise to a slightly different rate per/metre frontage cost than making-up the footway elsewhere.
- 6.5 Accordingly, although the nature of the works would be similar throughout the scheme, 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.208(b) from the frontagers – 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 Implications
Background Documents: (Access via Contact Officer)	None