

Decision Maker: **Environment Portfolio Holder**

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

Date: **8th November 2016**

Decision Type: Non-Urgent Executive Non-Key

Title: **ELMSTEAD LANE (PRIVATE STREETWORKS) - SECOND RESOLUTION**

Contact Officer: Laura Squires, Traffic Engineer
Tel: 020 8313 4231 E-mail: Laura.Squires@Bromley.gov.uk

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

Ward: Chislehurst

1. Reason for report

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

2. **RECOMMENDATION(S)**

2.1 **That the specification, plan, sections, estimate and provisional apportionment now submitted by the Executive Director of Environment and Community Services, in respect of the scheme approved by the Environment Portfolio Holder on 18th October 2016, be approved without modification and:-**

2.2 **That the Portfolio Holder further resolves that the Council bears the whole of the cost of the works, which will be met from funding provided by Section 106 funding and Transport for London under the provisions of Section 236(1) of the Highways Act 1980.**

Impact on Vulnerable Adults and Children

1. Summary of Impact: N/A

Corporate Policy

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

1. Cost of proposal: Estimated Cost £33.8k
 2. Ongoing costs: Future maintenance costs will be met from existing highway maintenance budgets
 3. Budget head/performance centre: Section 106 funds (£20k)
Station Access Schemes (£13.8k)
 4. Total current budget for this head: £20k and £15k
 5. Source of funding: Section 106 funds from the Ravensbourne College development;
TfL LIP 2016/17 budget for Station Access Schemes
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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: Statutory Requirement: 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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Procurement

1. Summary of Procurement Implications: N/A
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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 Following the Environment PDS Committee on 29th September 2016, the Environment Portfolio Holder received a report regarding the use and condition of the footway on the eastern side of Elmstead Lane between its junction with Walden Road to the north and Grange Drive. The footway has not been made up and adopted as a highway maintainable at the public expense.
- 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 To enable the street to become highway maintainable at public expense, the Council needs to adopt it. The Council will only do this following improvement to the appropriate standards. The improvement works may be carried out under the provisions of the Private Street Works Code, but for this to occur the Council has to make two distinct resolutions: a First Resolution giving details of those aspects of the street with which it is dissatisfied; and a further resolution, a Resolution of Approval. This resolution approves details of the works required to bring the street up to a suitable standard, an estimate of the costs of such works and a provisional apportionment of these costs amongst the owners of the premises fronting the street, which includes adjoining and abutting.
- 3.4 The Portfolio Holder made a First Resolution under Section 205(1) of the Highways Act 1980, following the Environment PDS Committee on 29th September 2016. The appropriate documents under Section 205(3) Highways Act have now been prepared to enable the Resolution of Approval to be made and these documents will be available for inspection at the meeting of the Committee. This enables the Provisional Apportionment, which contains details of property ownerships, to be as up to date as possible.

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, 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 Further to the First Resolution, under Section 205(3) of the Highways Act 1980 detailed designs with any necessary plans and sections and a specification of the street works referred to in the Resolution has been undertaken, and an estimate of the probable expenses of the works has been obtained, totalling £33.8k.
- 5.2 The estimated cost of the works for Part 1 (eastern side of Elmstead Lane, between Walden Road and the northern boundary of number 36 Elmstead Lane) is £25,600.
- 5.3 The estimated cost of the works for Part 2 (the eastern side of Elmstead Lane, between the northern boundary of No. 36 Elmstead Lane to the junction with Grange Drive) is £8,200.

- 5.4 £20k 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. The remaining £13.8k will be funded from the TfL LIP budget for Station Access Schemes which has an uncommitted balance of £15k.
- 5.5 The Council will bear the whole of the expenses of the street works under the provisions of Section 236(1) of the Highways Act 1980. Where an authority so resolves to bear the whole of the expenses of the street works, the liabilities of the owners of premises in respect of those expenses are to be treated as discharged accordingly.
- 5.6 As set out in the Agreement, the Section 106 contribution must be spent before the 5th anniversary of the payment, otherwise any unspent monies must be returned to the developer.
- 5.7 Future maintenance costs of the footpath will be contained within existing highway maintenance budgets.
- 5.8 It should be noted that all Private Street Works include an amount of 15% of the estimated construction costs to cover staff time associated with the administration and supervision of the works. This cost is included in the total cost of the scheme.

6. LEGAL IMPLICATIONS

- 6.1 Should a Resolution of Approval be passed, under Section 205(5) of the Highways Act a notice must be drawn up containing the following particulars:—
- (i) a statement that the street works authority have resolved to execute street works in the private street in question;
 - (ii) the address of the offices of the authority at which a copy of the resolution of approval, and the approved documents or copies of them certified by the proper officer, may be inspected, and the times at which, and the period during which, they may be inspected; and
 - (iii) a statement that an owner of premises liable to be charged with any part of the expenses of executing the street works may object to the proposal to execute the works, giving the period during which such objection may be made.

The notice must be published within the provisions of Section 205(5)(a)(b) and (c). Within one month from the date of the first publication of the notice, under Section 205(5)(a) an owner of premises shown in the provisional apportionment of expenses as liable to be charged with any part of the expenses of executing street works with respect to a private street or a part of a private street, may, by notice to the Council, object to their proposals under Section 208(1) of the Highways Act 1980, on any of the following grounds:

- (a) that the alleged private street is not a private street or, as the case may be, that the alleged part of a private street is not a part of a private street;
- (b) that there has been some material informality, defect or error in, or in respect of, the resolution, notice, plans, sections or estimate;
- (c) that the proposed works are insufficient or unreasonable;
- (d) that the estimated expenses of the proposed works are excessive;
- (e) that any premises ought to be excluded from or inserted in the provisional apportionment;

- (f) that the provisional apportionment is incorrect in respect of some matter of fact to be specified in the objection or, where the provisional apportionment is made with regard to other considerations than frontage, in respect of the degree of benefit to be derived by any premises, or of the amount or value of any work already done by the owner or occupier of premises.

If any objections should be received and are not withdrawn, the Council may apply to the Magistrates Court for the objections to be heard and determined.

- 6.2 As anticipated at first resolution stage, the estimated cost per meter frontage of making up the footway between the northern boundary of No. 36 Elmstead Lane to the junction with Grange Drive is higher than elsewhere. It is therefore necessary to consider the scheme in 2 parts in order to avoid an objection under Section 208(1)(b).
- 6.3 After street works have been executed in a private street, Section 228 of the Highways Act 1980 permits the Council to adopt the street by means of notices displayed in the street for a period of one month.
- 6.4 During the period that the Section 228 notices are displayed, the owner(s) of the street is/are able to object to its adoption as a highway maintainable at the public expense. In this case, the Council is able to apply to the Magistrates Court for an Order overruling the objection.
- 6.5 On the expiration of one month from the day on which the notices are first so displayed the street shall, subject to any objections being received and determined or abandoned by the objectors, become a highway maintainable at the public expense.

Non-Applicable Sections:	Procurement and Impact on Vulnerable Adults and Children Implications
Background Documents: (Access via Contact Officer)	ES16018 - Elmstead Lane (Private Street Works) – First Resolution, report to Environment PDS Committee, 29 th September 2016