

Decision Maker: ENVIRONMENT & COMMUNITY SERVICES PORTFOLIO
HOLDER

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

Date: 20th November 2018

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 - SECOND
RESOLUTION.

Contact Officer: Mike Hammond, Highway Development Engineer
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Chief Officer: Nigel Davies, Executive Director, Environment and Community Services

Ward: Chelsfield and Pratts Bottom

1. Reason for report

- 1.1 To obtain a Resolution of Approval under the Private Street Works Code, in respect of lighting the access road from Station Approach Chelsfield to the site of the development adjacent to 2 Station Cottage.

2. **RECOMMENDATIONS**

- 2.1 That the specification and layout shown on drawing no 60508978/12773/01, estimate and provisional apportionment now submitted by the Executive Director of Environment and Community Services, in respect of a scheme approved by the Portfolio Holder for the Environment on 12th Septemeber 2013, be approved.
- 2.2 That the Portfolio Holder further resolves that the Council bears the whole of the cost of the street works which will in turn be funded by the developer of the site, under the provisions of s236(1) of the Highways Act 1980.

Impact on Vulnerable Adults and Children

1. Summary of Impact: None
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Corporate Policy

1. Policy Status: Not Applicable:
 2. BBB Priority: Not applicable:
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Financial

1. Cost of proposal: £9,510
 2. Ongoing costs: Non recurring cost
 3. Budget head/performance centre: Highways
 4. Total current budget for this head: £6.52m
 5. Source of funding: All costs will be met by the developer
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Personnel

1. Number of staff (current and additional): 2
 2. If from existing staff resources, number of staff hours: This will depend upon whether objections are raised from residents. All staff costs will be met by the developer
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Legal

1. Legal Requirement:: Statutory requirement: By making a First Resolution in respect of this scheme, the Proper Officer of the Council was required to prepare various documents in accordance with s205(3) of the Highways Act 1980. These documents now need to be approved by a further resolution, the Resolution of Approval. In order to recharge the costs to the developer, it is intended that the Council first meets the full cost of the scheme itself, but to do this, must pass a resolution to this effect under s236(1) of the Highways Act 1980.
 2. Call-in: Applicable:
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Procurement

1. Summary of Procurement Implications: The developer will arrange and fund all the works
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): The residents and visitors of the new development and adjacent properties
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? No
2. Summary of Ward Councillors comments:

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). This was refused by the Council but subsequently allowed on appeal. In allowing the development the Planning Inspector placed conditions on the permission in respect of the need for a passing bay and lighting in the access road which 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, who are 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, but, despite efforts extending over a considerable period of time, no agreement could be reached.
- 3.2 This application was subsequently resubmitted in 2015 (15/01397) and permitted by the Council where the same conditions were applied. This application had to be started within 3 years of the permission date which expired on 30th September 2018.
- 3.3 There was a subsequent application in 2017 (17/00364) for a single dwelling where the lighting condition was applied but due to the reduced number of dwellings and realigned of the access road junction the passing bay condition was not included.
- 3.4 The matter of the street lighting can be addressed by means of the Private Street Works Code and, in the circumstances, the legal advice is that the Council should use its powers, albeit that the lighting will not be adopted upon completion and the Developer will meet the Council's costs in full.
- 3.5 The Portfolio Holder made a First Resolution under s.205 (1) of the Highways Act 1980 on 12th September 2013. The appropriate documents have now been prepared to enable the Resolution of Approval to be made. Frontagers of the access road have been initially contacted regarding ownership and property width to enable the Provisional Apportionment (which contains details of property ownership) 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 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, it is not proposed to make-up the road for adoption, but only to light it to enable the development to proceed. There is a requirement for the Council to 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.

5. FINANCIAL IMPLICATIONS

- 5.1 The Developer has agreed to meet all of the costs of a scheme to light the access road estimated to be £9.5k, including any costs involved with appearing in front of Magistrates to resolve any objections. No costs will fall upon the Council.
- 5.2 The costs of future maintenance of the lighting is the subject of a legal agreement and no costs will fall upon the Council.

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 Because the full cost of the scheme will be met by the Developer without charge to the frontagers, the frontagers would not be able to raise objections to the proposals 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 and it is anticipated that the frontagers may chose to pursue objections on non-financial grounds.
- 6.3 Any objections which are raised by the frontagers that cannot be resolved by negotiation 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 and the Developer has been made aware of this.

7. PROCUREMENT IMPLICATIONS

- 7.1 The developer will be responsible for arranging all the works. The Council's term contractor, Aecom, will carry out the site supervision.

Non-Applicable Sections:	Impact on Vulnerable Adults and Children Personnel Implications
Background Documents: (Access via Contact Officer)	1. Private Street Works – 2 Station Cottages Lighting of Access Road First Resolution 12 Sept 2013