

Decision Maker: ENVIRONMENT PORTFOLIO HOLDER

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

Date: 5th February 2018

Decision Type: Non-Urgent Executive Non-Key

Title: PROPOSED MAKING-UP OF CLARENCE ROAD, BICKLEY
(PART) – SECOND RESOLUTION

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

Ward: Bickley

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 as a highway maintainable at the public expense of Clarence Road, Bickley between Page Heath Lane and Southlands Grove.

2. **RECOMMENDATION(S)**

2.1 The Committee recommends that the Portfolio Holder makes a Resolution of Approval in respect of a scheme for Clarence Road and approves the specification, plans, sections, estimate and provisional apportionment, to be prepared by the Executive Direction of Environment and Community Service in due course.

2.2 In future, where this Committee recommends that the Portfolio Holder makes a First Resolution in respect of a scheme proposed under the provisions of the Private Street Works Code, it simultaneously recommends that the Portfolio Holder makes the further Resolution of Approval upon receiving the necessary specification, plans, sections, estimate and provisional apportionments prepared by the Executive Direction of Environment and Community Services.

Impact on Vulnerable Adults and Children

1. Summary of Impact: No negative impacts.
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Corporate Policy

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

1. Cost of proposal: Estimated Cost: £400k
 2. Ongoing costs: Future maintenance costs will be funded from existing highway maintenance budget.
 3. Budget head/performance centre: TfL 2018/2019 LIP budget for Cycling and Walking
 4. Total current budget for this head: £924k
 5. Source of funding: TfL LIP Formula Funding 2018/19
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Personnel

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
 2. Call-in: Applicable
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Procurement

1. Summary of Procurement Implications: None, as the works will be carried out by the Council's highways term contractor.
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): Local residents fronting Clarence Road, cyclists and pedestrians using Clarence Road.
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Yes
2. Summary of Ward Councillors comments: Cllr Smith has advised that he is supportive of the scheme provided external funding is available for the scheme.

3. COMMENTARY

- 3.1 Following the Environment PDS Committee on the 10th October 2018, the Environment Portfolio Holder received a report regarding the use and condition of Clarence Road between its junction with Page Heath Lane and Southlands Grove. The street has not been made up and adopted as a highway maintainable at the public expense, and therefore the Council is not responsible for its maintenance, which includes repair.
- 3.2 The Council is entitled to make-up the Highway for adoption under the provisions of the Private Street Works Code, contained in the Highways Act 1980. Section 236 of the Act enables the Council, as the Street Works Authority, to resolve to bear the whole of the cost of the works, rather than recharge most of the cost to the frontage owners. In this instance, it is proposed that the cost of the works would be met from the LIP budget.
- 3.3 Approximately half way along the unmade section of the street, it crosses a railway line via a bridge, the maintenance of which is the responsibility of Network Rail. The bridge is considered to be in a weak condition, with a maximum limit of 13 tonnes. If Clarence Road is to be made-up, not only would this bridge have to bear the additional weight of the road construction, but also the weight of the additional traffic which the improved running surface would attract, including heavy vehicles which might not take heed of the weight limit. It is therefore intended to implement an experimental road closure between the southern boundary of number 62 Clarence Road and the driveway access to numbers 79-87 Clarence Road. The closure will prohibit all vehicles except pedestrians, pedal cycles and Network Rail service vehicles engaged on maintenance of the bridge. The closure will be reviewed after 6 months with a view to making it permanent.
- 3.4 By introducing a permanent restriction, works over the bridge could be to reduced design standards, compared with the remaining parts of the street.
- 3.5 The completed scheme will also support Bromley's ambition to promote quality cycle routes in the Borough.
- 3.6 To enable the street to become a 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 cost of such works and a provisional apportionment of these costs amongst the owners of the premises fronting the street, which includes adjoining and abutting.
- 3.7 The Portfolio Holder made a First Resolution in respect of Clarence Road under S.205(1) of the Highways Act 1980, following the Environment PDS Committee on the 10th October 2018.
- 3.8 The appropriate documents are being prepared to enable the Resolution of Approval to be made and these documents will be presented to the Environment Portfolio Holder outside of this meeting for approval. Once the Resolution of Approval is made these documents will be placed on deposit for inspection.
- 3.9 The requirement for a Resolution of Approval is contained in the Private Street Works code. If such a resolution is not properly made it is possible that an objection could be successfully raised by an owner of premises shown in the Provisional Apportionment of estimated expenses as liable to be charged with the cost of making up, on the grounds contained of S.208(b) of the Highways Act 1980 "that there has been some material informality, defect of error in, or

in respect of, the Resolution, notice, plans, sections or estimates. This would be the case even where no charge falls upon the frontage owner.

- 3.10 The second recommendation is designed to streamline the Private Street Works process without incurring the risk of a successful objection under the above ground.

4. IMPACT ON VULNERABLE ADULTS AND CHILDREN

- 4.1 No negative impacts.

5. POLICY IMPLICATIONS

- 5.1 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.
- 5.2 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 carriageway will be charged to the frontage owners, a referendum has not been conducted.

6. FINANCIAL IMPLICATIONS

- 6.1 The estimated cost of construction, design and project management is £400k . This will be funded from TfL LIP Formula Funding 2018/19 Budget for Cycling and Walking, which has an allocation of £400k set aside for this scheme, from a total budget of £924k.
- 6.2 Future maintenance costs will be contained within existing highway maintenance budgets.

7. PERSONNEL IMPLICATIONS

- 7.1 No additional staff resources will be required.

8. LEGAL IMPLICATIONS

- 8.1 The closure of the bridge to traffic other than pedestrians, pedal cycles and Network Rail service vehicles will be achieved by means of making a Traffic Regulation Order under Section 9 of the Road Traffic Act 1984.
- 8.2 The Council must proceed under the requirements of the Private Street Works Code, which will involve serving notices of provisional apportionment on the frontage owners. Because the intention is that the full cost of the scheme will be met without charge to them, the notices will show the individual frontage charges being met by the Council. This means that the frontage owners will not be able to raise objections to the proposal on financial grounds, but may choose to pursue objections on other grounds.
- 8.3 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.
- 8.4 The Highways Act 1980, Section 208, sets out the grounds upon which the owner(s) of premises shown in a Provisional Apportionment may object to the proposed works. Only residents liable to be charged with any part of the costs of executing the proposed street works may, by notice, object to the proposed works.

9. PROCUREMENT IMPLICATIONS

- 9.1 None as the works will be carried out by the Council's highways term contractor.

Non-Applicable Sections:	None
Background Documents: (Access via Contact Officer)	None