

Decision Maker: ENVIRONMENT & COMMUNITY SERVICES PDS COMMITTEE

Date: 25th January 2023

Decision Type: Non-Urgent Non-Executive Non-Key

Title: VEHICLE CROSSOVER POLICY

Contact Officer: Garry Warner, Assistant Director (Highways)
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Chief Officer: Colin Brand, Director of Environment & Public Protection

Ward: (All Wards);

1. Reason for report

Following a request from Cllr Fawthrop this report reviews current policies relating to the construction of new vehicle crossovers.

2. **RECOMMENDATION(S)**

That the Environment PDS:

- i) **Endorse the current policies relating to the construction of new vehicle crossovers.**

Impact on Vulnerable Adults and Children

1. Summary of Impact: None
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Corporate Policy

1. Policy Status: Existing Policy:
 2. BBB Priority: Excellent Council Quality Environment Safe Bromley Vibrant, Thriving Town Centres :
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Financial

1. Cost of proposal: Estimated Cost : None
 2. Ongoing costs: Recurring Cost : None
 3. Budget head/performance centre: Highways planned maintenance
 4. Total current budget for this head: n/a
 5. Source of funding: n/a
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Personnel

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

Legal

1. Legal Requirement: Statutory Requirement :
 2. Call-in: Applicable:
-

Procurement

1. Summary of Procurement Implications: None
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): Borough wide
-

Ward Councillor Views

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

3. COMMENTARY

Background

- 3.1 When residents seek to provide off-road parking on their front gardens, they can request to have the kerb outside their property lowered and the footway reinforced to take the load of normal car or light vehicle, which is known as a vehicle crossover. If their application is successful the works are undertaken by the Council's highways contactor, with the full costs being met by the resident, along with agreed fees for the application and management of the works.
- 3.2 As a Highway Authority and using powers in Section 184 (11) of the Highways Act 1980, the Council is responsible for granting permission for such vehicle crossovers and in accordance with the Act, to have regard to:
- (a) The need to ensure, so far as practicable, safe access to and egress from premises.
 - (b) The need to facilitate, so far as reasonably practicable, the passage of vehicular traffic in highways.
- 3.3 In order to ensure that applications are dealt with consistently and fairly they are considered in accordance with policy and guidelines, as determined by the Council from time to time. The policy for vehicle crossovers was last considered in January 2012 (Report ES 11110), when the criteria for approval of vehicle crossovers was approved. A copy of the policy and guideline are attached as Appendix 'A'.
- 3.4 In March 2018 (Report ES18028) a minor change was agreed to facilitate the construction of narrow crossovers across highway grass verges.
- 3.5 Applications for new crossovers are made by residents using the Council's website, which includes further guidance on policy and the application process.

4 POLICY IMPLICATIONS

- 4.1 There are no proposed changes to the crossover policy at this time

LEGAL IMPLICATIONS

- 6.1 Under section 184 of the Highways Act (1980), the Highway Authority has powers to regulate the way access is taken over the footway, not to prohibit it. Permission for a vehicle crossover conveys no property rights and is limited to the granting of a licence to cross over the highway and highway verge only.
- 6.2 Landowners of land adjoining a highway have a right of access from their land onto the highway subject to certain statutory controls in order to balance the rights of the landowner and to guarantee the safety of the public. Planning permission for vehicle crossovers may not always be necessary but crossover applications can still be rejected for non-compliance with highway legislation: different legislation applies to the Planning and Highway functions of the authority.
- 6.3 The Council has a duty, as a Highway Authority, "to assert and protect the rights of the public to the use and enjoyment of any highway" (section 130 Highway Act 1980). Under these powers the Council can also deal with infringements such as obstructions and nuisances on the highway, in order to avoid dangers to road users arising from traffic turning on and off the road.

Non-Applicable Sections:	Financial Impact on vulnerable adults and children Personnel implications Procurement implications
Background Documents: (Access via Contact Officer)	

PROVISION OF FOOTWAY CROSSOVERS: POLICY AND GUIDELINES

(Adopted January 2012, revised March 2018)

General Principles

1. These Guidelines apply to the construction of new or extended crossovers which provide access to properties from the carriageway across footways and/or verges, under section 184 of the Highways Act 1980, and where the proposed crossover does not depend on the applicant requiring planning permission for an associated development.
2. Where planning permission is required, the need for a crossover and any detailed design considerations will be taken into account as part of the assessment of the planning application. However, many of the principles contained in these Guidelines will be relevant when considering whether to grant permission for a crossover and to its subsequent construction.
3. The construction of a vehicle crossover does not give the occupier of the premises any particular rights, except to drive across the footway or verge to gain access to his/her property with a private or light goods motor car: the crossover itself is part of the public highway. The Authority does not guarantee that a crossover will be suitable for use by any particular vehicle (for example a vehicle with low ground clearance). The Authority reserves the right to impose reasonable conditions on the use of any crossover, as provided for in the Highways Act 1980.
4. The Authority reserves the right to review its policies, working practices and charges from time to time to ensure the continued provision of an efficient and cost-effective service.
5. A guidance leaflet for applicants will be made available to provide advice on minimising environmental impact, construction materials, parking layouts, the adopted policies, procedures and any other relevant information.

Conflict with street trees or planted areas

6. When an application is received to construct or extend a vehicle crossing, which has a direct or indirect effect on a highway tree or other "managed" planting, no decision will be taken until the Council's Arboricultural Officer or other appropriate officer has been informed and responded.
7. The general presumption will be to refuse an application if there is a conflict with a street tree.
8. If the Arboricultural Officer (AO) or other appropriate officer, decides that a particular tree or planted area does not warrant retention for the benefit of the community or can be re-established elsewhere, the local Area Manager will be told that its removal is approved and provided with the estimated cost. At the same time, the AO will stipulate the number, type and costs for replacement trees/plants. The number of replacement tree(s) will depend on the size of the existing tree – this will usually be one replacement for a young tree, two replacements for a semi-mature tree and three replacements for a mature tree.

9. The cost of the tree/plant removal and the replacement(s), including initial maintenance, will be charged to the applicant as part of the vehicle crossing works.
10. When an existing crossing is obstructed/affected by a street tree to the obvious detriment of public safety, every effort will be made to resolve the conflict so as to retain the tree. However if this is not possible and public safety is being compromised, the tree will be removed and replacements planted. The cost of the tree removal and replacement(s) or crossing relocation and accommodation works will be borne by the Authority

Conflict with private trees

11. When an application is received to construct or extend a vehicle crossing, and the officer making the initial site visit feels that the proposals would have an adverse affect on an established private tree, he will defer any decision to progress the crossing and refer the matter to the Arboricultural Officer. The Arboricultural Officer will consider the particular situation and inform the local Area Manager of any advice and/or intended action. This could include the implementation of a Tree Preservation Order if it is felt that the loss of the tree(s) would be detrimental to the visual amenity of the area.

Conflict with street furniture

12. There should be no obstruction such as a telegraph pole, lighting column or above ground utility apparatus within 800 mm of the edge of the crossover.
13. Any repositioning, alteration and/or adjustment to street furniture or Statutory Undertaker's apparatus considered necessary and practical to help with the forming of an access shall be undertaken at the cost of the applicant

Safety and the free flow of traffic

14. The Authority is required by the Highways Act 1980 to consider safety and the free flow of traffic when considering whether to install a crossover. Among the matters likely to be considered are proximity to a road junction, visibility and sight lines, the existence of "zig zag" markings at the kerbside, the width of the street and traffic flow. This is not an exclusive list, and the Council will take into account any matter which appears relevant under this heading.

Applications in streets with, or proposed to have, controlled parking

15. The Authority reserves the right to take into account existing on-street parking provision when considering whether to permit a crossover. Where the proposed crossover would result in the removal of a marked on-street parking or loading bay, or the reduction in capacity of such a bay, there will be a presumption to refuse an application. In cases where it is possible to relocate or otherwise amend an on-street parking bay without disbenefit to the public, all costs will be charged to the applicant.
16. From time to time the Council responds to increased local parking stress by consulting on proposals to introduce new areas of parking control, or to extend or amend controls in existing controlled areas. The Council will not accept any applications (and will return any applications and cheques) from an area affected by proposals between the date of issue of the first consultation document or the date when a consultation was first proposed in a published Council agenda paper (whichever is the earlier) until such time as a final decision is taken to implement a scheme (or not implement it as the case might be). Once a scheme is agreed for implementation, but before it is implemented,

any application will be considered as though the scheme had already been implemented.

17. The Authority will not provide a vehicle crossover until all necessary amendments to the Traffic Regulation Orders have been made so as to provide unimpeded access to the crossover and the application complies with the criteria set out in the Council's on-street parking policy.
18. The Authority will not promote an amendment to a Traffic Regulation Order to make a vehicle crossover until the appropriate fee has been received. Furthermore, the Authority does not warrant that the receipt of the fee will guarantee that any objections to amending an Order will be overruled or set aside.

Redundant crossovers

19. When it appears that an existing crossover is redundant (for example because a hardstanding has been replaced with soft landscaping or a boundary wall has been constructed) and the Authority is undertaking routine maintenance, or it otherwise appears expedient for the Authority to do so, the Authority will remove the crossover and reinstate the kerb and footway without charge to the frontage owner.

At other times the Authority will consider requests from frontage owners for reinstatement, at the frontage owner's expense, where there is clear evidence that the frontage owner has already undertaken works to ensure that there is no continuing risk of vehicles seeking to cross the footway to access the premises. In appropriate cases the Authority will also designate the area in front of the former crossover as parking space.

Verges

20. The Authority will endeavour to sustain grass verges and amenity areas maintained by the highway authority as an important and integral part of the Borough's street scene wherever possible. The Authority reserves the right to reject on amenity grounds an application for a crossing across a verge or amenity area.
21. Where they will adversely affect the amenity of the area, the provision of vehicle crossings in highway verges and amenity areas shall be kept to a minimum, for example by combining more than one crossover.
22. When considering an application for a crossing or an extension to an existing crossing in a grass verge or amenity area greater than 3 metres in depth, the presumption shall be to reject it – *revised March 2018 to allow the overall area of a crossover across a grass verge to 14.4 square metres with a grass verge a maximum of 4.0 metres deep.*
23. Officers will continue to employ appropriate construction techniques and materials that will minimise the visual impact of crossings wherever possible.

Short frontage standards

24. As the general Borough policy, an application to construct a vehicle crossing that serves short frontage parking, that is where the space for parking at a right angle to the carriageway is limited, provision of safe access and egress shall be considered when determining approval of an application. Parallel parking to the carriageway shall not be permitted. Permission for an application will therefore be refused if the part of the property nearest the road is fewer than 4.5 metres from the back edge of the public footpath; the parking space shall be a minimum of 2.4 metres wide.

Provision of extra crossovers and 'in and out' drives

25. Where planning permission is required, the Chief Planner can reject applications in accordance with criteria in the Unitary Development Plan or Local Development Framework and on traffic safety criteria. Where planning permission is not required, requests for additional crossovers may be rejected on the basis that reasonable access already exists as a result of the construction of the first crossover and the common law right of access has been met.
26. Where there is no practical loss of on-street parking or amenity from an additional access and it is possible to park a vehicle between the two points of access (e.g. 5m in length), applications for additional crossovers will usually be considered favourably. This assumes however that all relevant planning, highway safety and amenity criteria have been satisfied.

Fees and charges

27. Where an application is initiated by the applicant for his or her own benefit (that is, the proposed crossover is not necessitated by or consequent upon a scheme proposed by the Council for which there is an approved budget), the Authority will seek to recover from the applicant its full costs in considering the application (including where the application is unsuccessful) and providing / constructing a vehicle crossing and any necessary associated works.
28. The fees and charges will be regularly reviewed by officers, in light of relevant legislation/regulation, changes in contracts and changes in resource costs. Any revisions considered necessary will be implemented under delegated powers.
29. The Council will continue to offer residents a range of acceptable payment options.

Specification and use of construction materials

30. The standard surface materials for vehicle crossings shall be concrete modular block paving when the footway is flagged paving and bitumen macadam when the footway surface is bitumen macadam or similar.
31. "Special" materials which vary from the above standard will be acceptable but only when the character of surrounding highway determines it is appropriate.
32. The maximum width of a vehicle crossing shall be 3 metres forming a ramped area, with dropped kerbs either side increasing the overall width to 4.8 metres at the kerb edge of the carriageway.
33. Applicants for crossing extensions are to be informed of any likely difference in the appearance of the new construction and given the opportunity to bear the costs of any special works to reduce the difference or to undertake a full width reconstruction/ resurfacing should they wish.

Construction and maintenance

34. With the exception of special cases, where agreement is reached with officers to the contrary, all vehicle crossing construction will be undertaken by the Authority's term-maintenance contractor. From the date that the Council accepts the completed crossover, it will assume responsibility for its maintenance at no cost to the occupier, apart from any damage caused by illegal use by heavy vehicles.

Standard conditions to be met prior to construction

35. No vehicle crossing construction work shall commence until the applicant has properly opened up the access and laid out their off street parking provision (permeable hard standing) to the satisfaction of the local Area Inspector.
36. No construction work shall be programmed and/or commenced until acceptable financial arrangements have been put in place and/or payment has been made.

Cost of construction offset by appropriate and relevant road and/or traffic works

37. When major footway maintenance works are being undertaken and provided there is not a conflict with any other vehicle crossing policy, residents may be offered the opportunity of having a footway crossing constructed whilst the works are in progress. The costs charged to the resident will be for only those additional works in forming the crossing.
38. Residents who apply for a crossover in the normal way will be advised whether major footway works are proposed during the next 12-month period from receipt of the application to enable deferral of the installation until the major works commence.

Infringements involving existing crossovers

39. Redundant Crossovers – Although current procedures should now prevent it, there may be instances where an existing crossover has been constructed but the occupant has taken no steps to provide parking within their curtilage (examples include failure to remove boundary walls, hedges, trees, etc) and the crossover appears to have been used to reserve parking either on the carriageway or the crossover.

In the first instance, the occupant will be requested to construct a hard standing and gain access, or pay for the removal of the crossover. If the occupant does not respond or refuses to pay, the Authority may take steps to reinstate the kerb and footway in whatever manner it considers expedient and to reclaim any associated costs. This action may also include any temporary measures required to stop vehicles crossing the footway.

40. Illegal Footway Crossings - Where a driver habitually attempts to gain access to either a residential or commercial property by crossing the footway/grass verge where there is no constructed crossover, the Council has powers under section 184 (11) of the Highways Act (1980) to insist on the construction of a properly surfaced vehicle crossing, subject to meeting all relevant planning, highway safety and amenity criteria. The approach will be to notify the occupier in the first instance to make them aware of the legal implications and to advise them both to stop crossing the highway and to apply for a crossover in accordance with the stated procedures. The Council can then charge the occupier with the costs of installation. If the occupant persists in crossing the highway, further action can be taken to protect the highway and to install preventative measures to restrict access.

Exemptions to parking on vehicle crossovers

41. A crossover is provided to gain vehicular access to the curtilage of a property (that is, it remains illegal to park on a highway where a crossover has been constructed, other than temporarily, as this obstructs the highway previously available to pedestrians). Where this occurs the Council's Parking Team has arrangements with its contractor to serve Penalty Charge Notices (PCNs) on vehicles parked in contravention of the borough-wide footway parking ban. Exemptions may apply to certain streets where

vehicles can either park partly (with two wheels) or wholly (with all four wheels) on the footway. An exemption may also apply to streets with clearly defined pavement areas with long crossovers between the property boundary and the pavement. On no account will an exemption apply to parking on crossovers between the pavement and the edge of the carriageway.

Exemptions based on applicants' medical conditions

42. When an application has not been approved, the applicant may appeal on medical grounds, if either the driver or another occupant of the property is unable to walk any distance without suffering considerable discomfort. This request would be subject to similar criteria as those applied to applications for an on-street disabled bay. Under these circumstances approval may be given which is personal to the person claiming exemption, and the applicant will be required to enter into an agreement whereby the Council has the right to reinstate the highway as a footway and remove the dropped kerb area of the crossover if the person for whom exemption was claimed ceases to live at the property. A nominal sum will be charged to the resident for the complete cost of these reinstatement works at the installation stage.

Appeal procedures

43. Should an applicant for the construction of a vehicle crossing be dissatisfied with the response (including but not limited to refusal of consent or any conditions attached to the use of the crossover), he or she may make representations to that effect. The matter will be reviewed in the first instance by the local Area Manager, who will assess whether these Guidelines have been properly and consistently applied. The Area Manager will determine either:

- that the Guidelines have been correctly applied; or
- that the Guidelines have not been correctly applied, and propose a remedy to the applicant.

44. The outcome of the review will be communicated to the applicant within 28 days of representations being received, together with notification of their right to appeal further if desired.

If an applicant exercises the right to appeal further, the matter will be referred to the Director of Environmental Services, or in his absence an Assistant Director. In determining the appeal, the Director shall have regard to:

- the decision of the Area Manager and whether it is correct;
- any other matter which the applicant has cited as grounds for appeal, including, but not limited to, matters contained in these Guidelines; and
- whether any proposed decision provides an appropriate balance of benefit between the applicant and the community.

The outcome of the appeal will be final, and will be communicated to the applicant, with reasons, within 14 days of the appeal being received.

45. Where planning permission is required and the application is refused residents will still have a statutory right of appeal dealt with by the Planning Inspectorate and notes of explanation are provided when the Town Planning Division issues a refusal notice.

