

<u>MEETING</u> ENVIRONMENT COMMITTEE
<u>DATE AND TIME</u> THURSDAY 11TH MAY, 2017 AT 6.30 PM
<u>VENUE</u> HENDON TOWN HALL, THE BURROUGHS, LONDON NW4 4BQ

Dear Councillors,

Please find enclosed additional papers relating to the following items for the above mentioned meeting which were not available at the time of collation of the agenda.

Item No	Title of Report	Pages
8.	SCHOOLS PARKING PILOT SCHEME (Appendix A)	3 - 4
10.	FOOTWAY DAMAGE	5 - 52

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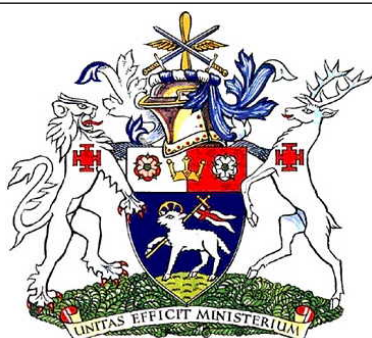
ADDENDUM TO SCHOOL PERMIT REPORT

Parking Surveys - Childs Hill School - April 2017

	7am			9am			10am			2pm			6pm		
	No. of available spaces	No. Parked Cars	No. Teachers Permits	No. of available spaces	No. Parked Cars	No. Teachers Permits	No. of available spaces	No. Parked Cars	No. Teachers Permits	No. of available spaces	No. Parked Cars	No. Teachers Permits	No. of available spaces	No. Parked Cars	No. Teachers Permits
Sanderstead Ave	30	9	0	31	8	0	32	7	0	29	10	0	29	10	0
Purley Ave	54	16	0	56	14	0	54	16	0	55	15	0	59	11	0
Greenfield Gdns	25	59	2	27	57	2	31	53	2	21	63	2	30	54	0
Dersingham Rd	13	18	0	12	19	2	12	19	2	13	18	2	15	16	0
Somerton Rd	70	22	0	73	19	5	72	20	5	72	20	5	70	20	0
Caddington Rd	19	50	0	24	45	0	17	52	0	14	55	0	25	44	0
Gillingham Rd	14	23	0	12	25	0	11	26	0	13	24	0	17	20	0
Thorverton Rd	19	20	0	13	26	0	14	25	0	12	27	0	19	20	0
Farm Avenue	7	14	0	5	16	0	4	17	0	3	24	0	1	22	0
Harman Drive	9	16	0	7	18	0	6	19	0	8	17	0	6	19	0
Harman Close	6	0	0	6	0	0	6	0	0	5	1	0	5	1	0
Hocroft Road	18	12	0	24	6	0	21	9	0	22	8	0	23	7	0
Hocroft Ave	13	11	0	9	15	0	11	13	0	14	10	0	17	7	0
Ranulf Road	2	37	0	7	32	0	14	25	0	6	45	0	7	32	0
Lyndale	9	26	0	13	22	0	17	18	0	19	16	0	13	22	0
Claremont Rd	1	24	0	1	24	0	4	29	0	2	27	0	8	17	0
Cricklewood Lane	34	18	0	15	37	0	13	39	0	10	42	0	27	25	0
The Vale	20	30	0	23	27	0	23	27	0	28	22	0	20	30	0

AGENDA ITEM 8

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Environment Committee

11 May 2017

Title	Damage to Highways
Report of	Commissioning Director (Environment)
Wards	All
Status	Public
Urgent	No
Key	No
Enclosures	Annex A – A simplified guide to lorry types and weights Appendix A – Report Cost recovery of Damage to the Highway
Officer Contact Details	Jamie Blake, Commissioning Director (Environment) Jamie.blake@barnet.gov.uk

Summary

This report sets out the work undertaken by officers to investigate potential mechanisms the Council could pursue to prevent damage to the footway caused by development work, in particular the delivery of Skips onto private land.

Recommendations

1. That the Environment Committee notes the phased approach to prevent damage to the highway resulting from activities associated with construction work on development sites.
2. That the Environment Committee approves the following phased approaches:
 - Phase 1 - Building Control to inform Re Highways when Notification to start work is received from owners / developers. On receipt of notification, Re Highways will inspect and take photographic evidence of the footway condition before, during and post work. The cost of repairing any damaged identified will be recovered under Section 133 of Highway Act 1980.

- **Phase 2 - Develop a process for limiting the weight of vehicles using residential crossovers under Section 184 of the Highways Act 1980. This is a longer process which will require notifying (The Notice) all qualifying properties with a crossover of our intentions and any objections received referred to the Secretary of State for Transport approval as required by Schedule 14 of the Highways Act 1980 before The Notice is confirmed.**

3. That the Environment Committee authorise the Commissioning Director Environment to immediately implement Phase 1 and develop the process for the implementation of Phase 2 described above.

1. WHY THIS REPORT IS NEEDED

1.1 This report is needed to provide the Environment Committee with an update on the work undertaken to prevent damage to the highway resulting from construction activities associated with work on development sites.

1.2 The findings of the extensive investigatory and benchmarking work together with legal Advice have been considered and the recommendations developed to reflect the findings.

1.3 BACKGROUND

1.3.1 Barnet Council is experiencing an increase in maintenance cost of repair work in respect of damage caused to the highway due to an increase in private development works. The refurbishment of a property may require the unloading of materials and deposits of skips, but not be subject to planning permission or building regulation approval, and the Local Authority would be unaware of such works until being notified of the damage to the public highway.

1.3.2 Of particular concern, is the potential damage of the highway resulting from skips being delivered to private properties. Skips delivered to a front garden does not currently require a licence or notification to the Highway Authority, but it can cause damage to the footway or highway asset during the loading and delivery process.

1.3.3 In contrast when a skip is placed on the highway (carriageway) the owner is required to apply for a licence from the highway authority under Section 139 of the highways Act 1980, which presents an opportunity for the authority to impose conditions for its placement. It also means that costs can be recovered if the placing or removal of the skip causes damage to the highway.

- 1.3.4 When an empty skip is delivered to private land, the skip can be handled into position and generally does not require the vehicle stabilisers to be deployed onto the highway surface. In contrast a fully loaded skip alone can weigh up to 8 tonnes (legally) and the combined weight of the vehicle on the lighter surfaced footway/verge/cross-over can reach 18 tonnes (max loaded weight) when positioning the HGV for lifting the skip. It is therefore more likely to cause damage when collecting the skip, and recording the state of the highway when a skip has been placed in order to compare damages following collection is an opportunity to prove that damage has indeed occurred.

1.4 EXISTING CROSSOVER CONSTRUCTION IN BARNET

- 1.4.1 The council's existing crossover guidelines in place allow for two types of crossover:

- A residential crossover application for light vehicles (cars & small vans) this is constructed with a 250mm concrete depth and has a maximum laden weight of vehicle **3500 kgs**.
- A heavy duty crossover application for larger vehicles constructed with up to 850mm concrete depth and suitable for a laden weight **over 3500 kgs**. This is for flats and commercial properties with access for several vehicles.

- 1.4.2 Further with development sites there is an option to use a heavy duty specification of up to 1m depth with reinforced concrete for heavy construction, lorries etc. This is usually requested via the Development Control team.

- 1.4.3 The standard engineering detail of Crossovers in Barnet, as is the case with many local authorities, are not designed to withstand the weight of HGVs, often causing cracks or severe breakage in paving slabs and designed with the expectations that only private light goods vehicles will be using them.

- 1.4.4 There are already conditions in place to govern heavier vehicles using domestic crossings although the emphasis is for construction traffic rather than the placing of skips explicitly. Part 4 of the council's crossover guidance sets out that ***'Temporary access for heavier vehicles will require a specific licence issued by the London Borough of Barnet.'***

- 1.4.5 In practice for the purpose of skips, this provision in isolation will only offer limited benefit to the authority as it will not mitigate that the crossover construction for domestic purposes is not adequate to accommodate loads in excess of a private light goods vehicle. A guide to typical vehicle loads is contained in Appendix B and demonstrates a large proportion of commercial vehicles exceed the 3500kg.

1.5 WORK UNDERTAKEN BY THE AUTHORITY

- 1.5.1 A 12 week pilot study was undertaken in the Finchley and Golders Green constituency whereby all the streets in the seven wards of the constituency were inspected for damage to the footway where development work was evident fronting residential properties over the period from 9 November 2015 to 29 January 2016. At the end of the inspection, Notices under Section 133 of the Highways Act 1980 were sent to a sample of 20 property owners which showed the most extensive damage and where the Council felt that the evidence was sufficiently robust. The results of these findings are contained within Appendix A.
- 1.5.2 As part of the pilot and incidental to the survey; skips, scaffolding, building materials and hoardings on the public highway were recorded and the Re Licensing Team issued fines in a number of cases where appropriate licences had not been obtained.
- 1.5.3 Of the sample 20 owners served with S133 Highways Act notices sent out by registered mail, substantive responses were received from 15 owners (as at 20 April 2016). Responsibility for damage was accepted by three owners (15%) and one of these owners accepted responsibility and requested the inclusion of a crossover. In a further case the owner had repaired the damaged footway themselves (5%) to a good standard, although no authority was given for them to do so and in another the owner has requested to do the work themselves. They have been informed that work on the highway can only be undertaken by authorised contractors approved by LB Barnet.
- 1.5.4 A further 10 owners have appealed (50%) for various reasons, but generally denying that the damage has been caused by them. A number of replies to the S133 HA notices refer to the fact that the owners have not carried out any excavation to the footway fronting their property.
- 1.5.5 The pilot study was considered successful and the Council commissioned the Project Centre to develop proposals to prevent damage being caused to the highway, mainly by skip vehicles, as a result of development works and a process to recover the cost of the repairs from the owner /developer. These proposals are the subject of this report for the Committee's consideration.

1.6 CONSIDERATION OF PRELIMINARY RECCOMENDATIONS

- 1.6.1 The following options were originally considered by the Project Centre. Officers recognised that the purpose of these preliminary recommendations were to form a basis to test this approach.

- **Construction Licence** - Introduce an Off-Street Skip Licence scheme that requires a deposit and fee prior to a skip being delivered to private land.
- **Operator Licence** - Introduce a clause in the registration licence for all Barnet skip operators to seek permission for access to deliver a skip to private land when crossing the footway/verge/cycleway
- **Damage Reporting** - Investigate and compile a report when damage is identified or a skip is found on private land, for the purpose of evidence for prosecution in the event of damage

1.6.2 Officers wanted to test this preliminary advice to ensure compliance with relevant statute and sought legal advice on the recommended options.

1.7 CONSIDERATION OF LEGAL ADVICE

1.7.1 In summary the legal advice is that the desired outcomes could be achieved by using the powers already contained in s.184 of the Highways Act 1980 by placing a set of conditions for the use of a domestic crossover.

1.8 SCHEME PROPOSED

1.8.1 In view of the legal advice received, it is recommended to develop a process to control the use of crossovers using the s.184 of the Highways Act 1980. The process proposed above as Phase 2 could require an amount of work akin to running a CPO.

1.8.2 This would take the form of stipulating that a crossover may only be used by vehicles up to a certain weight before the owner needs to seek a permit from the Council which could also require the applicant to pay a deposit and assume liability for the costs of reinstating the footway should any damage occur.

1.8.3 Such a scheme would need to fully comply with the provisions of s184 and Schedule 14 of the Highways Act 1980 including as detailed below:

- A. The use of the crossover would need to be “habitual”;
- B. The crossover cannot be a crossover falling within s.184(2) i.e. a crossing made up pursuant to s.184 and its predecessors;
- C. Any conditions i.e. the licensing or deposit scheme would need to be “reasonable”;

- D. In reaching the decision to use s.184 the Council would need to take into account the factors in subsection (5) which requires the highway authority to have regard to the need to prevent damage to a footway or verge, and in determining the works to be specified in a notice under subsection (1)(a) or (3) of section 184, the authority shall have regard to that and the following other matters, namely—
 - (a) the need to ensure, so far as practicable, safe access to and egress from premises; and
 - (b) the need to facilitate, so far as practicable, the passage of vehicular traffic in highways.
- E. A notice would need to be served on the owner and occupier of the premises;
- F. That notice would need to comply with Schedule 14 and s.184(8) in that the notice must inform the recipient of their right to object;
- G. Any objections need to be referred to the Minister (now Secretary of State for Transport) and the notice along with the stipulated controls are then subject to confirmation by the Minister if the objections are not withdrawn (see Sch.14 to the HA 1980). The Minister may confirm, refuse or modify the notice.

1.8.3 Development of the necessary processes (by RE Highways) for receiving alerts from Building Control Team of Notification to start work which would then trigger site inspections to assess the condition of the footway before, during and post work.

2. REASONS FOR RECOMMENDATION

- 2.1 The recommendations are required to allow the Council to develop processes to prevent future damage to the highway as a result of construction activities associated with development sites and to recover the cost of repairs from owners/ developers where damage has identified.
- 2.2 The condition of the highway (both carriageway and footway) is of high concern to Barnet's residents and the Council. In response to these concerns, the Council is investing £50million over 5 years (starting 2015/16) to improve the condition of the highway network and thereby address residents' concerns. It therefore vital that this investment is safeguarded by ensuring that no further damage is made to the Council's assets following carriageway and footway renewal work and where damage is caused that the cost of repairing the damage is recovered from those responsible for the damage.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDATION

- 3.1 A Construction and Operators Licence was considered but deemed unsuitable for this purpose.

4. POST DECISION IMPLEMENTATION

- 4.1 Officers will start work to immediately develop the necessary processes for the implementation of Phase 1.
- 4.2 Officers will begin work for the implementation of Phase 2 which will include writing to all properties with an existing crossover advising of its intention to impose control (namely limiting the weight of vehicles) on the use of crossovers. Applications for new crossovers will be amended to take into account the introduction of the new controls.
- 4.3 An update report will be reported to a future meeting of this Committee on progress made.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1 In relation to the Sustainable Community Strategy 2010-2020, enforcing damage on the footway should ensure the Council can deliver savings on footway maintenance for the benefit of all road users.
- 5.1.2 The reduction of footway damage should support the following of the 2015-2020 Corporate Plan strategic objectives and assist in delivery of Corporate Plan desired outcomes:
 - A clean and attractive environment, with well-maintained roads and pavements, flowing traffic, increased recycling:
 - Barnet's streets will be kept clean and tidy, benefitting from investment in more efficient mechanical sweepers to better clean town centres and residential streets
 - the borough's roads and pavements will be in a good condition, with the council recognising that this has consistently been the top priority for residents for the past few years
 - Delivering on borough Local Transport Objectives (and London Mayoral outcomes):
 - 1. Ensuring more efficient use of the local road network
 - b. Improve the condition of roads and footpaths
 - d. Make travel safer and more attractive
- 5.1.3 The Highway network is the Council's most valuable asset and is vital to the economic, social and environmental wellbeing of the Borough as well as the general image perception. They provide access for business and communities, as well as contribute to the area's local character and the resident's equality of life. Highways really do matter to people and often public

opinion surveys continually highlight dissatisfaction with the condition of local roads and the way they are managed.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

5.2.1 The inspection process outlined under phase 1 will be undertaken by Re for the Council. The costs of the officer time will be negotiated and added to the management fee the Council pays to Re.

5.2.2 Any further process development work required by the project centre will be funded by the Special Parking Account Reserve (SPA), which is used to fund appropriate highways related works and improvements. The costs will need to be approved and monitored by LB Barnet, who must approve the reserve use.

5.2.3 Any income that results from the inspection work undertaken in phase 1, and the development work for processes in phase 2 will be included within the guaranteed income that Re provide to the council under the joint venture's activities. This income must ensure accurate cost recovery for the council.

5.3 Social Value

5.3.1 The Public Services (Social Value) Act 2012 requires people who commission public services to think about how they can also secure wider social, economic and environmental benefits. This report does not relate to procurement of services contracts.

5.4 Legal and Constitutional References

5.4.1 The Traffic Management Act 2004 places obligations on authorities to ensure the expeditious movement of traffic on their road network. Authorities are required to make arrangements as they consider appropriate for planning and carrying out the action to be taken in performing the duty. The Highways Act 1980 provides the Council with the necessary powers to implement the proposed recommendations.

5.4.2 The Council's Constitution (Responsibly for Functions, Annex A) gives the Environment Committee certain responsibilities related to the street scene including pavements and all classes of roads, parking provision and enforcement, and transport and traffic management including agreement of the London Transport Strategy Local Implementation Plan and to consider for approval fees and charges for those areas under the remit of the Committee.

5.4.3 Road safety and traffic calming are carried out in accordance with the following Legislation and Guidance:

- The Highways Act 1980
- Road Traffic Regulation Act 1980

- The Transport Act 1981
- The Road Traffic Act 1991
- The Traffic Calming Act 1992
- Disability Discrimination Act (DDA) 1995
- The Highways (Road Humps) Regulations 1999
- Greater London Authority (GLA) Act 1999
- Road Traffic Reduction Act 1997
- The Traffic Management Act 2004
- Bus Priority Team Technical advice note BP2/05 – Traffic Measures for Bus Routes 2005
- Local Transport Note 1/07 Traffic Calming 2007
- Manual for Streets
- Manual for Streets 2

5.5 Risk Management

5.5.1 None in the context of this report. Risk management may be required for work resulting from this report.

5.6 Equalities and Diversity

5.6.1 The 2010 Equality Act outlines the provisions of the Public Sector Equalities Duty which requires Public authorities in the exercise of their functions to have due regard to the need to:

1. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010
2. Advance equality of opportunity between people from different groups
3. Foster good relations between people from different groups

5.6.2 The broad purpose of this duty is to integrate considerations of equality into day to day business and keep them under review in decision making, the design of policies and the delivery of services.

5.7 Consultation and Engagement

5.7.1 If the council were to adopt a system under s.184 all occupiers and owners of all qualifying crossovers would need to be notified in line with s.184 and Schedule 14 of the Highways Act 1980.

5.7.2 It is likely this approach would result in objections as occupiers and owners may perceive this additional layer of governance as negative. This would then need to be referred to the Minister for confirmation, refusal or modification.

5.8 Insight

















- 5.8.1 The options developed take into account the need to strike a balance of ensuring owners occupiers can carry out essential works where necessary while ensuring damage to the highway is stringently monitored.

6. BACKGROUND PAPERS

- 6.1 None.

Annex A – A simplified guide to lorry types and weights

A SIMPLIFIED GUIDE TO LORRY TYPES AND WEIGHTS

Recommended Description			Identifier	UK Maximum Gross Weight (tonnes)	Shape
LIGHT GOODS VEHICLES			2 axles	3.5	no rear side windows 
LORRIES	HEAVY GOODS VEHICLES (Vehicles over 7.5 tonnes gross require a Heavy Goods Vehicle Driver's Licence)	SMALLER 2-AXLE LORRIES	2 axles	Over 3.5 7.5	
		BIGGER 2-AXLE LORRIES	2 axles	Over 7.5 18	
		MULTI-AXLE	3 axles rigid	25 26*	
			3 axles artic.	26	
			4 axles rigid	30 32*	
			4 axles artic.	36 38*	
		AXLE	Vehicle and draw-bar trailer 4 axles	30 36**	
			5 axles or more artic. See note (a)	40	
		LORRIES	Vehicle and draw-bar trailer 5 axles See note (a)	40**	
			6 axles artic. See note (b)	41*	
			6 axles draw-bar See note (b)	41* and **	
			5 or 6 axles artic. See notes (b) and (c)	44* and ***	
			6 axles draw-bar	44*,** and ***	
			6 axles artic. See note (b) and (d)	44*	
			6 axles draw-bar See note (b) and (d)	44* and **	

* If the driving axle, if it is not a steering axle, has twin tyres and road friendly suspension, or each driving axle is fitted with twin tyres and the maximum weight for each axle does not exceed 8.55 tonnes.

** Distance between the rear axle of the motor vehicle and the front axle of the trailer is not less than 3 metres.

*** If the vehicle is being used for combined transport.

(a) 5 axles or more artic and the 5 axles or more drawbar could alternatively have a 3 axle motor vehicle and a 2 axle trailer.

(b) Conditions:
- each vehicle must have at least 3 axles.
- drive axle has twin tyre and road friendly suspension and maximum of 10.5 tonnes, or each driving axle is fitted with twin tyres and has a maximum of 8.5 tonnes
- trailer has road friendly suspension

(c) Conditions for operation on 5 axles:

- must have 3 axles on tractor unit
- single container 40ft in length conforming to standards laid down by the International Standards Organisation being carried only
- vehicle being used for international journey.

(d) Powered by a low pollution engine.

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Cost Recovery of Damage to the Highway

Enforcement of Damage Caused by the Delivery of Skips to Private Land

London Borough of Barnet

1000003230/20161212LC – Highways Damage Report - Draft

21/12/2016

Created by
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**PROJECT
CENTRE**

DRAFT

EXECUTIVE SUMMARY

This report, along with benchmarking data for general highway damage cost recovery, explores the options that Barnet Council may choose to develop when intending to discourage the practice of driving heavy goods vehicles onto highway surfaces such as the verge/footway/cycle path/cross-over which is usually required when delivering a skip to a private frontage.

The report offers 3 options that are recommended to be used together, as one system of enforcement. These options could feasibly be split and used individually or paired.

1. Construction Licence (Off-Street Skip Licence)
2. Operators Licence (Registered Operator Restrictions)
3. Damage Report & Prosecution

Principally the method if progressed would involve influencing a landowner to apply for a licence to have a skip delivered to their land based on an inevitable report for prosecution of any damage found.

The Construction Licence will offer protection to the landowner of an pre-works damage report that would document any historical damage, reclaiming only subsequent damage, otherwise the authority would pursue for all damage found as a result of a skip being delivered. The licence will be more expensive than the option to place the skip on the road. A Mid-works survey would be offered to those found non-licensed with an offer to apply with skip in-situ, based on the fact that the damage is likely to be caused on collecting rather than the delivery.

The Operator's Licence would set a restriction in the registered operator's documentation for operators within Barnet noting that they must request evidence that the licence has been granted from their customer before they deliver to private land. (or just restrict them from intervention with driveways directly if the Construction Licence is not in place)

Damage Reporting will follow both methods and costs will be reclaimed under Section 133 of the Highways Act 1980 under prosecution if necessary.

A proposed process flow chart for the above can be found in Appendix A.

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1. BACKGROUND

Barnet Council are experiencing an increase in maintenance cost of repair work in respect of damage caused to the highway due to an increase in private development works. The refurbishment of a property may require the unloading of materials and deposits of skips, but not be subject to planning permission or building regulation approval, and the Local Authority would be unaware of such works until being notified of the damage to the public highway.

A particular concern is that of skips delivered to private property. When a skip has been delivered to a front garden it does not currently require a licence or notification to the Highway Authority, but it can cause damage to the footway or highway asset during the loading and delivery process.

In contrast when a skip is placed on the highway (carriageway) the owner is required to apply for a licence from the highway authority, which presents an opportunity for the authority to state certain criteria for its placement and condition. It also means that damages can be reclaimed if the placing or removal of the skip causes damage to the highway.

When a skip is delivered to private land and is empty, the skip can be handled into position and generally does not require the vehicle stabilisers to bear any weight if placed. In contrast the collection can involve up to 8 tonnes (legally) of waste being collected in the skip alone and wheels being mounted in the lighter surfaced footway/verge/cross-over when lining up the HGV (18 tonnes max loaded weight) for lifting the skip. It is therefore technically more likely to cause damage when collecting the skip, and recording the state of the highway when a skip has been placed in order to compare damages following collection is an opportunity to prove that damage has indeed occurred.

This document explores the options that Barnet Council may choose to develop when intending to discourage the practice of driving heavy goods vehicles onto highway surfaces such as the verge/footway/cycle path/cross-over which is usually required when delivering a skip to a private frontage.

2. INTRODUCTION

2.1 Research

Following the benchmarking exercise that was undertaken, it is evident that none of the participating authorities are currently controlling skips delivered to private property, such as front gardens. A further investigation outside of the initial benchmarking was run which discovered that Aberdeen City Council state that they restrict skips from being placed in front gardens unless the crossover has been confirmed as fit for HGV access. Although on further investigation with officers at the council it is apparent that there is little done to enforce this ban, and when a skip is discovered no more than a warning notice is delivered to the owner.

The **.GOV website** is clear when stating that a licence is not required when requesting a skip for private land, and therefore is encouraging of this practice:

Skip licence (England and Wales) 

<https://www.gov.uk/apply-skip-permit>

'You don't need a skip licence if you're putting the skip entirely on private land.'

Project Centre contacted 'GOV to ask if this could be revised if an authority chose to introduce a licence scheme.

2.2 Abbreviations

- "The 2013 Act" refers to the London Local Authorities and Transport for London Act.
- "The 1980 Act" refers to the Highways Act 1980.
- "The Pilot Study" refers to the 3 month Barnet pilot study running from 09/11/16 ~ 29/01/16 for Damage to the Public Highway Caused by Development Activities.
- "Benchmarking" refers to the results from sending queries to the highway authorities in order to gain informative research on their respective processes.
- "Guidance notes" refers to the LB Barnet Guidance Notes for Building Activities in the Borough.

2.3 Barnet Study of Damage to the Public Highway Caused by Development Activities

A recent pilot study by Barnet that investigated Damage to the Public Highway Caused by Development Activities (Pilot Study) has produced some findings that are referred to in this report, currently there are several cases that are being prepared for prosecution.

This study is discussed in section 4.

The Pilot Study was a 12 week study and was undertaken in the Finchley and Golders Green area of LB Barnet where all streets in the 7 wards of the constituency were inspected for damage to footways, this was during 9 November 2015 ~ 29 January 2016. The Pilot Study

was an experiment to practice processes for enforcement under the 2013 Act. This Pilot Study produced a useful set of findings that identifies issues and instances that may require a further developed process. The results of these findings will be shown throughout the report under the relevant sections.

2.4 Legislation

Specifically this report is looking at Acts of law that give Highway Authorities the power to reclaim repair costs for Highway damage, and the guidance for enforcement that this is applied with.

The main acts for this aspect of Highway Damage are the:

- 1980 Highways Act; and
- 2013 London Local Authorities & Transport for London Act.

Under Section 41 of the 1980 Act, Highway Authorities have a *Duty to maintain highways maintainable at public expense*. This section of the act defines the responsibilities that highway authorities have in regards to maintaining the highway to the extent that it is safe to use. This responsibility of maintenance is then enforceable by Section 133 of the same act, which reads:

"133 Damage to footways of streets by excavations.

If the footway of a street that is a highway maintainable at the public expense is damaged by or in consequence of any excavation or other work on land adjoining the street, the highway authority for the highway may make good the damage and recover the expenses reasonably incurred by them in so doing from the owner of the land in question or the person causing or responsible for the damage. "

Currently, all Highway Authorities that responded to the Benchmarking have stated that their respective enforcement processes adhere to this. The Barnet recently ran a Pilot Study as an experiment to enforce using the 2013 Act, which amends the 1980 Act in this section.

Section 6 of the 2013 Act includes an amendment to the 1980 Act where it states:

"6. Damage to highways in consequence of adjacent works

The 1980 Act shall apply in Greater London as though for section 133 (damage to footways of streets by excavations) and its heading there were substituted—

"133. Damage to highway by carrying out of works

If a highway maintainable at the public expense is damaged by or in consequence of any works on land adjacent to the highway, the highway authority for the highway may make good the damage and recover the expenses reasonably incurred by them in doing so from—

- (a) the owner of the land in question; or*
- (b) the person carrying out the works; or*
- (c) the person on whose behalf the works were carried out.”.*

These are the notable differences made in the amendment:

- “footways of streets” to “highways”;
- “by excavations” to “in consequence of adjacent works”;
- “person causing the damage” to “person carrying out the works”;
- “person responsible for the damage” to “person on whose behalf the works were carried out”.

The definition of the damage made becomes broader by referring to the highway instead of the footway only, this is to include damages other than the footway in this passage for law enforcement. The definition of the source of damage is updated so that the term ‘excavations’ doesn’t refer only to digging developments, the updated refined term ‘adjacent works’ includes any kind of development on private property that has caused damage to the highway. The person, in regards to who caused the damage, has been refined to ensure that in some cases it is the hired developer, working on behalf of the land owner, who is responsible.

The 2013 Act also has provision for skip licensing on the Highway which does not cover the delivery and collection of skips to private land when crossing the non-carriageway section of the highway. Therefore the proposals within this report focus on obtaining a deposit or discouraging the delivery of skip to private property by means of emphasising the authorities right to reclaim damages from the landowner should they occur during this process.

3. BENCHMARKING FOR RECOVERY OF DAMAGE CAUSED TO THE HIGHWAY

Information was obtained based on general highway damage therefore this section reports broadly on how damage is recovered rather than specifically for skip damage. It should also be noted that there is no evidence of any authority that currently has a process for specifically recovering damages caused by skips delivered to private land.

The main areas researched instead were: Planning Consent & Licensing, Damage Detail and Enforcement. The Barnet Pilot Study also produced resulting data which has been used in this report for Highway Damage and Enforcement.

3.1 Information Benchmarking

To give an informative view of these areas, 10 councils were contacted. 9 of these councils were London Boroughs, the other was contacted to give a perspective on how council's outside London operate. The council's that responded were:

- Richmond;
- Walthamforest;
- Lewisham;
- Hammersmith & Fulham;
- Kensington & Chelsea;
- Ealing;
- Hounslow;
- Brighton.

Of which some did not respond to specific queries. However the majority of questions have been answered dutifully with useful information. The following questions asked of the council's were:

- Which department is responsible and who physically undertakes the process?
- Is there a guidance or code of practice that is adhered to?
- Is there a process set out for the practice of enforcement?
- What legislation is used to regulate against?
- How often does the council enforce action for damage to highways?
- Are there specific classifications for sources of damage? If so, what are they?
- Are there classifications for types of damage?
- How are small developments enforced when there is no planning permission required?

Half of these questions were asked initially to the council's in a '1st wave' of benchmarking, the '2nd wave' of questions were only responded to by 2 or 3 councils. However the information received overall is enough to draw conclusions on how highway authorities operate. The first question answered was shown in the Brief Overview at the start, displaying the departments responsible for each council.

3.2 Responses

Below is a table of the council's contacted for the Benchmarking exercise, a total of 10 councils were contacted where 9 were London Boroughs and 1 was Brighton. This was done to identify the difference in processes for differing councils, including an outside of London perspective. A third wave were contacted specifically for information on skip enforcement as none had been found during the initial 10, this third wave included Croydon Council and Aberdeen City Council.

Borough	Response?	Department
Aberdeen City	Yes	Enforcement
Croydon	Yes	Env. Enforcement Services
Richmond	Yes	Inspection & Enforcement
Waltham Forest	Yes	Highways
Lambeth	No	
Lewisham	Yes	(General) Admin Team
Hammersmith & Fulham	Yes	Highways (?)
Kensington & Chelsea	Yes	Transport & Highways
Ealing	Yes	Highways
Hounslow	Yes	Hounslow Highways
Newham	No	
Brighton	Yes	Highways/Street works

3.3 Highway Damage

This section will cover the damage to highway classifications like types of damage occurred, sources of damage and how often they are reported. It is important to note that the focus is aimed towards damage to footways as a result of works, however with the amendment of legislation in the 2013 Act it is important to note enforcement can be handled for all aspects of highway damage.

To understand a little better of what damage Council's are likely to deal with, it was necessary to ask "Are there specific classifications for types of damage?"

Borough	Response
Waltham Forest	No, but reports mainly consist of footway damage.
Ealing	Highways Damage & Damage meeting safety criteria.
Brighton	Highway Maintenance & Emergency Repair.

The way in which Ealing and Brighton operate in this manner is very similar, where the safety/emergency criteria is defined by the size of the trip and its location following a site based risk assessment by an inspector. Waltham Forest stated that from experience the main types of damage reported are due to HGVs driving over footways/the verge, or skips being placed on the highway or developers mixing cement.

Another aspect of classification for damage is the source of the damage itself. Here's a table of answers for "Are there classifications for sources of damage?"

Borough	Response
Waltham Forest	No.
Ealing	No, 3 rd Party Damage as a description.
Brighton	No.

Where there are plenty of different types of sources of damage, all councils that responded did not classify them to different areas. Ealing does include 3rd party damage in the description, but the detail does not go further than that. However Ealing did provide information on what their most common sources of damage are:

- Skip collections/deliveries;
- Excavations in the highway;
- Material deliveries;
- New/Ongoing developments;

- Damaged/Missing utility plant or street furniture;
- RTC (Road Traffic Collision) Damage.

3.4 Vehicle Crossovers & Footways

Currently there is still some information pending in this area so there will be additions, but the majority of necessary information has been included.

Vehicle Crossovers specifically are an area of interest as there are concurrent incidents of damage, not just in Barnet but in many London Boroughs. This is often a result of HGVs accessing on to the footways/verge/crossover to collect/deliver a skip or building materials.

To get a grasp of how common crossover constructions are, here's a table of the number of vehicle crossovers authorised by Councils constructed for 2008-2010.

Borough	Crossovers Constructed for 2008-2010
Hammersmith & Fulham	119.
Barnet	850.
Enfield	2623.

The standard engineering detail of Crossovers is not designed to a strong enough standard to withstand the weight of HGVs, often causing cracks or severe breakage. Brighton has informed that the basics of a Vehicle Crossover in a residential area is constructed of 100mm of concrete and tarmac or paving slabs bedded on the concrete. These are designed with the expectations that only private light goods vehicles will be using them.

"Would the crossovers be suitable for an HGV to access on them? If not, how are they controlled/enforced?" This was a question to Brighton in which they answered that any HGV access on crossovers should be occasional, and not often. Expressing that at an application stage the crossover will be categorised between private and commercial property. A commercial property would have 150mm concrete construction as a requirement which can withstand the HGV limit.

Brighton also expressed that it is not practical to monitor each crossover after construction other than through current routine highway inspection. In the instance damage has occurred, the issue is addressed with the property owner directly and would go from there.

3.5 Enforcement Code of Practice

Enforcement spans a long process from the beginning of the development licence application process to the reclaiming of repair damage costs. As part of the benchmarking exercise it was necessary to research into any Code's of Practice being used, Internal processes set out, how often enforcement takes place and how developments are regulated.

"Is there a guidance or code of practice that is adhered to?"

Borough	Response
Richmond	No guidance/code of practice.
Waltham Forest	Environmental Services Enforcement Protocol.
Lewisham	No guidance/code of practice.
Kensington & Chelsea	No guidance/code of practice.
Ealing	The Highways Act 1980, supplemented with experience.
Brighton	Varies, S.131. 1980 Act or B&H Permit Scheme.

In summary of the replies received, the main guidance used is the same as the legislation that is enforced against, the 1980 Highways Act. This act is complimented by in-house guidance from the local permit/licence schemes, so the general opinion is that these documents are enough guidance for enforcement teams to operate without a specific code of practice for operational procedures.

With enforcement officers being technically experienced and aware of the standard enforcement regime, the need for a code of practice would only be required if a new process were to be implemented which is fundamentally different to the current processes or if the team of enforcement is newly recruited, this is the current opinion of most Highway Authorities included in the benchmarking.

3.6 Operational Process of Enforcement

"Is there a process set out for the practice of enforcement?"

Borough	Response
Richmond	Applications, Deposits, Approvals, Surveys, etc.
Waltham Forest	Yes, due to be update in coming months.
Lewisham	Surety, deposits, refunds, repair cost claims, etc.
Hammersmith & Fulham	Keep details and reclaim repair costs.
Kensington & Chelsea	Gather evidence and reclaim repair costs.
Ealing	Currently going through consultation.
Hounslow	Public report concerns, team carrying out inspections.
Brighton	Duty to maintain under the 1980 Act.

The enforcement process is closely tied with the application process as shown, where a developer that applies for a licence of planned works has to pay deposits in case any

damages were to occur. The application process for Barnet has already been covered but as a brief overview; almost every highway authority has a similar process with regards to the application process for licensing.

This covers where a development is licensed, but what is the process when the damage is caused by an unlicensed development? In this case most council's will reclaim the repair costs through S.133 of the 1980 Act after investigating and identifying the responsible person.

"What legislation is used to regulate against?"

Borough	Response
Richmond	Reclaim costs via S.133, 1980.
Waltham Forest	S.133 or S.131, 1980.
Lewisham	S.133, 1980.
Kensington & Chelsea	S.133, 1980.
Ealing	S.133, 1980.
Hounslow	1980 Act.
Brighton	1980 Highways, NRSWA 1991 and B&H Permit Scheme.

Most councils will recover the costs of damages incurred using this legislation, not directly charging the landowner/developer for damaging the highway as an offence. In cases where the landowner/developer refuses to pay up, both Richmond and Walthamforest have stated the expenses would be recovered as a civil debt, which may also use S.131 of the Highways Act 1980. However this action of enforcement is rarely acted upon as developers often pay when they are responsible for the repairs.

"How often does the council enforce action for damage to highways?"

Borough	Response
Waltham Forest	77 reports this year, none requiring enforcement.
Ealing	30 reports per month requiring remedial action.
Brighton	Almost never enforced as repair costs always agreed.

Evidently the enforcement in this area would seem successful; this can be expressed as a positive result of the process method of enforcement where Inspection and Enforcement teams gather evidence of the damage and create case files for each report. This is also effective in cases where the works that have taken place are/were unlicensed and the damage has been brought to the attention of the council via a complaint/report.

3.7 Benchmarking Summary

The benchmarking information concludes that most authorities have found it difficult to prove from their damage reporting who was responsible and when damage has occurred.

None of the councils contacted have a deposit system in place outside of the Planning Consent route. If the damage is accidental then this is hard to enforce too. This is a result of the classifications for sources of damage only going as far being described as 3rd party damage.

The general view that is provided of enforcement for highway damage is that the authorities base their enforcement regime around the application process, where if damage is made by a licensed development, then it is practically insured by the deposit previously paid in advance. Outside of the planning and building regulation application process, any attempt of enforcement is through a public complaint route and post damage report.

As far as unlicensed developments go, there isn't much routine in enforcement of issuing fines. Unlicensed developments only occur as a problem when it has caused damage and a public complaint is made which notifies the highway authority, otherwise the existence of the works after they have been completed is hard to identify/recognise.

Complaints/reports do not come often, and when they do occur it is about the damage to the highway normally presenting on a public safety issue, not whether the development was appropriately licensed.

4. BARNET PILOT STUDY

4.1 Introduction

Currently there are still areas of this Pilot Study that are being researched, and the cases that were taken forward for enforcement are still outstanding for a decision at the point of writing this report.

4.2 Highway Damage

The Pilot Study carried out by Barnet focused on footway damage as a result of ongoing developments adjacent to the highway of which there was damage outside 292 residential properties. The total area of damage was estimated at 2,471 square metres at a total cost of £364,966.

Result data given showed that during the 'follow up properties' stage of the enforcement process, the common descriptions given were:

- Damaged/Cracked Paving;
- Sunken verge/Damaged Crossover;
- Skip on Premises or Road;
- Scaffolding on Premises or Road;
- Building Materials on Premises or Road;
- Renovation/Building Work behind Hoarding;

These describe the nature of the inspection, where 'Skip on Premises or Road' does not mean damage has been caused but that there is a possibility of damage in the future, whether it's to the footway when being collected or other aspects of the highway, and this may need to be followed up or regularly monitored. The most common description, besides skips, was damaged paving with different levels of damage. Some properties were described as minor cracks where as others were severe, however in all cases a follow-up inspection was ordered.

The resulting data given at the end of the Pilot Study provided an estimate that if exercise was rolled out across the whole borough, then the number of properties with damage outside could be over 850 with costs of repair in excess of £1 million.

4.3 Enforcement During Pilot Study

The Pilot Study undertaken by Barnet consisted of two part-time employees, employed over a three month period. They were trained by an experienced safety inspector and assistant engineer. The site surveys would include, for each development:

- Visual Inspections;
- Photographs;

- Damage description

These would be used to establish the responsible person(s) for the damage caused. The damage would then be enforced at the end of the inspection period by sending Notices under section 133 of the Highways Act 1980 for a sample of 20 property owners.

Over the three months, out of a total of 703 streets there were damages to footway as a result of development activities identified at a total of 292 residential properties. A further 302 ongoing residential developments were identified with no damage to the footway, which the enforcement team took photographic evidence of for possible future monitoring.

The sample of 20 property owners were each sent a 'Section 133 Letter', which would include the following passage of legislation:

It is an offence in accordance with Section 133 of the Highways Act 1980 to damage the footway of a maintainable highway by excavation or as a consequence of works on adjoining land. The Highway Authority may make good any damage and recover any expenses incurred from the owner of the land of the person responsible for the damage.

As well as quoting the costs of repairing the damage and the requirement of the responsible property owner to pay using an enclosed cheque/card payment form. At the end of letter is information on how to appeal, either by writing a letter to the Council address or sending an email to the address give, with a time deadline of 28 days.

If no payment or appeal was made within the 28 day deadline, the Council sent a 'Section 133 Final Reminder Letter' asking the responsible property owner to pay within the next 14 days or face legal action from the Council.

Of the 20 owners in the sample:

- 10 owners appealed for various reasons;
- 5 owners did not respond;
- 3 owners accepted responsibility;
- 1 owner repaired the damage themselves (to a good standard but with no authorisation);
- 1 owner requested to repair the damage by themselves (but has been informed highway work can only be undertaken by authorised contractors for LB Barnet).

The 5 owners that did not respond to the notices have not been accounted for in the Final Report.

4.4 Pilot Study Summary

As far as research shows, many Councils construct the vehicle crossovers similar to the existing footway. This creates plenty of types of crossovers with differing engineering details, with some made entirely of tarmac, which is not strong enough for anything more than a

private LGV to cross over regularly. It can also be seen in the follow up property list that damaged footway is very common alongside crossover damage for the same reason.

It is understood that this area of highway damage is the key motivator in developing the enforcement regime. The enforcement process used in the Barnet was efficient with the follow up checks of properties undergoing developments and any future process will include this stage of enforcement.

The physical inspections undertaken by the inspectors were efficient to the point that if damage was found at one of the development sites then there would not be a problem in proving the damage was caused as a result of that development. However there may be ways in which the inspection process can be improved in order to ensure that if fresh damage is apparent then specific criteria are recorded to reduce doubt that each case of damage pursued will be successful.

From the sample of 20 property owners served with the notice for repair costs, it's evident that the large percent (50%) of appeals would cause a problem at a borough-wide level of enforcement. Conclusions given in the final report of the Pilot Study say that if the Council did not prepare to take action for appeals then the Council would risk gaining a reputation of not pursuing these appeals.

5. BARNET CONSTRUCTION LICENSES

5.1 Introduction

This section describes the licensing process for Barnet currently. The application process information is provided by the LBB website for construction licences, guidance notes and application forms. Enforcement of licensing information is provided by the Barnet Pilot Study and Information Benchmarking. The site also currently refers to 'building licences' which appear to be the same thing.

The current licensing process for Barnet divides developments into applying for 5 main types of construction licence/permit and 1 highway licence for general developments.

5.2 Application Process

The information for this section has come from LBB's site on construction licences, as well as some research inside the process itself with the Information Benchmarking. This process used is similar if not identical for all councils currently.

Currently in the Barnet guidance notes it informs that there are construction licences required for the following developments:

- Skips;
- Scaffolding/Hoarding (only acceptable for scaffolding companies);
- Building Materials;
- Cranes/Hoists (technically applying for a Crane Indemnity);
- Habitual Crossover;
- (Any work that will encroach the highway needs a general) Highway Licence.

In the application process it is the landowner's responsibility to make sure that the correct licenses are in place, however it is common practice for the application to be made by the builder on behalf of the landowner.

When a developer inquires about a development licence to the council, they will have to include the location of the development and the nature of it. The council will then email the application forms to the applicant developer and will authorise a highway inspector to take pre-conditioned surveys of the location within 48 hours.

The highway inspector will collect data on the current condition of the proposed location, and using the data will calculate an amount for the deposit (as long as the site is appropriate for works), which will vary depending on the nature of the location and works. The highway inspector will then contact the applicant informing them of the deposit amount required, as well as licence conditions.

The conditions for construction licenses are set out in the *Guidance Notes for Building Activities in the Borough* which can be found on the Barnet website. The conditions set out in this document include; lamping at night, not obstructing highway drainage and other specific standards that are enforceable under the relevant sections of the 1980 Act.

The Developer will then have to return the completed forms with all the relevant payments included. The licence admin fee is set at £173, and the deposit is a minimum amount of £516.

Once this is sent to the Council, the Council will aim to respond within 4 working days to approve the licence, as long as the form is completed and payments have been made it is unlikely for the Council to reject. The Council then issues the licence/indemnity to the developer and the works can start as soon as the period for the permit begins.

5.3 Enforcement of Licensing

The deposit paid for the licence is calculated by the highway inspector that undertook the pre-conditioned surveys and should cover any repair costs for damage caused by the development, it is not said what the process is for when the costs of repair exceed the deposit paid but one would assume that the Highway Authority would reclaim the remaining costs via S.133 of the 1980 Highways Act.

It is not stated how often inspections take place; the usual practice would be to inspect before the development and then after the works are finished to ensure no damage has been made. However for the Benchmarking exercise many Highway Authorities did not state their position on post-condition inspection routines.

In regards to the Pilot Study that Barnet undertook, the dedicated officers routinely inspected every development site in the respective area. It is not clear in the report whether this meant that every known location of a licensed development was inspected however that would be ideal for Enforcement.

The Pilot Study report also shows that within inspection of the 'known' developments the Enforcement Officers would record data of unlicensed developments which the Re Licensing team took action for a number of, issuing fines for inappropriate licensing. It is not clear what the level of the fine is (though as the fine is an FPN it has set levels), however the developer would also have to pay for the correct licensing, which is known, in addition to the fine for incorrect licensing.

An important observation is that complaints/reports the highway authority receives from the public will refer only to when damage is made to the highway, not reports of an unlicensed development. This is an area worth looking into for enforcement and would be closely tied with the application/licence process.

5.4 Summary

A brief section underlining the key areas in licensing that should be addressed.

The current separation of licenses between the 6 options listed covers all major topics of large to small development. The application forms for construction licenses are extensive enough to cover all kinds of development, but the area of interest is using the application process to improve enforcement. The general highway license may be worth considering for defining what developments fit in that option.

Licensing enforcement needs to be developed to the point where the amount of unlicensed developments occurring can be estimated and efficiently enforced. Currently there is no way of telling how many unlicensed developments there are, excluding those that have caused damage and have been reported due to the fact.

It is ideal to have an enforcement process that can ensure that all conditions set out in the guidance notes are up to the standards that each development should be, however this level of enforcement may be difficult to develop.

The Barnet pilot showed there were 'a number of' incidents where developments did not have appropriate licensing and had to issue fines, the method in which the unlicensed developments were discovered is what needs to be focused on. Between routine inspections of licensed developments, the enforcement officers recorded data of; skips, scaffolding, building materials and hoardings on the public highway that were not known to the highway authority. The routine here can be further developed.

Alongside developing the routine, there may be other options to consider, for example the Enforcement Officer being able to issue an FPN on the scene after having recorded information of the unlicensed development. Most improvements made would be at an operational procedure level for Enforcement Officers.

6. PROPOSED OPTIONS FOR OFF STREET SKIP DAMAGE ENFORCEMENT

Within Barnet a skip company requires registration of an operator's licence to operate in the borough, which means they have exclusivity within the borough to operate when placing skips on the highway, although there is no current restriction for an unregistered business to deliver a skip to private land.

The following options could be adopted independently however it is recommended that all three options are adopted and used together as they will support each other:

- **Construction Licence** - Introduce an Off-Street Skip Licence scheme that requires a deposit and fee prior to a skip being delivered to private land
- **Operator Licence** - Introduce a clause in the registration licence for all Barnet skip operators to seek permission for access to deliver a skip to private land when crossing the footway/verge/cycleway
- **Damage Reporting** - Investigate and compile a report when damage is identified or a skip is found on private land, for the purpose of evidence for prosecution in the event of damage

6.1 Construction Licence

As detailed in this report Barnet has recently introduced a suite of construction licences, see section 5. These licences require a deposit from the landowner depending on the size of the development, and also require an administration fee.

The minimum value requested is currently:

- £516 deposit
- £173 administration

This means that as a minimum a landowner is required to pay £689 in total prior to reclaiming their deposit.

6.1.1 The Proposal

It is proposed that the construction licence principal of deposits is carried over to an 'off-street skip licence' which could form part of the construction licence set. This licence would be different and more expensive to obtain than the licence required to place a skip on the highway.

A proposed process for enforcement of an off-street skip licence can be found at Appendix A. The principal of which is based on recovery of damages to the highway in consequence of adjacent works under Section 6 of the London Local Authorities and Transport for London Act 2013 which substitutes Section 133 of the Highways Act 1980.

The emphasis is on the landowner to apply for a licence in order to protect themselves from being pursued for historical damages adjacent to their property.

6.1.2 Application & Pre-Works Survey

It is understood that the main desire of the authority is to place a control on skips delivered to private frontages and therefore the application for an off-street skip licence is likely to be stringent, it will require evidence that a habitual cross-over is present and has been engineered to a sufficient grade to support heavy goods vehicle access. This is unlikely in all cases for domestic frontages.

Alternatively if the applications were chosen to be more widely accepted than above, the risk of damage could be detailed within the 'notice of acceptance' as a warning to the landowner and their responsibility of financial maintenance recovery reaffirmed in a letter, including an estimate for a deposit required prior to consent (this could be more than the minimum £516).

If an application is accepted the skip delivery is not authorised until the fee has been received.

If not accepted a 'notice of rejection' is sent advising that the skip should be placed on the highway and advising the appropriate action to be taken for this.

Regardless of the decision the application could trigger a report and evidencing to be made that could be used if the licence refusal is ignored.

Alternatively the standard response could be that unless the landowner can evidence the structural composition of the cross-over then it is refused as there is no record of a strengthened surface held, it may still be useful for the council to take photographs of the site.

6.1.3 Mid-Works Survey

This is a mechanism to strongly encourage a licence to be retrospectively applied for when a skip is discovered with or without damage on the highway.

It is important to note that risk of damage is much more likely when the skip is collected rather than when delivered. A Mid-Works survey would act well to evidence subsequent or recent damages.

Should a skip be discovered on a driveway which has not been licensed (these would be very easy to identify if the council takes a strong line on applications). Then a letter to the householder could be delivered notifying them that they are now at risk of being pursued for any damage found in front of their premises regardless of how historic this damage is.

At this stage the inspector would gather evidence for a 'mid-works' report preferably at the same time that the letter is hand delivered.

The mid-works survey would record any evidence of obvious recent damage such as fresh clean cracks in slabs or concrete. It is assumed that in most cases some damage will be present and it will be important to record this for comparison post-works (when the skip has been collected by HGV).

Emphasis within the mid-works letter would be made that if the landowner chose to immediately apply for an off-street licence then they would benefit from an assessment of any historical damage that would not be claimed for repair costs.

If the owner does not take out a licence then any damage found following the collection of the skip (post-works) no matter how historic, may be claimed for.

6.2 Operator Licence

Barnet currently requires all skip companies that operate within the borough to be registered. In order to register skip companies must provide:

- proof of public liability insurance - with a minimum cover of £5,000,000
- a copy of a waste transfer note
- a waste carrier's licence certificate
- a goods vehicle operator's licence.

It is proposed that in addition to this the operator could also be required to comply with terms specific to the borough.

6.2.1 Proposal With off-street licences in place

The proposed terms would include that if there is an off-street skip licence scheme in place then **the operator must ensure that this licence has been approved before delivering any skip to any private land**. This would cover circa 46 skip companies currently registered within Barnet including the larger national companies, and could also include a deposit scheme, although that is not the initial proposal when off-street licences are in place.

Skip companies from neighbouring boroughs are currently able to operate in Barnet if they are delivering to private land, so this would present a risk of an increase in these companies operating for this purpose if not controlled. These companies (such as operators within Enfield) could also be notified that they have a responsibility to advise any customer within Barnet of their requirement to obtain an off-street skip licence. As Barnet will, during prosecution, offer evidence that the operator had been so advised, and therefore they could be sued by the landowner directly for misinforming them.

It may also be that neighbouring boroughs choose to follow Barnet's practice if successful and there could be an opportunity for the Boroughs to list conditions in their registration requirements that specify similar terms supporting neighbouring boroughs.

6.2.2 Proposal Without off-street licences in place

If there is no desire, or it is not practical to implement an off-street skip licence scheme, the operators could be required to conform to conditions within the Operators Licence Registration conditions. Much the same as above but a deposit could be taken as part of the registration fee, to cover damage caused to the highway when delivering skips to private land. There would be a risk of increase of operators outside of the borough increasing under this regime.

6.3 Damage Reporting

Effectively this option would be the natural final stage of either or both of the above. It could also be a stand alone option should the above not be uptaken.

This option concludes the damage report survey process above as a 'post-works survey'

6.3.1 Post-Works Survey

Damage reporting includes the gathering of evidence into a report for the purpose of prosecution of the party responsible for damaging the highway and the prosecution thereof under section 133 of the Highways Act 1980 and the subsequent section 6 of London Local Authorities and Transport for London Act 2013, which states:

6. Damage to highways in consequence of adjacent works

The 1980 Act shall apply in Greater London as though for section 133 (damage to footways of streets by excavations) and its heading there were substituted—

"133 Damage to highway by carrying out of works

If a highway maintainable at the public expense is damaged by or in consequence of any works on land adjacent to the highway, the highway authority for the highway may make good the damage and recover the expenses reasonably incurred by them in doing so from—

(a) the owner of the land in question; or

(b) the person carrying out the works; or

(c) the person on whose behalf the works were carried out."

In the case where a licence has been obtained and a deposit offered then the damage report would follow the post works survey and would assess damages caused since the beginning of the works, or delivery of skip in this case, and charge the licensee accordingly pursuing any further costs as required.

In a case where there is no licence in place then a post-works survey will be conducted and a report would be compiled (which might include a mid-works survey as evidence if one has taken place) and an option to consider damages that are evidently historic could be balanced within the claim, but nonetheless the landowner of the driveway or development land would be pursued for damages following the flowchart process at appendix A

DRAFT

7. RECOMMENDED ACTIONS

7.1 Next steps

- Individual interviews and data gathering with LBB

An email was sent to CapitaRE on 09/12/16 requesting to arrange an interview with staff involved in the Pilot Study but unfortunately these staff are now engaged in other work and are not available. Capita have however offered to assist with any questions when the draft report is shared.

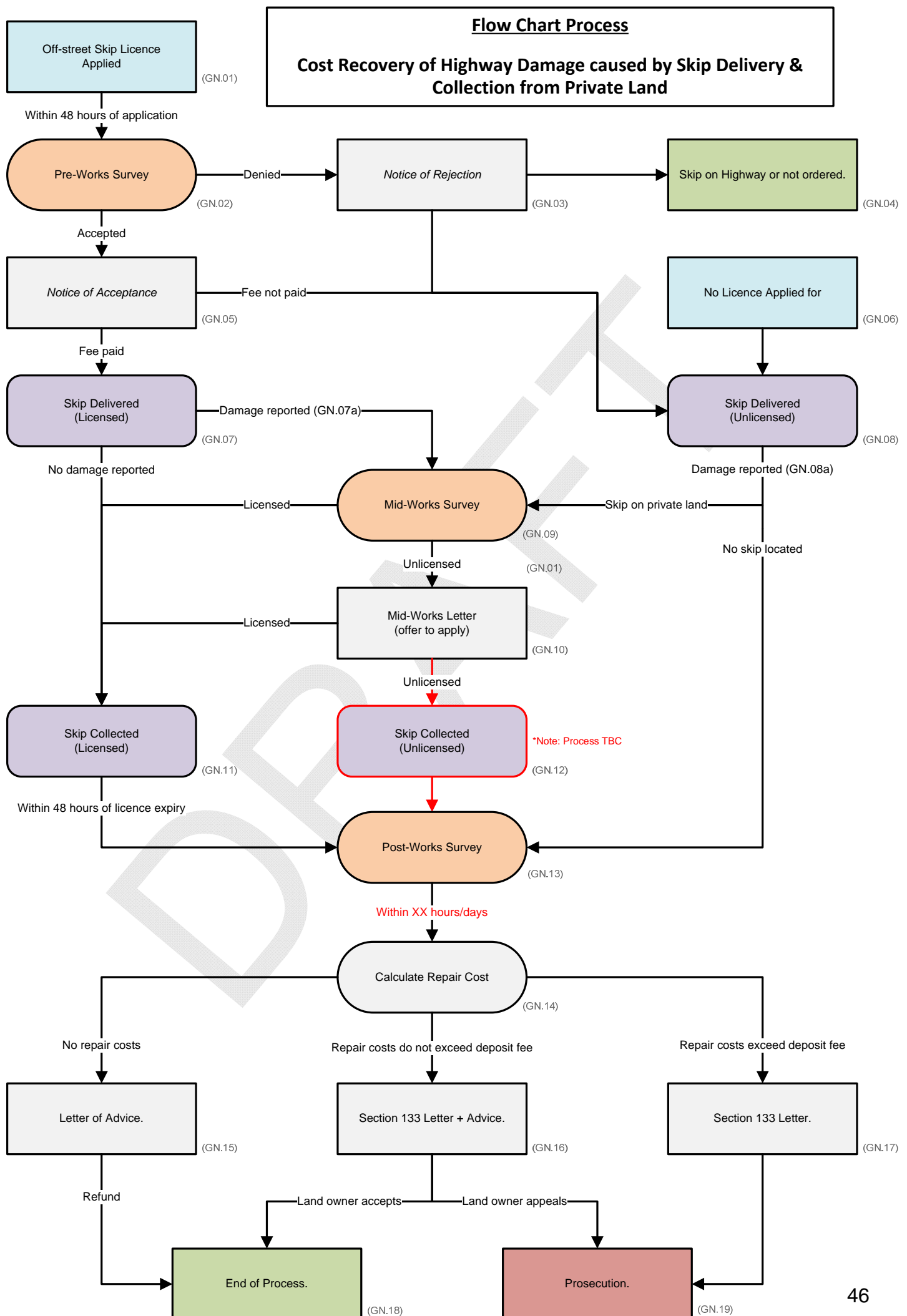
- Workshop and group discussion – Legal and Statutory requirements, operational requirements

To be agreed in early January 2017 - This will agree the proposed options to take forward from this initial report and will confirm the operational procedure stages, and departments.

- Advise on ancillary documents
- Review and refine Operational Process with LBB staff
- Phase 2 – Prepare Code of Practice
- Gate Review - Issue final

DRAFT

Appendix A



Cost Recovery of Highway Damage caused by Skip Delivery & Collection on Private Land

(Guidance Notes)

This document is to be read in conjunction with the Flowchart for the process

GN.01. Application for off-street skip licence

Standard construction licence application process currently used by Barnet but with the addition of an off-street skip licence.

GN.02. Pre-Works Survey

The survey will be subject to criteria and assessment for whether the location is suitable, as well as documenting the current condition of the highway. Whether the location for works is suitable will be subject to the following criteria:

- The footway in front of the property being used to deliver/collect the skip is a habitual crossover that is fit for regular HGV Access;
- Other tbc

The condition of the highway by the private land will be documented by:

- Taking photos of the footway that is going to be used for HGV access;
- Taking photos of the carriageway outside of the location;
- Noting any existing damage and taking photos;
- Other tbc

GN.03. Notice of Rejection

To be posted to the land owner when the Authority decide that the Pre-Works survey result is unacceptable for an off-street skip to be placed. This Notice will advise that, where applicable, the land owner should apply for a skip permit for the carriageway.

GN.04. Skip on Highway or Not Ordered

Where after the owner has been served a Notice of Rejection, they have decided to apply for a Skip Permit for the highway or have not ordered the skip.

GN.05. Notice of Acceptance

To be posted to the land owner when the Pre-Works survey show the location is acceptable for an off-street skip. An estimated deposit fee, to safeguard possible repair costs to the highway after the works, is sent with the Notice and once paid the works will be authorised.

GN.06. No Licence Applied for

The owner is going to have a skip delivered to their land and has not applied for the off-street skip licence.

GN.07. Works authorised and Skip Delivered

Once the deposit fee has been paid and the licence permit date starts, the skip operator is authorised to deliver the skip on site.

GN.07a. Damage Reported

This may come from any number of sources:

- The land owner;
- Skip company operating;
- Public complaint from a neighbour;
- Inspector from another team.

GN.08. Works unauthorised and Skip Delivered

Where a Skip Company has not properly informed the land owner of the necessity of an off-street skip licence and has delivered a skip to the private land unauthorised.

GN.08a. Report of Damage outside of licence process

This is a report of damage not specifically about a known licensed development; it can refer to unlicensed developments as well. If the skip is still placed on the private land at the time of the report this will provoke a mid-works survey, or if there is no sign of works it will be responded with a post-works survey.

GN.09. Mid-Works Survey

The main aim of the Mid-Works Survey is to respond to reported damage and gather evidence, though there is another process in the Survey which is responding to unlicensed skips on private land also. There will not be a warning, invoice or calculation for damage repair costs until after the post-works survey. The evidence for damage to be gathered at this stage includes;

- Photos of the development;
- General overall photos of the footway & carriageway;
- Specific photos of any damage caused;
- Notes of most possible causes of damage.

If it is the case that the complaint did not include whether the works are licensed, the Highway Inspector will have to double check by using a HDS and contacting the licensing team. When it is certain the skip is unauthorised, then the Survey will also include;

- Taking photos of the skip that show if the skip company name is marked;
- General photos of the development;
- Talking to neighbours of the resident property and asking about when the skip was placed;
- Other tbc

GN.010. Mid-Works off-street skip licence application letter

After performing the Mid-Works Survey the Highway Inspector will post, to the land owner, a Mid-Works off-street skip licence application letter that will strongly advise that the land owner applies for a licence so that they may not be liable for any historical damage.

GN.011. Works complete and skip is collected from site

The off-street skip licence is expired and the skip company has collected their skip.

Following agreement with client- develop process where the skip company has not collected the skip after the licence has expired.

GN.012. Skip collected without licence

This is where, after a Mid-Works off-street skip licence application letter has been posted, the land owner did not apply for an off-street skip licence for the remainder of the works (i.e. have paid no deposit fee) and the skip company has collected the skip.

GN.013. Post-Works Survey

The Post-Works survey is the most vital part of the process for claiming damage repair costs, the survey will include;

- Taking a general photo of the private land the skip was placed on;
- Photos of the footway and carriageway;
- Specific photos of any damage;

- Notes on all kinds of damage, including estimates of how historic;
- Other tbc

If there are Pre-Works or Mid-Works Surveys before this then the damage reported in them will be noted and compared with the condition of the highway after works. This will later be calculated.

GN.014. Calculating repair costs

The Highway Authority will use the survey data to conclude whether there is any damage that has been caused by the works which needs repairing. Using the data and estimates of expenses for repairs, the authority will calculate the repair costs if there are any needed.

GN.015. Letter of Advice for no repair costs

This letter will advise the land owner that they are entitled to the whole of their deposit fee and must contact the Highway Authority to claim it back.

GN.016. Letter of Advice and Section 133 Letter for repair costs less than deposit fee

The Section 133 Letter will inform how much of the deposit fee is being used to repair damage caused by the works, with photo evidence of the damage. The Letter of Advice will inform the land owner of the amount of the deposit fee they can claim back and if they wish to do so they must contact the Highway Authority.

GN.017. Section 133 Letter for repair costs exceeding deposit fee

The Section 133 Letter will inform the land owner that the entire deposit fee is being used to repair the damages and that the expenses caused as a result of the works are larger than the deposit fee initially paid so they must pay the remaining amount of repair costs, which is stated, or face prosecution. The Letter will include some photo evidence of the damage.

GN.018. End of Process

Where any damage repairs caused by the works have been dutifully paid in full.

GN.019. Prosecution Process Begins

Following the evidence gathered from the surveys, if not all repair costs have been paid then the Highway Authority will be able to effectively pursue the responsible person.

Quality

It is the policy of Project Centre to supply Services that meet or exceed our clients' expectations of Quality and Service. To this end, the Company's Quality Management System (QMS) has been structured to encompass all aspects of the Company's activities including such areas as Sales, Design and Client Service.

By adopting our QMS on all aspects of the Company, Project Centre aims to achieve the following objectives:

- Ensure a clear understanding of customer requirements;
- Ensure projects are completed to programme and within budget;
- Improve productivity by having consistent procedures;
- Increase flexibility of staff and systems through the adoption of a common approach to staff appraisal and training;
- Continually improve the standard of service we provide internally and externally;
- Achieve continuous and appropriate improvement in all aspects of the company;

Our Quality Management Manual is supported by detailed operational documentation. These relate to codes of practice, technical specifications, work instructions, Key Performance Indicators, and other relevant documentation to form a working set of documents governing the required work practices throughout the Company.

All employees are trained to understand and discharge their individual responsibilities to ensure the effective operation of the Quality Management System.



DOCUMENT CONTROL

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Job Number	Issue	Description	Originator	Checked	Authorised
1000003030	01	First Draft	Liam Cowley 12.12.16	Adam Cozens 21.12.16	Kevin Donnelly 22.12.16

File path: G:\Project Centre\Project-BST\1000003230 - LBBa Highway Damage\7 Project Delivery\ 20161221ac - DTH Skip on Private Land.docx

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