

## Environment Committee

11 May 2017

<b>Title</b>	<b>Damage to Highways</b>
<b>Report of</b>	Commissioning Director (Environment)
<b>Wards</b>	All
<b>Status</b>	Public
<b>Urgent</b>	No
<b>Key</b>	No
<b>Enclosures</b>	Annex A – A simplified guide to lorry types and weights Appendix A – Report Cost recovery of Damage to the Highway
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### 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
<b>LIGHT GOODS VEHICLES</b>			2 axles	3.5	no rear side windows 
<b>LORRIES</b>	<b>HEAVY GOODS VEHICLES</b>  (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-	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.