



## Environment Committee

11 September 2019

<b>Title</b>	<b>Paving Slab Enhancement – Privately Funded Highway Works</b>
<b>Report of</b>	Chairman of the Environment Committee
<b>Wards</b>	All
<b>Status</b>	Public
<b>Urgent</b>	No
<b>Key</b>	No
<b>Enclosures</b>	Appendix 1 - Privately funded minor highway improvements flowchart Appendix 2 - Privately funded highway improvement application form Appendix 3 - Standard footway details
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### Summary

At the meeting of Full Council on 30<sup>th</sup> October 2018 a motion was passed requesting that Environment Committee introduce a process to enable residents and businesses to pay for the replacement of cracked paving stones that may be visually undesirable but do not meet the current intervention criteria for works funded on an asset and risk management basis by the Council.

This report explores how such privately funded highways works can be enabled, the issues that need to be considered and the criteria, processes and next steps that need to be taken towards implementation.

## **Officer Recommendations**

- 1. That the Environment Committee notes the content of this report and the legal advice from HB Law in paragraphs 6.4 to 6.7.**
- 2. That the Environment Committee notes the potential implications of agreeing privately funded works as stated in this report as detailed in paragraph 2.5.**
- 3. That the Environment Committee approves the inclusion of other footway types e.g blacktop, modular and concrete (or combinations thereof) within this process.**
- 4. That the Environment Committee approves the “Like for Like” replacement of the footway and agrees that no new materials be introduced to change the visual appearance of the footway on the road / street in question.**
- 5. That the Environment Committee approves that any work resulting from this proposal is only undertaken by the Council’s Term contractor for Highway Works and work will only commence once funds have been received.**
- 6. That the Environment Committee agrees that the Paving Slab Enhancement – Privately Funded Highways Works scheme is approved and managed through existing highway processes subject to the provisions of paragraph 6.0 of this report.**
- 7. That the Environment Committee agrees to charge a non-refundable fee, of £182.45 (the same as the vehicle crossover fee) for processing the initial application and the recovery of management costs as part of the quotation for highway works.**
- 8. That the Environment Committee approves the review and development of existing Highway processes and documentation approved for the current Residential Crossover Scheme to manage this initiative and delegate their approval to the Executive Director for Environment.**
- 9. That the process is reviewed in a year to consider programme volumes and the adequacy of the operational, administrative and governance arrangements and provide a report to the Executive Director for Environment for approval.**

### **1. PURPOSE OF REPORT**

## Introduction

- 1.1 The Environment Committee has responsibility for all policy and budgetary matters related to Highway Services in Barnet, with significant resources allocated annually to both footway and carriageway works on a prioritised basis in accordance with Asset Management principles as detailed below:

### Programme Allocation

Type of works	Allocation £	Allocation percentage split
Carriageway resurfacing	£2.111 million	36%
Footway relay	£3.035 million	52%
Carriageway patching	£0.700 million	12%
Total	£5.846 million	100%

- 1.2 At Full Council on 30<sup>th</sup> October 2018 it was, however, resolved to permit residents and businesses (or a number of adjoining neighbours) to promote and fund maintenance and/or improvement works on the public highway outside of existing programmes for carriageway and footway maintenance and the associated policies, systems and procedures.
- 1.3 A motion was introduced by Councillor David Longstaff entitled “Right to buy”. The motion stated:- *“Council notes that some cracked paving stones don’t reach the criteria that warrant replacement from the Highways Department, but are unsightly. Council supports residents and businesses who wish to pay for our term contractor to replace cracked paving stones on a like for like basis.”*
- 1.4 Investigations involving other London Highway Authorities indicate that this type of proposal has not been introduced elsewhere and is, therefore, an unprecedented initiative which requires careful consideration. However, after a wider investigation, Cambridgeshire County Council does have such a process which has been considered in the development of these recommendations.

## 2 REASONS FOR RECOMMENDATIONS

- 2.1 The Council’s capital footway and carriageway programmes are prepared annually and reported to the Environment Committee for consideration and approval. They are developed using an independent condition assessment with nationally consistent standards applied to all assets in the borough. This condition data is used, with other defect information, input from the highway safety inspectors, who have local knowledge gained through their regular site inspections, and the application of whole life cost principles together generate the footway and carriageway programmes which identify deteriorating assets for appropriate treatment and funding and deliver best value outcomes for all residents.
- 2.2 All ward councillors are annually invited to review the proposed footway and carriageway programmes and, as a result of this consultation and engagement, the programmes may be revised to generate what are the final versions. These will only then be subject to review and possible change if future development or statutory undertaker works within the borough conflict and may result in abortive works, or where engineering practicalities mean that the proposed treatment type is no longer suitable. Any schemes that cannot be progressed or are delayed due to the above are replaced in priority order.

2.3 There are, however, circumstances where footway and carriageway assets do not meet intervention levels to trigger reactive works or planned maintenance schemes funded by the Council. In these circumstances, a footway or carriageway asset may still be considered unacceptable in visual or environmental terms perhaps and it is recognised there may be a desire to fund these works locally from within the community. This initiative empowers community groups or local residents to bring forward and fund improvements and gives local people real influence in their local community.

#### 2.4 Recommended Option

The Authority supports the establishment of a mechanism to facilitate residents and businesses who wish to pay for the Council's Highways Term Maintenance Contractor to replace cracked paving stones on a like-for-like basis following the process flow chart and application form as detailed in the Appendices to this report.

#### 2.5 Issues for consideration and resolution

Where individual residents, or a number of neighbours, are permitted to pay for additional maintenance and/or improvement works outside of the Council's capital programmes described above, this could be perceived as unfairly delivering works outside of stated policies. In addition there are a number of practical issues that will require additional administrative, management, financial and operational input by Council Highway Officers:-

- The Council's current treatments and specifications will be applied on a like for like basis and there will not be scope for the use of different designs including construction depths, materials and finishes etc for privately funded works.
- The total cost of the works process - design, construction, supervision etc. - would be based on current contractual arrangements and requirements while individuals might suggest the use of alternative provision with resultant management and operational impacts.
- Arrangements for future maintenance and liability for any works completed would be subject to the provisions agreed under paragraph 6.0 of this report.
- The environmental impacts of isolated maintenance of improvement works which are resident funded could result in further demands on the Council's resources to investigate and respond to enquiries requesting similar work at public expense locally that would not be in accordance with any established condition assessments, prioritisation processes and governance arrangements.
- Isolated works funded by individuals are more likely to have an aesthetic value for the resident concerned rather than support the asset management principles and risk based approach to highway maintenance reflected in the current code of practice and applied by the Council.
- There may be a significant impact on existing Council and Re resources required to successfully manage and implement individual applications of this type outside the existing footway and carriageway programmes.

### **3. POST DECISION IMPLEMENTATION**

3.1 Once approved by Committee the recommended option will be progressed by Officers, under delegated responsibility of the Executive Director of Environment.

## **4. CORPORATE PROIRITIES**

- 4.1 Barnet 2024, the Council's Corporate Plan 2019 – 2024 states that one of the Council's corporate outcomes is to provide a pleasant, well maintained borough that we protect and invest in with the objective of keeping the borough moving, including improvements to roads and pavements.
- 4.2 The Council's current Network Recovery Programme will continue to maintain and improve the highway network, footpaths and carriageways, for use by residents, local users and those people travelling in and through Barnet. It will improve the highway network, which in turn will contribute to improving the local environment and the quality of life for the residents and help create conditions for a vibrant economy.
- 4.3 The proposed planned maintenance programme will also contribute to the Council's Health and Wellbeing Strategy by making Barnet a great place to live and enable the residents to keep well and independent.
- 4.4 The Highway network is the Council's most valuable asset and is vital to the economic, social and environmental wellbeing of the borough, together with its general image.

## **5.0 SOCIAL VALUE**

- 5.1 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. Our current contracts have considered social values.

## **6.0 LEGAL AND CONSTITUTIONAL REFERENCES**

- 6.1 The Council's Constitution Article 7 – Committees, Forums, Working Groups and Partnerships (Responsibility for Functions, 7.5) gives the Environment Committee responsibility for all borough-wide or cross-constituency matters related to the street scene.
- 6.2 Highway Maintenance is a Statutory Duty under the Highways and Traffic Management Acts. The adoption of this scheme can not negate or replace the Council's statutory duties as Highway Authority. The scheme may only permit discretionary services/works that go beyond the Council's statutory maintenance duties.
- 6.3 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.
- 6.4 A Legal review was requested from our HB Public Law and their initial response is as follows:- *"The Council can use the section 184 process set out above to secure funding for crossovers. For works which are outside its statutory duty to provide, the Council can rely on section 1 of the Localism Act 2011. For all other work on the highway, which are considered to be of benefit to the general public, it can secure finances under a short section 278 Agreement."*
- 6.5 In practice there is currently no evidence of Councils using the General Power of Competence (GPC) under Section 1 (1) of the Localism Act 2011 to carry out highway works. However, under the GPC a council can do anything that an individual can do

provided that it is not illegal and is not a statutory duty of that Council. As an individual can work on the highway with the highway authority's consent, and be paid for such work this element of section 1 would be satisfied.

- 6.6 With regard to the restriction on using this power where there is a statutory duty to provide the service, the Council would have to be satisfied that the service goes beyond the Council's statutory duty to maintain and safeguard the existing adopted (public) highway and that the works being paid for privately are for a discretionary service offered by the Council not a mandatory service.
- 6.7 In addition, section 30 of the Greater London Authority Act 1999 gives the Council a more general power to, amongst other things, promote the improvement of the environment.

## **7.0 RISK MANAGEMENT**

- 7.1 The council, as Highway Authority, has various responsibilities and duties, as broadly summarised in this report. In order to address these responsibilities and duties the council has established policies, systems and processes that are regularly audited, reviewed and amended where necessary to reflect current policy and guidance and provide the council with a robust defence against insurance claims on the public highway.
- 7.2 The preparation of annual programmes of work for both footways and carriageways in the borough demonstrates the necessary use of asset planning and risk management principles for the distribution of available funding and resources on an agreed, clear and auditable basis utilising a prioritisation process and governance arrangements overseen by members and approved by the Environment Committee.
- 7.3 Any engagement with residents proposing to fund their own additional works on the public highway will be outside of these established programmes and governance arrangements and, therefore, subject to additional and unknown levels of public and member concern, query and scrutiny.
- 7.4 Where privately funded works are involved there will inevitably be a demand for completion without delay and this is a particular concern and risk when considered in the context of highway defects and programmes and their completion within specific timescales using available resources.
- 7.5 The service will liaise with finance to ensure appropriate collection and full cost recovery of a final process and mitigation of any further risks. It is considered that the proposed recommendations will lead to an improvement in the appearance and condition of the footway asset locally, therefore improving the environment, and potentially enable already scarce maintenance funding to be used in areas where the intervention levels are such that reactive or planned works meet the relevant criteria.

## **8.0 EQUALITIES AND DIVERSITY**

- 8.1 The Equality Act 2010 requires organisations exercising public functions to demonstrate that due regard has been paid to equalities in:
- Elimination of unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010.
  - Advancement of equality of opportunity between people from different groups.
  - Fostering of good relations between people from different groups.

8.2 The Equality Act 2010 identifies the following protected characteristics: age; disability; gender reassignment; marriage and civil partnership, pregnancy and maternity; race; religion or belief; sex and sexual orientation.

8.3 In order to assist in meeting the duty the council will:

- Try to understand the diversity of our customers to improve our services.
- Consider the impact of our decisions on different groups to ensure they are fair.
- Mainstream equalities into business and financial planning and integrating equalities into everything we do.
- Learn more about Barnet's diverse communities by engaging with them.

8.4 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 delivery of services.

8.4 Good roads and pavements benefit all sectors of the community by removing impediments and assisting quick, efficient and safe movement to access school, work and leisure facilities. This is particularly important for the elderly, people caring for children and those with mobility difficulties and sight impairments. The condition of roads and pavements is regularly at the top of concerns expressed by residents and the Council is listening and responding to those concerns by committing funding and resources to its planned highway maintenance programmes across the borough on a prioritised basis.

8.5 The physical appearance and the condition of the roads and pavements also have a significant impact on the quality of life of residents and visitors to the borough. A poor quality street environment will give a negative impression of an area, impact on people's perceptions and attitudes as well as increasing feelings of insecurity.

8.6 The Council's policy is focused on improving the overall street scene across the borough to a higher level that is required under the Council's existing statutory duties to maintain the adopted highway, and is consistent with creating an outcome where all communities are thriving and harmonious places where people are happy to live. This will not be achieved by individual residents seeking to undertake limited works in the own locality and thus highlighting this and the absence of similar works on the adjacent public highway.

8.7 Condition surveys are regularly carried out on all roads and pavements in the borough, and reference is also made to service requests by letter, email and phone from residents, members and users, together with issues raised at meetings and forums etc. The improvements and repairs aim to ensure that all users have equal and safe access across the borough regardless of the method of travel.

## **9.0 CORPORATE PARENTING**

9.1 In line with the Children and Social Work Act 2017, the council has a duty to consider Corporate Parenting Principles in decision-making across the council. There are no implications for Corporate Parenting in relation to this report.

## **10.0 CONSULATATION AND ENGAGEMENT**

10.1 A number of other Highway Authorities in London have been contacted regarding the proposal to permit residents or businesses to fund their own maintenance and/or improvement schemes on the public highway and none have confirmed such a policy exists

in their area. However, Cambridgeshire County Council does operate such a process and we have reviewed their processes and governance arrangements to help inform our recommendations.

10.2 Consultations on the council's established and prioritised carriageway and footway programmes took place with local ward councillors in January 2019 and the finalised programmes were subsequently approved by the Environment Committee.

## **11.0 INSIGHT**

11.1 This section does not apply to this report.

## **12.0 BACKGROUND PAPERS**

12.1 Motion carried at Full Council on 30 October 2018:  
<http://barnet.moderngov.co.uk/documents/g9453/Printed%20minutes%2030th-Oct-2018%2019.00%20Council.pdf?T=1> )