

	<h2>Environment Committee</h2> <h3>08 November 2016</h3>
<p style="text-align: right;">Title</p>	<p>Commuted Maintenance Payments for Highways</p>
<p>Report of</p>	<p>Commissioning Director for Environment</p>
<p>Wards</p>	<p>All</p>
<p>Status</p>	<p>Public</p>
<p>Urgent</p>	<p>No</p>
<p>Key</p>	<p>No</p>
<p>Enclosures</p>	<p>None</p>
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Summary

This report seeks approval to replace the existing policy for the collection of commuted maintenance payments under s38 and s278 agreements made under the Highways Act 1980 (“the 1980 Act”) as approved by the Cabinet Resources Committee on the 28 November 2006

Recommendations

1. That the Environment Committee approve to replace the 2006 policy with the best practice guidance documents “Commuted sums for maintaining infrastructure assets” (County Surveyors Society (now known as ADEPT), 2009) and “Commuted Sums for the relief of maintenance and reconstruction of bridges” by ADEPT January 2016 as revised or amended from time to time from the date of approval by members

1. WHY THIS REPORT IS NEEDED

1.1 This report is needed to support the replacement of the Council's existing policy (November 2006) relating to the requirement for payment of commuted maintenance payments in order to align the approach with best practice guidance document issued by ADEPT (Association of Directors of Environment, Economy Planning and Transport) and to achieve the efficiency savings targets required to be achieved by 2020.

1.2 BACKGROUND

1.2.1 Commuted maintenance payments are financial contributions paid to the Council as compensation for the expense to the Council for taking on the future maintenance responsibility for newly created highways e.g. new estate roads; or improvements to the existing public realm. They are typically secured through legal agreements made between the Council and developers / landowners under Sections 38 and / or 278 of the Highways Act 1980 ("the 1980 Act")

1.2.2 Although the Council's current policy (2006) is to seek commuted maintenance payments towards the maintenance of particular items of infrastructure identified as likely to cause future budget pressures such as traffic signals, drainage, structures. Non-standard surfacing / materials, other non-standard features, street lighting and planted area "along with others that the Director may deem necessary, this is subject to the proviso that any commuted maintenance payment sought only covers potential maintenance cost increases to the Council over and above those that would be normally incurred via respective agreements, As a consequence, the liability for the on-going maintenance of works and roads remains with the Council rather than being passed on to a developer.

1.2.3 Further, the policy has not been reviewed or amended since that time, notwithstanding the issue of best practice guidance on the issue in November 2009 ("Commutated sums for maintaining infrastructure assets" County Surveyors Society, 2009) with a less restrictive methodology for seeking commuted maintenance payments. Prior to the recent court of appeal decision in the case of Redrow Homes Limited v Knowsley Metropolitan Borough Council (Redrow) (October 2014), it was accepted by the Council like many other authorities nationally that section 38 was not a lawful basis upon which the Council as highway authority could require a developer to pay commuted maintenance contributions by highways constructed by the developer and adopted for maintenance at the public expense.

- 1.2.4 However, the Court of Appeal decision clearly confirms that on-going costs of maintenance (and costs of construction or improvement) after adoption of a highway can lawfully be included in a section 38 highways agreement.
- 1.2.5 The County Surveyors Society guidance / methodology provide a transparent and consistent approach both in the seeking of and the calculation of commuted maintenance payments.
- 1.2.6 As with other Councils there is an increasing amount of new developments in Barnet along with associated transport infrastructure works. In addition to new developments, Barnet has several Major Regeneration Schemes in the borough (i.e. Dollis Valley; Stonegrove; Millbrook Park; West Hendon; Brent Cross; Granville Road; Grahame Park & Colindale). As a consequence, when the developments takes place, the highway network will expand with increasing maintenance liabilities to the Council as we adopt new highway or improvements which are undertaken to existing highway.
- 1.2.7 It is probable that current and future developers / landowners will see the expansion of the commuted maintenance payment policy as an additional financial burden even if they are advised of the potential implications at the pre-planning stage.
- 1.2.8 Developers may, in order to save on potential maintenance payment values, alter future development layouts and specifications however; this can be challenged and addressed through technical approval process undertaken by officers.
- 1.2.9 There may also be a reduction in applications for new sections of highway to be adopted from developers which in itself could be beneficial to the Authority and reduce future maintenance liabilities. Ultimately developers may not wish to proceed with certain developments as they may not prove to be financially viable. This scenario is seen as unlikely due to the current volume and quality of development current in the pipeline

2. REASONS FOR RECOMMENDATION

- 2.1 Amending the current policy is necessary in order to mitigate all future maintenance liabilities to the Council associated with new infrastructure assets adopted from new developments in the pipeline and highway improvement works resulting from all new developments works in the borough.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDATION

- 3.1 If the policy is not amended then the majority of all on-going maintenance costs will need to be met from the Council's resource which is not ideal due to on-going budget constraints.

4. POST DECISION IMPLEMENTATION

- 4.1 If the Environment Committee are minded to approve the recommendation, then Officers would work with the Council's lawyers at HBPL to amend the s278 and s38 templates to provide for the payment of commuted maintenance payments deemed appropriate and necessary as the rule rather than the exception.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1 Approval of an amended commuted maintenance contribution policy is aligned with the Council's Corporate Plan (2015 – 2020 with 2016/17 addendum and targets) priorities (page 4).
- 5.1.2 Manage demand for services through efficiency savings and delivering services differently ("Fairness" principle)
- 5.1.3 Driving out inefficiencies to deliver more with less ("Responsibility" principle)
- 5.1.4 Maximise guaranteed income potential from a growing economy ("Opportunity" principle)

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

- 5.2.1 Commuted maintenance contributions will be calculated in accordance with best practice guidance from ADEPT & County Surveyors Society guidance / methodology
- 5.2.2 Commuted sums for periodic maintenance for various elements will be included and proposed as part of the annual Fees and Charges Report. Commuted sums for additional assets will be added as the need arises. Some commuted sums will be subject to site specific calculations.
- 5.2.3 As a typical example and assuming a road was offered for adoption that was of standard width, included 2 footpaths, drainage and street lighting the expected costs would be in the region of £325 per linear metre. This would cover future maintenance liabilities, road markings, sweeping, gully cleansing etc. Over the last 3 years the length of adopted carriageways or where legal agreements have been finalised for adoption totals approximately 2715 linear metres (2.715km) which equates to approximately of £880,000 of future liability with no additional funding.

5.3 Social Value

Not applicable as this report does not relate to the procurement of services.

5.4 Legal and Constitutional References

5.4.1 Article 15A of the Constitution (responsibility for Functions, June 2016) empowers the Environment Committee to consider for approval of policy for those areas under the remit of the Committee.

5.4.2 The remit of the Environment Committee includes specific responsibility for the street scene including pavements and all classes of road, street lighting, transport and traffic management and open spaces

5.4.3 The 1980 Act empowers the Highway Authority to enter into an agreement for the execution of any works of benefit to the public on terms that the other party pays the whole or such part of the cost of the works as may be specified in or determined in accordance with the agreement including any payments in respect of the maintenance of the works to which the agreement relates (s278(1)(3)).

5.4.4 The 1980 Act also empowers the Highway Authority to enter into an agreement with any person to undertake the maintenance of a way which that other person is willing and has the necessary power to dedicate as a highway so that the way becomes a highway maintainable at public expense (S38(3)). Such an agreement may contain such provisions as to the bearing of the expenses of the construction, maintenance or improvement of any highway or road to which the agreement relates and other relevant matters as the authority making the agreement think fit (s38(6)).

5.5 Risk Management

5.5.1 Risk management may be required in order to manage the potential for developers to use the alternative adoption procedure under s37 of the 1980 Act to circumvent the Redrow decision.

5.5.2 The s37 procedure requires a developer simply to serve notice on the authority stating that "it desires the highway to be maintainable at the public expense". Critically s37 contains no provision for the authority to call for any commuted maintenance payments to be paid by a developer.

5.5.3 However, the disadvantage of s37 to developer is that it would not be able to serve the requisite notice on the authority until the road / works have been actually constructed. This could be managed through an appropriately worded planning condition / planning obligation requiring approval of proposed highway works an earlier development process trigger point It is also possible to challenge the use of the s37 procedure in the Magistrates Court on the ground proposed highway would be of insufficient utility to the public to justify maintenance at the public expense.

5.6 Equalities and Diversity

- 5.6.1 Street design should be inclusive, providing for all people regardless of age or ability. There is a general duty for public authorities to promote equality under the 2010 Equality Act. There is also a specific obligation for those who design, manage and maintain buildings and public spaces to ensure that disabled people play a full part in benefiting from, and shaping, an inclusive built environment.
- 5.6.2 The 2010 Equality Act outlines the provisions of the Public Sector Equalities Duty which requires Public Bodies 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
- 5.6.3 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. As part of the consultation development a separate stakeholder management plan is being developed to ensure that equalities issues are incorporated into the policy development, consultation and implementation.

5.7 Consultation and Engagement

- 5.7.1 If the Environment Committee are minded to approve the recommendations, then actual commuted maintenance payments to be applied towards the maintenance new highway infrastructure assets adopted. will be agreed as part of Fees and Charges Report.
- 5.7.2 Any proposed charges will be consulted upon

6 BACKGROUND PAPERS

- 6.1 Cabinet Resources Committee – 28th November 2006 (Fees and Charges for Environment Theme Services)
- 6.2 2006 Policy
- 6.3 “Committed Sums for maintaining infrastructure assets” guidance document, County Surveyors Society, 2009
- 6.4 “Committed Sums for the relief of maintenance and reconstruction of bridges guidance notes ADEPT National Bridges Group January 2016