



## Cabinet

<b>Title</b>	<b>Damage to Highway – Project expansion</b>
<b>Date of meeting</b>	18 <sup>th</sup> July 2023
<b>Report of</b>	Cabinet Member (Portfolio Lead) for Environment and Climate Change – Cllr Alan Schneiderman
<b>Wards</b>	All
<b>Status</b>	Public
<b>Key</b>	Key Decision
<b>Urgent</b>	No
<b>Appendices</b>	None
<b>Lead Officer</b>	Cath Shaw – Deputy Chief Executive – <a href="mailto:cath.shaw@barnet.gov.uk">cath.shaw@barnet.gov.uk</a>
<b>Officer Contact Details</b>	Ian Edser, Director of Highways and Transportation, Customer and Place – <a href="mailto:ian.edser@barnet.gov.uk">ian.edser@barnet.gov.uk</a>

### Summary

In Sept 2015 the Environment Committee approved for a pilot scheme to be trialled for a period of three months in Finchley and Golders Green, where a large number of development activities had been identified, to inspect for visible damage to the highway. The process was for an Officer to inspect development sites in those areas and where visible damage to the highway fronting the development was observed, a notice would be served under Section 133 of the Highways Act 1980 on the landowner in order to inform them of the Council's intention to recover from them the cost of the damage to the highway caused by them.

Subsequently in May 2017 the Environment Committee gave further approval for the highways service to take the following approach to Damage to Highways

- Building Control to inform the Highways Service when notification to start work is received from owners / developers.
- On receipt of notification, the Highways Service will inspect and take photographic evidence of the footway condition before, during and post work.
- The cost of repairing any damage identified would be recovered from the landowner under Section 133 of Highway Act 1980.

This approach is currently focussed on seven Wards (Childs Hill, East Barnet, Golders Green, High Barnet, Mill Hill, Totteridge and Woodside and Whetstone) The Wards selected were based on the highest number of reported damage to highway incidents and the levels of development work taking place in these Wards.

In order to recover the Council's expense of repairs in relation to damage caused by others to the footway, as well as to support active travel, encourage walking and ensure that footways are safe for pedestrians, the damage to highways service should be expanded to cover the whole of the Borough.

## Recommendations

- 1. Cabinet note the current activities undertaken by the Highways Service team to tackle incidents of damage to highway caused by development works.**
- 2. Cabinet approves extending borough wide, the approach noted in this report to deal with damage to highways.**
- 3. Cabinet note that the Head of Paid Service (through delegated powers) will increase staffing resource for the relevant team, if the extended approach above is approved.**

### 1. Reasons for the Recommendations

- 1.1 Barnet's highway network is our largest, most valuable and most visible community asset and is probably the most used of all our services, by nearly all residents daily. It is vital to the economic, social, and environmental well-being of our residents and wider community.
- 1.2 The Highways Act 1980 ("**HA 1980**") sets out the main duties of highway authorities in England and Wales. Highway maintenance policy is set within a legal framework. Section 41 of the HA 1980 imposes a duty to maintain highways which are maintainable at public expense.
- 1.3 Section 133 HA 1980 states that 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.
- 1.4 Extending this service to cover the entire Borough ensures that the Council consistently carries out its duties as a Highway Authority and recovers the costs for repairing the highway from the party who caused the damage

### 2. Alternative Options Considered and Not Recommended

2.1 The Council has a range of potential options available; these include:

- Option 1 - To not continue the current approach regarding damage to highways
- Option 2 To not extend the current approach on damage to highways to the whole borough

Option 1 has been discounted as it requires public money to be spent on repairing the highway when damage has been caused by a third party.

Option 2 is not the preferred option as it presents a disparity with how residents or their agents are treated in different Council Wards. The current approach could be retained, but Officers' preference is to expand the service incrementally across the Borough.

### **3. Post Decision Implementation**

- 3.1 The Highways Team will consolidate current activities with a view to incrementally expanding the service across the whole borough.
- 3.2 Recruitment will be conducted for the additional staff to undertake this activity.
- 3.3 Mid-year costs benefit analysis/project review.

### **4. Corporate Priorities, Performance and Other Considerations**

#### **Corporate Plan**

- 4.1 The continuation and expansion of the Council's Damage to Highways service will contribute to the Council's sustainability strategy through the promotion of better practices exercised by landowners and developers in relation to the protection of the Highways network.

#### **Corporate Performance / Outcome Measures**

- 4.2 Damage to highways is an important approach to addressing the condition of the highway network and ensuring that the network is safe and accessible.

#### **Sustainability**

- 4.3 The aim of Damage to Highways project is to actively maintain the footway network for all users and to encouraging landowners to treat the public highway with respect and thus minimising repeat work and recover monies from those identifiable third parties responsible for the damage to the Highway, to avoid the Council bearing all the cost of the repairs.

#### **Corporate Parenting**

- 4.4 No direct or indirect impacts on looked after children or care leavers identified beyond those applicable to the population as a whole.

#### **Risk Management**

- 4.5 The Council, as Highway Authority, has various responsibilities and duties. 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.

The Damage to Highways project is a means of ensuring that intervention level damage caused by third parties are repaired efficiently and effectively and the integrity of the footway is maintained for all users.

#### **Insight**

- 4.6 Not applicable to this report, however the work is informed by Building Control reports and Highways Officers inspections.

#### **Social Value**

- 4.7 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.
- By ensuring damage to the highway is paid for by the third party/parties who cause it we are ensuring public funds are maintained and can be used to fund other necessary works

## **5. Resource Implications (Finance and Value for Money, Procurement, Staffing, IT and Property)**

- 5.1 The current annual staffing cost (1 FTE Technical Supervisor and 0.5 FTE Business Support Officer) of delivering the damage to highways project across 7 Wards is circa £102k. Total income received in 2022/23 was £223k.
- 5.2 If approved to extend borough wide, it is likely that an additional 3FTE (2 Technical supervisors and 1 Business Support Officer) will need to be recruited at an additional cost of £178k. The potential additional costs recovered for damage to the highway is expected to meet and probably exceed the cost of the extra resources required to manage the project over an additional 17 Wards based upon the current application of the service across seven wards. The additional costs recovered from third parties for necessary repairs to the highway is estimated to be in the range of £200-300k. Therefore, this proposal should not place any additional budget pressure on the service.
- 5.3 There are no direct IT implications for the council as a result of extending the current arrangements.
- 5.4 There are no direct Property implications for the Council as a result of extending the current arrangements.
- 5.5 There are no procurement implications as a result of extending the current arrangements.
- 5.6 Unpaid invoices go through the Council's normal reminder letters and cost recovery process.
- 5.7 Unpaid debts may eventually be registered as a Local Land Charge against the property, as last recourse

## **6. Legal Implications and Constitution References**

- 6.1 Under Part 2D of the Council's Constitution, the terms of reference of Cabinet includes the following responsibilities:
- Development of proposals for the budget (including the capital and revenue budgets, the fixing of the Council Tax Base, and the level of Council Tax) and the financial strategy for the Council;
  - Monitoring the implementation of the budget and financial strategy;
  - Recommending major new policies (and amendments to existing policies) to the Council for approval as part of the Council's Policy Framework and implementing those approved by Council;
  - Approving policies that are not part of the policy framework;
  - Management of the Council's Capital Programme;

- 6.2 As a highway authority the Council has a duty under section 41(1) Highways Act 1980 to maintain the public highway, where it is maintainable at public expense.
- 6.3 Section 133 Highways Act 1980 states that 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.
- 6.4 Provisions in the Local Land Charges Act 1975 enable any costs incurred by a local authority in repairing the footway (under section 133 Highways Act 1980) to be registered as a Local Land Charge against the land.

## **7. Consultation**

A public consultation is not required for implementation of s133 Highways Act 1980 and has not been carried out

## **8. Equalities and Diversity**

- 8.1 The Equality Act 2010 requires organisations exercising public functions to demonstrate that they have given due regard to the:
- Elimination of unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010.
  - Advancement of equality of opportunity between people who share a protected characteristic and people who do not.
  - Fostering of good relations between people who share a protected characteristic and people who do not.
- 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 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.
- 8.5 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.

- 8.6 The physical appearance and the condition of the roads and pavements also have a significant impact on the quality of life of and accessibility for 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.
- 8.7 As this is an expansion of an existing piece of work an Equality Impact Assessment has not been carried out. From the pilot there is no evidence that the Council's approach disproportionately affects any of the protected groups. In all cases the Council seeks to engage with the landowner before works commence and advise the landowner of their responsibility not to damage the highway. If expansion of the service is approved borough wide the Council will continue to monitor/review for equality issues/impacts.
- 8.8 The process recognises people can be in a position of hardship and therefore allows for payment plans to be set up.

## **9. Background Papers**

- 9.1 Environment Committee Meeting Sept 2015  
[Damage to the Public Highway Caused by Development Activities.pdf \(modern.gov.co.uk\)](#)
- 9.2 Environment Committee Meeting May 2017  
[\(Public Pack\)Addendum - Items 8 and 10 Agenda Supplement for Environment Committee, 11/05/2017 18:30 \(modern.gov.co.uk\)](#)
- 9.3 Environment Committee Meeting March 2023  
[\(Public Pack\)Agenda Document for Environment and Climate Change Committee, 14/03/2023 19:00 \(modern.gov.co.uk\)](#)