

MUNICIPAL YEAR 2012/2013 REPORT NO. **203**

MEETING TITLE AND DATE:

Cabinet: 24 April 2013

Council: 17 July 2013

REPORT OF:

Director - Environment

Agenda – Part: 1	Item: 7
Subject: Amendments to the Policy for Footway Crossovers and Proposals for the Management of Associated Illegal Activity.	
Wards: All	
Key Decision No: KD 3664	
Cabinet Member consulted: Cllr Bond	

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1. EXECUTIVE SUMMARY

- 1.1 Enfield manages applications for footway crossovers based on an approved set of technical standards that were last updated in 2003. This report proposes amendments to the technical standards in order to address a number of operational and practical issues based on the learning gained by officers over the last nine years.

- 1.2 The development of the crossover policy must go hand in hand with the Council's ability to enforce non-compliant situations. This report therefore describes the actions that Enfield is currently taking to tackle the illegal activity of driving across footways without vehicular crossovers and recommends adoption of a policy based on a more pro-active approach, prioritized on a borough-wide basis, using a combination of methods based on recent legal advice from Counsel.

- 1.3 The report also proposes that action should be taken in cases where vehicles project from private forecourts and cause an obstruction on the footway.

2. RECOMMENDATIONS

- 2.1 To agree the proposed amendments to the technical standards for footway crossovers.

- 2.2 To agree the proposed policy for the management of vehicles crossing footways and verges without a properly constructed footway crossover.

- 2.3 To agree the proposed policy for enforcement action where residents allow their vehicles to project from their forecourts and overhang the public footway.

- 2.4 To recommend to full Council to agree that the appointed day for implementation of the adopted section 16 of the London Local Authorities and Transport for London Act 2003 be 1st November 2013 (paragraph 3.4.5 of the report refers).

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3. BACKGROUND

3.1 General and current technical standards

3.1.1 Enfield has a robust policy whereby residents can apply to have a footway crossover constructed by the Council's contractor to enable them to gain vehicular access across a public footway into their property. The application process requires an applicant to provide specific details of their proposal and to submit these, along with an application fee, to enable a Council officer to assess whether their application meets Enfield's specific technical standards. If appropriate, the resident will be provided with an estimate of the construction costs and, subject to the resident completing appropriate work to their own property and making the payment for the construction costs, the crossover will be constructed by the Council's contractor.

3.1.2 The Technical Standards were last revised and approved by Cabinet in November 2003. The standards are based on the requirements of the Highways Act to consider the need to:

- prevent damage to footways/verges
- ensure, so far as reasonably practicable, safe access to and egress from premises, and
- facilitate, so far as reasonably practicable, the passage of vehicular traffic on highways.

The specific technical requirements are summarised in the crossover application pack which is provided to each applicant.

3.1.3 Charges to residents are reviewed annually. For 20013/14, the application fee is £160.00 and the construction cost is £160.00 per sq metre. If planning permission is required, a planning application fee of £172.00 is also payable. Where front gardens are shorter than 4.8metres, a legal agreement is currently required which costs £140.00. It should be appreciated that the combined cost to residents of the application fee, any associated planning permission, crossover construction costs, as well as the resident's cost for constructing their own parking area is likely to present financial difficulties for many residents.

3.1.4 The concept of parking in front gardens involves many conflicting issues such as whether or not it frees up space on the road, its affect on congestion and the streetscene as well as safety considerations associated with parking in gardens as opposed to on the street. A balance must therefore be achieved whilst taking into account the needs of residents to park their cars with a reasonable level of safety and convenience, with those of the public at large. It should also be noted that the development of policy on this issue, whilst considering highways, streetscene, traffic and transportation issues, should link into Enfield's 'Development Management Document', which forms part of Enfield's Local Plan.

3.1.5 Often, residents will have already created parking areas in their front gardens, along with the associated removal of their front boundary wall, and many of these situations may well be historic. This is particularly problematic on

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Classified Roads where the current transportation planning policy generally resists additional crossovers, but this is undermined where a resident has used their frontage for parking cars for 10 or more years. In these cases they become eligible to obtain a 'Lawful Development Certificate' (LDC) from the Council, having established their activity as being immune from planning enforcement. The resident would then be able to apply for a footway crossover to be constructed.

3.1.6 Whenever a crossover application is refused, consideration must be given to how the Council will enforce this decision and prevent further illegal activity; otherwise this will undermine the crossover approval/refusal process.

3.2 Illegal activity and actions currently taken by the Council to deal with this.

3.2.1 In common with other outer London boroughs, Enfield suffers from a high number of cases where residents drive over the footway or verge to gain vehicular access to their properties without a properly constructed footway crossover. This causes deterioration and damage to the footway, especially if constructed of paving slabs, damage to verges and shrub beds, potential damage to utility apparatus below the footway and general degradation of the quality of the highway asset and streetscene. This in turn leads to unnecessary public expense to undertake repairs as well as exposing the Council to a higher risk of third party insurance claims for personal injury.

3.2.2 The illegal activity of driving across a footway without a crossover may be due to a number of reasons which include:

- residents not wishing to pay for the provision of a new crossover to gain access to parking areas in their front gardens;
- residents straying beyond an existing crossover onto the adjacent footway or verge areas because their crossover is not wide enough for their current use;
- residents not being aware of the need to have a properly constructed crossover;
- applications for new crossovers being denied in cases where they do not meet the requirements of the crossover technical standards or the requirements for planning permission;
- In many cases residents may choose to drive across the footway regardless.

Understandably, many residents argue against paying for a crossover if they feel that Enfield does not take a strong stance to manage and enforce illegal crossover activity

3.2.3 Currently, where it is identified that a resident is driving across a footway or verge without a crossover, the occupier is written to and asked to stop. If appropriate, they are invited to apply for a crossover. Where it is clear that the occupier's actions are damaging the footway or verge, bollards are sometimes

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installed, but this action is limited due to available budgets and a lack of formal Council endorsement to this approach. Current enforcement action is therefore prioritised on the basis of protecting public safety and the authority's duty to maintain the highway and therefore prevent further damage. In many situations, the installation of bollards leads to the occupier applying for a crossover. However, in some cases, the situation would not comply with either the technical standards or planning requirements and a crossover would not be permitted. These cases often lead to residents being dissatisfied, complaining to the Council, and even removing the bollards themselves.

3.2.4 This issue has become a priority within Enfield, and is one that a number of Councillors have expressed the need to move forward on.

3.2.5 The Council supports residents in cases where they report that their footway crossover is blocked by a parked car. On request from a resident the Council will either issue a Penalty Charge Notice or remove the contravening vehicle. This process is currently being reviewed.

3.3 Proposed amendments to the footway crossover policy

3.3.1 It is proposed that a number of the technical requirements in the current policy should be amended to take into account the learning gained by officers who have implemented the technical standards since they were last reviewed over 9 years ago. This is needed to address a number of operational and practical issues, which will facilitate a balanced approach between the construction of new crossovers and enforcement of illegal ones.

Appendix 1 shows the proposed technical standards.

Appendix 2 shows a comparison of the proposed technical standards with the 2003 version.

3.3.2 The guidance pack that is issued to applicants already includes advice on 'good design' and this will be enhanced to further promote the requirements for sustainable drainage and good landscape design. The current footway crossover policy requires that applicants must not allow surface water from their properties to drain onto the public highway, which can be achieved by using porous surfacing or by installing a drain across the property threshold which feeds into a soakaway. This approach generally ensures compliance with permitted development requirements, unless planning permission is required for other specific reasons. It is recommended that this requirement should continue to be enforced by a Highway Officer in advance of authorising the construction of a new crossover.

3.3.3 The revised standards clarify that there must be a minimum distance between a new footway crossover and an adjacent tree of at least 1.5metres, or 4 times the diameter of the tree trunk, (whichever is greater). The Council's Arboricultural Officer should be consulted where there is any doubt that adjacent tree roots might be damaged.

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- 3.3.4 Planning permission for applications on classified roads will continue to be considered in accordance with the criteria stated in Enfield's Development Management Document and supporting documentation. This will particularly apply to class A roads (principal roads) where the need to minimise any adverse impact on road safety and congestion will be considered. However, the criteria may be relaxed and a more sympathetic approach may be taken to approving applications on class B and C roads in recognition that these roads are less strategically important, and generally have lower traffic flows than principal roads.
- 3.3.5 Currently, where applications are approved for forecourt depths between 3.8m and 4.79m, an occupier is required to enter into a legal agreement with the Council that restricts the length of car being parked on their forecourt. Legal Services have advised that this agreement does not add much in respect of the Council's enforcement powers and that it would be better to take separate action where vehicle overhangs cause an obstruction. It is therefore recommended that legal agreements for short forecourts should be discontinued. The application form will stress the need for an occupier to ensure that their vehicle does not project onto the public highway and this will be a condition of every approval. A publicity exercise will assist with getting this message across to residents and drivers.
- 3.3.6 In recognition of the above, and of the increasing number of smaller cars that are now being manufactured (a smart car is 2.59m long), it is recommended that the 'absolute minimum depth' requirement is reduced from 3.8 metres to 3.5metres. This will allow greater flexibility to approve applications where an occupier is able to park a small car in their garden, or even a larger car at an angle. All applications with gardens shorter than the 'desirable minimum depth' of 4.8metres will be subject to a greater level of scrutiny by the Highway Officer to ensure that vehicles can enter/exit without straying beyond the designated crossover and onto the un-strengthened footway.

3.4 Proposed Enforcement Action for illegal crossovers

- 3.4.1 Where it is evident that a resident is taking a vehicle across a footway or verge without a crossover, s184 of the Highways Act empowers the Highway Authority to construct a crossover and to recover its costs. This approach would be appropriate where a property would meet the required technical standards but the resident chooses not to apply. A formal process must be followed, whereby the Council would serve a notice of its intention to the occupier, however the recovery of costs might be problematic in some cases.
- 3.4.2 Unfortunately, s184 does not provide any powers to serve a notice to prevent vehicles from being taken across a footway without a crossover. It is therefore of no use where the technical standards can not be met and other approaches must therefore be considered.
- 3.4.3 S16 of the London Local Authorities and Transport for London Act 2003, allows the Council to serve a notice on an occupier of a premises who

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habitually permits vehicles to cross the footway, to require him to cease doing so if there is no footway crossover. The s16 notice requires evidence of vehicles both parked, and not parked, in a front garden to prove the case, however this level of evidence is much less than that required for prosecutions under the Highways Act. Once the notice has become effective (after 28 days if not objected to) the Council can prosecute or erect bollards to prevent vehicular access. The cost of undertaking physical measures can be recovered from the occupier, although this may prove difficult in some cases.

3.4.4 Recent advice from Counsel has demonstrated that s16 enforcement powers at the Council's disposal for dealing with illegal vehicle crossings are more limited than originally hoped for. The legislation states that a s16 notice can not be served where an occupier has converted their garden to a parking area in accordance with Permitted Development (PD) rights. PD rights would be achieved in many properties where a parking area was constructed and garden walls removed prior to Oct 2008 as there was no requirement to control surface water run-off. S16 might therefore only be applicable in cases where gardens have been converted in recent years.

3.4.5 At Full Council on 25th January 2012 a resolution was passed to adopt the provision of section 16 of the London Local Authorities and pursuant to section 3 of that Act a further resolution is now required to agree a date upon which those provisions will come into effect.

3.4.6 S80 of the Highways Act allows a Highway Authority to erect fences or posts to prevent vehicular access to the highway, and this approach might be used in some circumstances where s16 is not applicable. In addition, where it is evident that vehicles are damaging the footway, other authorities have quoted s41 of the Highways Act in their duty to maintain the highway and therefore take reasonable measures to prevent further damage from occurring. Unfortunately, these options do not allow costs to be recovered.

3.4.7 Enforcement action should therefore be based on a suite of different options depending on the specific situation to deal with occurrences where:

- residents drive over the footway without a properly constructed footway crossover;
- where residents have a crossover but stray onto the adjacent footway or verge;
- where residents have constructed illegal crossovers themselves;

A pro-active approach should be taken based on the priorities contained within the proposed enforcement policy in Appendix 3.

3.5 Proposed Enforcement Action where vehicles project from a forecourt onto the public footway

3.5.1 Residents sometimes allow their vehicles to project from their property and overhang the footway, leading to an obstruction which can cause a danger to passing pedestrians, impede pedestrian thoroughfare, and prevent the authority from cleaning and maintaining the adopted public highway.

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- 3.5.2 Enfield's Parking Enforcement team is empowered to issue a Penalty Charge Notice (PCN) where a vehicle is parked in a front forecourt and projects a considerable distance onto the footway, such that one or more wheels are actually on the footway. Unfortunately a PCN can not be issued where vehicles project from a private forecourt over the footway but don't actually have any wheels on the footway.
- 3.5.3 It is proposed that the Council takes a pro-active approach to dealing with the problem of vehicles projecting onto the public footway from private properties by adopting the policy set out in Appendix 4.

3.6 Publicity and Communication

Effective publicity and communication with residents will be crucial. This will consist of leaflets delivered to targeted areas/properties and adverts in the local press in order to raise awareness and explain the Council's rationale.

4. ALTERNATIVE OPTIONS CONSIDERED

Other London Boroughs have been consulted and all have varying versions of technical requirements based on the Highways Act. Several boroughs install bollards to prevent illegal crossings but none positively enforce against vehicles that overhang the public highway.

5. REASONS FOR RECOMMENDATIONS

- 5.1 The adoption of updated technical standards based on officers' experiential learning will clarify and improve the existing arrangements for managing footway crossovers.
- 5.2 The adoption of a formal policy for the enforcement of illegal activity will provide a balanced approach between crossover applications and cases of non-compliance. Specialist advice from Counsel has been taken into account in the development of the proposed policy.

6. COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES AND OTHER DEPARTMENTS

6.1 Financial Implications

- 6.1.1 There is no direct financial implication arising from the recommendations in this report. The fees set for footway crossovers aims to recover the full costs of processing the applications by council officers.
- 6.1.2 The resources for managing illegal activities associated with footway crossovers will be managed from within existing budgets. Where enforcement

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actions are taken, the fine income will be used to contribute towards the cost of enforcement.

6.2 Legal Implications

6.2.1 When considering the formulation of technical standards for footway crossovers the Council need to have regard to the matters set out within section 184 of the Highways Act 1980 which are:

- (i) the need to prevent damage to a footway or verge;
- (ii) safe access to and egress from premises; and
- (iii) the need to facilitate the passage of vehicular traffic in highways

6.2.2 Powers to deal with those who habitually cross a kerbed footway with a vehicle are contained within section 184 of the Highways Act 1980 and section 16 of the London Local Authorities and Transport for London Act 2003 as already outlined in this report.

6.2.3 In circumstances where the powers mentioned in paragraph 6.2.2 are either not appropriate or cannot be used the Council are able to consider the installation of bollards to prevent vehicular access pursuant to powers set out in sections 66 and 80 of the Highways Act 1980 although the former carries provision for compensation.

6.2.4 Advice obtained from Counsel suggests that 10 years use might not necessarily be required in order to gain immunity from planning enforcement action. The parking of a car within the curtilage of a dwelling house is likely to be a lawful ancillary use under Section 55(2)(d) of the Town and Country Planning Act 1990. Therefore where a resident simply parks in the front garden a Lawful Development Certificate can be obtained straight away.

6.2.5 Once the Council has by resolution made section 16 of the London Local Authorities and Transport for London Act 2003 operative it will be able to serve notices requiring occupiers to cease driving across the footway. No such power is currently available to the Council under legislation. Section 184 of the Highways Act 1980 simply allows the Council either to construct vehicle crossings or impose conditions on the use of the footway as a crossing. If the occupier breaches the section 16 notice it is an offence for which the Council can prosecute. Alternatively the Council can execute works that would prevent vehicles being taken across the footway. The cost of these works is recoverable from the occupier.

An advert detailing the passing of the resolution, the appointed day and the general effect of the provision coming into operation would need to be published in a local newspaper and in the London Gazette in accordance with that Act.

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- 6.2.6 The Council has a duty under s.130 of the Highways Act 1980 to assert and protect the rights of the public to the use and enjoyment of any highway for which it is the highway authority, and a power to do the same in respect of any other highway in its area. It has an additional duty under s.130(3) to prevent, as far as possible, obstruction both of highways for which it is the highway authority and, where it considers the obstruction would be prejudicial to the interests of its area, any other highway. S.130(5) provides that the Council may institute legal proceedings and “generally take such steps as they deem expedient” for the purposes of s.130. This is on top of the general power under s.222 of the Local Government Act 1972 which, amongst other things, gives the Council the power to prosecute where it considers it “expedient for the promotion or protection of the interests of the inhabitants of their area”. This would include prosecuting for willful obstruction of a highway under section 137(1) of the Highways Act 1980. Where the Council has sufficient evidence of an offence under s.137, s.8 of the London Local Authorities and Transport for London Act 2003 gives it the power to issue a fixed penalty notice to the offender as an alternative to prosecution. Any criminal enforcement action must comply with the Council’s own enforcement policy.
- 6.2.7 The recommendations contained within this report are within the Council’s powers and duties.

6.3 Property Implications

None.

7. KEY RISKS

- 7.1 Residents may challenge the Council’s application of its technical standards and any enforcement action taken, particularly in cases where a resident can not comply with the technical standards.
- 7.2 Residents may consider that the cost of applying for a crossover is too expensive/unaffordable and therefore be tempted to act illegally;
- 7.3 The lack of a formal policy on enforcing non-compliant and illegal situations undermines the crossover application process;

8. IMPACT ON COUNCIL PRIORITIES

8.1 Fairness for All

The adoption of a borough-wide approach to enforcement of non-compliant situations will provide a fair and balanced approach with the application process.

8.2 Growth and Sustainability

These recommendations have taken into account issues relating to transportation planning, parking, highway maintenance, streetscene and the

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environment, all of which contribute to the growth and sustainability of the borough.

8.3 Strong Communities

These proposals will contribute to improving the quality of the streetscene and its contribution to the public realm, thereby benefiting local communities.

9. EQUALITIES IMPACT IMPLICATIONS

9.1 A more proactive approach to the management of illegal crossings and obstructions to the footway will assist the Council in delivering its obligations under the Equality Act.

9.2 Corporate advice has been sought in regard to equalities and an agreement has been reached that an equalities impact assessment/analysis is neither relevant nor proportionate.

10. PERFORMANCE MANAGEMENT IMPLICATIONS

The crossover application process includes target timeframes for the provision of estimates and works. The contractor's performance is reviewed as part of the performance management of the Council's Highway and Engineering Works Contract.

11. HEALTH AND SAFETY IMPLICATIONS

11.1 Consideration has been given to the health and safety issues relating to vehicles being parked in gardens compared with those parked on-street.

11.2 Key objectives of the enforcement of illegal activity are the need to prevent conflict between vehicles and pedestrians using the same area of footway and also to prevent un-strengthened footways from being damaged by vehicles which, in turn, can lead to potential trip hazards. The obstruction of the footway by vehicles projecting from private forecourts affects pedestrian safety.

12. PUBLIC HEALTH IMPLICATIONS

None.

Background Papers

None.

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Appendices

- 1 Proposed Technical Standards for footway crossovers
- 2 Comparison of current and proposed Technical Standards
- 3 Policy for the management of vehicles crossing footways and verges without a properly constructed footway crossover.
- 4 Policy for the enforcement of vehicles projecting onto the public footway from a forecourt.

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