

Environment and Sustainable Transport Committee

12 February 2019

Review of the Vehicle Crossover Policy

Report by Director, Communities

Call-in deadline: 5pm on Tuesday 26 February 2019

Purpose

To approve the adoption of the revised borough-wide Vehicle Crossover Policy.

Recommendations of the Portfolio Holder for Environment and Sustainable Transport

To **resolve** that -

1. The comments from the four Neighbourhood Committees on the proposed revised Vehicle Crossover Policy, are noted;
2. The revised Vehicle Crossover Policy as set out in **Annex 1** is approved and shall come into force on 1 April 2019.

Key Points

- A. The Council's current Vehicle Crossover Policy (the Policy) was adopted in 2008 and it now needs to be revised. The Policy is attached as **Annex 2** of this report.
- B. The proposed revised Vehicle Crossover Policy, as set out in **Annex 1** of this report, is more detailed and provides comprehensive information for applicants (the Revised Policy).
- C. Depending on particular circumstances, property owners may also require separate planning permission under the Town and Country Planning Act 1990 (the 1990 Act). This should be secured before the submission of an application for a vehicle crossover under the Highways Act 1980 (the 1980 Act). The Policy and the Revised Policy only deal with the highways application part of the process.
- D. A report on the Revised Policy was submitted to each of the four Neighbourhood Committees in January for consultation. The comments made by these committees are set out in the "Consultations" part of this report.

Context

1. A dropped kerb and driveway across a footway is referred to as a 'crossover'. It allows vehicles to pass between the public highway and property/land to which the crossover application relates. All vehicle crossovers on the highway maintainable at the public expense require permission from the Highway Authority under Section 184(11) of the 1980 Act. The Council is the Highway Authority for its administrative area.
2. Currently residents, businesses and developers can apply for a vehicle crossover at any time. Depending on their particular circumstances they may also require planning permission under the 1990 Act, prior to submitting their application

under the Highways Act 1980. As an example, planning permission is required for applications for a vehicle crossover or an extension to an existing one, onto a classified road. For householder/residential applications, alterations to front gardens to provide off-street parking space will in many cases constitute 'permitted development' under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), in which case an application for planning permission is not required. This report deals with the highways application process only. Further information regarding planning permission and permitted development rights can be found on the Government's Planning Portal, (at <https://www.planningportal.co.uk>).

3. The costs of providing a crossover are entirely borne by the applicant and made up as follows: -
 - a. an administration fee for assessing the application, currently £80, and
 - b. the actual civil engineering costs of constructing the crossover. The construction costs are estimated by the assessing officer using competitively tendered contract rates provided by our term highways works contractor.
4. In Kingston the Policy was last reviewed some 10 years ago and is no longer considered to be 'fit for purpose', as complaints from applicants who have been refused permission are regularly received challenging the basis of highway officer decisions.
5. In order to overcome this issue and to remove any perceived ambiguities/inconsistencies in the evaluation criteria used to assess applications, this report seek approval to the Revised Policy for dealing with applications.
6. The Revised Policy is based on the similar Vehicle Crossover Policy in operation in the London Borough of Sutton since October 2017. Both the Policy and that operated in Sutton are administered by the Highways and Transport group in the Shared Environment Service for Kingston and Sutton.

Proposal and Options

7. It is proposed to adopt the Revised Policy, as set out in **Annex 1** of the report.
8. The main differences the Revised Policy seek to introduce relate to minimum standards that must be met for a crossover application to be approved, such as the minimum size of the 'off-street parking area criteria' and a greater emphasis on the consideration of factors affecting highway safety and access, particularly for pedestrians, including the young, elderly, disabled and infirm.
9. The key modifications are:
 - a change in the minimum front garden depth from 4.57m to 4.8m to ensure that there is sufficient space for parking
 - to remove the provisions relating to short frontage agreements (SFAs) to avoid vehicles overhanging footways, which has become a significant issue as there are insufficient resources to "police" the non-compliance with the terms of the existing SFAs

- officer's decisions made under delegated powers in accordance with the Revised Policy will only be reviewable if there are exceptional circumstances
 - the ability for applicants to request white bar markings on the carriageway for new vehicle crossovers as well as existing.
10. Another option is to incorporate some amendments to the Revised Policy that the Committee may consider necessary taking into account comments from the Neighbourhoods Committees and Officer's opinion, as set out below.

Consultations

11. The report on the Revised Policy was brought to the four Neighbourhood Committees for consultation. The comments made by the committees are set out below.
12. The key comments are listed below:
- a) Members of the Neighbourhood Committees have welcomed the uniformity that the Revised Policy will bring to the Borough, especially in relation to white bar markings, when all residents will have equal opportunities to request them. However, some members of the Maldens and Coombe Neighbourhood Committee (MCNC) have expressed the wish to be able to make decisions in some cases if requested by a resident, for example in cases similar to 69 Burlington Road, New Malden (considered on 16/01/19). Similar comment was made by the members of the Kingston Town Neighbourhood Committees (KTNC), who have requested member involvement in exceptional circumstances.
 - b) Another comment from the MCNC was whether the policy should provide that crossover applications will only be granted if they will result in at least two cars no longer being parked on the carriageway.
 - c) It was also requested by the MCNC that applicant's personal circumstances such as health, children or disability be taken into account when making decisions. This was similarly raised by the Surbiton Neighbourhood Committee (SNC).
 - d) Members of the SNC and KTNC supported the proposal to remove the provisions relating to SFAs. There was a question about how residents will know about this change. The response provided at the meeting was that the Revised Policy will be available on the Council's website.
 - e) Another comment from SNC was that on page 19 of the Revised Policy there is reference to a 1:10 slope and that it should be 1:20 to take into account wheelchair users negotiating crossovers.
 - f) Members of the South of the Borough Neighbourhood Committee (SoBNC) have asked to add dimensions to Figure 2 on page 10 and to clarify dimensions related to trees (within item f) of the Revised Policy on page 14).
 - g) At the KTNC it was suggested that increasing the frontage depth to 4.8m does not guarantee vehicles will not overhang the footway, especially where bay windows project at a distance above ground level in front gardens and that clarity is required about how measurements are taken in such situations.
 - h) At the KTNC specific problems in the Tudor ward were highlighted as several roads have grass verges and members wished these to be protected. Other areas in the borough e.g. Alexander ward also have verges. A request was made that the Council takes a view on this issue.
 - i) At the KTNC it was pointed out that crossovers impact on areas where there are parking controls and the Proposed Policy does not take account of parking controls.

- j) A comment was made at the KTNC about the reference to the Highways Act 1980 in the Legal Implications section of the report. Section 5 of the Act provides for rights of appeal which are absent from the proposed Policy. The Policy needs to make provision for decisions to be appealed.

Officers' comments

13. The Revised Policy states that "There is no right of appeal (unless there are exceptional circumstances, which can be demonstrated by the applicant, and may be considered at the discretion of the Highways and Transport Group Manager, or other senior manager)". To address comments from the two Neighbourhood Committees about member involvement in decision making (paragraph 12 a) above), the above provision could be changed to state that the reconsideration would be conducted by the Highways and Transport Group Manager, or other senior manager, together with the Chair of the relevant Neighbourhood Committee, however this is not recommended as it is important to maintain a clear degree of objectivity and consistency of application of the policy borough-wide. The comment at paragraph 12 j) is based on a misinterpretation of Section 184 of the 1980 Act. The right to object referred to in Section 184(6) of, and Schedule 14 to, the 1980 Act relates to notices served by the Council under Section 184(1) and (3). The Revised Policy is not concerned with such notices but requests made for crossovers under Section 184(11) which may be rejected or approved, with or without modification. There is no statutory right of appeal against the refusal or an approval subject to modification. The wording of the Revised Policy however refers to a discretionary reconsideration in exceptional circumstances.
14. Section 2 (9) of the Revised Policy states that "In considering applications, it is the site that will be considered against our policy requirements not the vehicle size or type or the occupier circumstances". Officers' opinion is that personal circumstances may change for example the occupier may move, the vehicle type may change, therefore these should not be taken into account.
15. The comments at paragraph 12 e) and f) will be addressed by minor alterations to the wording of the Revised Policy.
16. In response to the comment at paragraph 12 i) , the Revised Policy states that "A proposed vehicle crossover must not result in the need to amend an existing Traffic Management Order (TMO), e.g. the removal or amendment of existing waiting and loading restrictions, or parking bays. This includes all designated parking bays, permit holder parking bays in Controlled Parking Zones (CPZ's), paid for bays, marked parking bays in areas of permitted footway parking, restricted zones, home zones, permit parking areas etc."

Timescale

17. Subject to the Committee's approval, it is proposed that the Revised Policy will come into force on 1 April 2019.

Resource Implications

18. It is envisaged that implementation of the Revised Policy will not require any additional resources.

Legal Implications

19. Under Section 184(11) of the 1980 Act requests can be made to the highway authority for a vehicle crossing over a footway or verge in a publicly maintained highway, to provide vehicular access to a property adjoining the highway (a Request).
20. The Council is the Highway Authority for highways within its administrative area.
21. The Council may approve a Request with or without modification, or may propose alternative works or reject the request. In determining how to exercise their powers the Council is required to have regard to the need to:
 - (a) prevent damage to a footway or verge;
 - (b) ensure, so far as practicable, safe access to and egress from premises; and
 - (c) facilitate, so far as practicable, the passage of vehicular traffic in highways.
22. The Council is required to notify the person making the request of their decision and if they approve, with or without modification, the works proposed in the request or propose alternative works, they shall supply that person with a quotation of the cost of the works as approved or proposed by them, and the person may, on depositing with them the amount quoted, require them to execute those works.
23. Having regard to its duties as highway authority on 4th November 2008 the Council adopted the Policy and, in determining requests for vehicle crossovers the criteria set out in the Policy have been applied.
24. The Policy is now over 10 years old and the Revised Policy is made in accordance with the Council's powers and duties as Highway Authority.
25. As indicated in para. 13 above there is no right of appeal against the Council's decision to refuse a request, or to approve it subject to modification. The Revised Policy however makes provision for a discretionary reconsideration of the decision in exceptional circumstances. A person aggrieved by the decision can otherwise pursue the usual remedies to challenge such a decision, for example, by way of an application for judicial review, or taking the matter up with the Local Government Ombudsman.
26. In considering the Revised Policy, members must consider the Council's Public Sector Equality Duty under Section 149 Equality Act 2010 (the 2010 Act). The Council must, when exercising its functions and determining policies, have due regard to the need to eliminate discrimination, harassment and victimisation and other conduct prohibited by the 2010 Act and to advance equality of opportunity and foster good relations between those who share a 'protected characteristic' under the 2010 Act and those who do not share a protected characteristic. A 'protected characteristic' is defined in the 2010 Act as age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Marriage and civil partnership are also protected characteristics for the purposes of the duty to eliminate discrimination. Members must consider how the decision will contribute to meeting these duties in light of other relevant circumstances such as economic and practical considerations. An EQIA has been undertaken and is set out in **Annex 3**.

Risk Assessment

27. It is envisaged that the risks posed by vehicles parked on private driveways overhanging the footway will reduce if the Committee resolves to approve the Revised Policy.

Equalities Impact Assessment

28. It is set out in **Annex 3**.

Health Implications

29. When a new crossover is constructed, it is an introduction of a new hazard to pedestrians and road users, in particular to vulnerable groups such as the elderly, disabled and children, and this should be always be taken into account when a new application is received.

Road Network Implications

30. The Revised Policy aims to take a balanced view in relation to crossovers by supporting the right of residents who meet the criteria to have one constructed, whilst at the same time taking into consideration the impact of crossovers on the local community.
31. Vehicle crossovers reduce the amount of available on-street parking, but this normally needs to be balanced against the removal of existing vehicles parked on-street that use the crossover to park off-street on private land.

Environmental & Air Quality Implications

32. The Revised Policy aims to take a balanced view in relation to crossovers by supporting the right of residents who meet the criteria to have one constructed, whilst at the same time taking into consideration the impact of crossovers on the local community.
33. Replacement of grass and plant beds with concrete and asphalt surfaces can have a negative effect on air quality as plants are known for trapping air pollutants. The London Assembly passed a motion in February 2016 which called for the Mayor and the Government to promote lawns, flower beds, rain gardens and other vegetation over other permeable options such as permeable block paving, porous asphalt or concrete. Excessive use of crossovers particularly with non-permeable materials can create additional surface water flooding risk.

Background papers - None other than those provided in Annexes.

Annex 1 The Revised Vehicle Crossover Policy

Annex 2 Current Vehicle Crossover Policy

Annex 3 Equality Impact Assessment

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