

12th September 2014	
Report to Head of Transportation and Highways	
Approval of Street Works for Private Street	
Report of: Principal Engineer, Strategic Planning Transportation	
Purpose: Consideration of resolution to undertake street works to a private street at Sandown Road, Orsett, so as to bring the initial 22 metres up to an adoptable standard	
Wards affected: Orsett	Key decision: No

1. RECOMMENDATIONS:

- 1.1 To approve a resolution authorising street works to be undertaken at Sandown Road, Orsett (shown hatched green on the attached plan), so as to bring the street up to adoptable standard pursuant to section 205 of the Highways Act 1980 ('the Act').**

2. INTRODUCTION:

- 2.1** The Council entered into a Section 278 agreement whereby contributions were paid by a housing developer to the Council to undertake private street works to Sandown Road. This report seeks authorisation to undertake part of those works.

3. BACKGROUND:

- 3.1** On the 28 August 2009, the Council enter into an agreement with Mr Athwal pursuant to Section 38 and 278 of the Highway Act 1980. This agreement provided for Mr Athwal to pay to the Council £82,000.00 for the Council to upgrade part of the A1013 and Sandown Road as set out below.
- widening part of the footway north of the A1013(Standford Road),to facilitate the provision of a shared footway/cycleway facility
 - making up of the initial 37 metres of Sandown Road including highway drainage, kerb foundation, kerbs (including lowering at pram ramps) carriage sub-base, road-base, road base surfacing, road markings and all

other works required to bring that part of Sandown Road to an adoptable standard

- construction of the bellmouth of Sandown Close including highway drainage, kerb foundation (including lowering of pram ramps) carriageway sub-base, road-base, basecourse surfacing, road markings and all other works required to bring the road way to an adoptable standard.

- 3.2** This agreement was to replace an earlier Section 106 agreement where these obligations rested with the developer. The Council covenanted to commence the works within 12 calendar months of the date of the Agreement and to use reasonable endeavours to complete the Works as soon as is reasonable practicable. The monies were to be spent only on the Highway Works. If the works are not completed within 3 years from the date of receipt of the contribution the Council would have to repay to the Developer any unspent proportion of the Estimated Cost. The monies were received by 7 September 2009.
- 3.3** A budget of £34,000.00 was allowed to undertake the area of works along the A1013. This section was commenced and completed in 2010. At this time £19,690.66 was spent on these works, however the remaining £14,039.34 was not carried forward at the end of the financial year and was absorbed within Council budgets. In order to execute the recommended works these monies will have to be recovered from the Council's fund.
- 3.4** In 2010 Council engineers set out the proposed improvement works to Sandown Road and residents objected to those works on the grounds that the developer had enclosed land within their site that did not belong to them. The residents argued that the road improvement design followed the wrong alignment. It was subsequently found that the developer did not have legal title to some of the land. As the authority to execute private street works is subject to public consultation and member endorsement, this meant that it was very unlikely the works would be completed. Additionally the strip of unregistered land made it impossible for the developer to satisfy their obligations to dedicate part of the land as public highway following completion of the works. At the time the Council wrote to the developer advising them that the design would have to be changed to suit local circumstances.
- 3.5** The road was redesigned, but due to the conflict with the front gardens of the new properties, the new scheme was not consulted on at that time. In 2013 Mr Athwal wrote to the Council requesting the return of any unspent monies on the grounds that the 3 year period had expired. The Council were of the opinion that the agreement needed to be amended to reflect actual land ownership boundaries and the developer's ability to dedicate the land as public highway, along with an extension of time to execute the works.

3.5 Mr Athwal was not amenable to amending the agreement, so the dispute was referred to arbitration under the terms of the agreement. During the arbitration process the arbitrator indicated that some concession should be made on both sides. So a compromise agreement was made whereby the agreement was re-written to enable a deliverable scheme and £20,000.00 of the contribution was return to Mr Athwal. This agreement was completed in June 2014.

3.6 The residents of Sandown Road have been consulted concerning the revised highway improvement scheme. At the time there were no objections from residents, with the exception of Mr Athwal, since that time agreement has been reach with Mr Athwal concerning the reduced extent of works. A further consent for housing at the Nursery site on Sandown Road has been given permission, this will contribute a further £150,000.00 towards extending the improvement works along Sandown Road.

4. ISSUES AND/OR OPTIONS:

4.1 The Council's term contractor has value engineered the project and reduced the extent of works to contain the works within a budget of £43,000.00. This will enable the works to be undertaken as far as Sandown Close, as shown hatched green on the attached plan.

4.2 The Council currently hold £49,363.30 as a highway deposit in code XW060; however at the end of the financial year £20,000.00 of this will be vired to off-set the repayment to Mr Athwal, this will leave £29,363.30. Assuming the £14,039.30 that was not carried forward is recovered from existing budgets, then the monies available will be £43,402.30. This will cover the cost of the revised scheme, but it is reliant on recovering the £14,039.34. However, if the monies cannot be recovered from existing budgets, there is the potential to offset the shortfall against future Section 106 income from the former Nursery site. We have been in discussion with housing developer's concerning that site, however there is no certainty that development will proceed and the additional £150,000.00 will be paid.

4.3 Once the works have been executed, Mr Arthwal will dedicate as highway that section of the land over which the adoptable highway works have been constructed. Concurrently the unregistered private street would be adopted by the Council pursuant to Section 228 of the Highways Act 1980.

5. IMPACT ON CORPORATE PRIORITIES:

5.1 None

RELEVANT POLICIES

None

FINANCIAL IMPLICATIONS

£14,039.34 will have to be recovered from existing budgets. Alternatively if these monies are not available, then conceivably the Council could fund the shortfall pending payment of the further £150,000.00 developer contribution.

No commuted sum for future maintenance is being paid. The Council will be under a duty to maintain the land in the future and these costs will have to be absorbed within existing budgets.

LEGAL IMPLICATIONS

Pursuant to section 205, Highways Act 1980 where a private street is not, to the satisfaction of the street works authority, sewered, levelled, paved, metalled, flagged, channelled, made good and lighted, the authority may from time to time resolve with respect to the street to execute street works and, subject to the private street works code, the expenses incurred by the authority in executing those works shall be apportioned between the premises fronting the street.

Where the authority resolve to execute street works with respect to a part only of the street (other than a part extending for the whole of the length of the street), the expenses incurred by them in executing the works shall be apportioned only between the premises fronting the length of the street which constitutes or comprises that part.

Where an authority have passed a resolution, the proper officer of the council shall prepare—

- (a) a specification of the street works referred to in the resolution, with any necessary plans and sections,
- (b) an estimate of the probable expenses of the works, and
- (c) a provisional apportionment apportioning the estimated expenses between the premises liable to be charged with them under the private street works code;

and the specification, plans, sections, estimate and provisional apportionment shall comprise the particulars specified in paragraphs 1 to 4 of Schedule 16 of the 1980 Act and shall be submitted to the authority, who may by a further resolution (hereafter in the private street works code referred to as “the resolution of approval”) approve them with or without modification or addition as they think fit.

After a resolution of approval has been passed: a notice must be published once in each of two successive weeks in a local newspaper circulating in the area of the street works authority;

A notice must be posted in a prominent position in or near to the street to which the resolution relates once at least in each of three successive weeks; and within seven days from the date of the first publication, a notice must be served on the owners of the premises shown in the provisional apportionment as liable to be charged.

During one month from the date of the resolution of approval a copy of the resolution, and the approved documents or copies of them certified by the proper officer of the council, must be kept deposited and open to inspection free of charge at all reasonable hours at the offices of the street works authority and also, in the case of a street situated in a non-metropolitan district, at the offices of the council of that district. The notice required by this provision must contain:

1. (a) a statement that the street works authority has resolved to execute street works in the private street in question;
2. (b) the address of the offices of the authority at which a copy of the resolution of approval, and the approved documents or certified copies of them, may be inspected, and the times at which and the period during which they may be inspected; and
3. (c) a statement that an owner of premises liable to be charged with any part of the expenses of executing the street works may object to the proposal to execute the works, giving the period during which such objection may be made.

OTHER IMPLICATIONS

There are no objections from the frontagers. The consultation specified that no costs would be apportioned to the frontagers, accordingly Legal Services have previously advised that no site notice or newspaper notice is required.

BACKGROUND PAPERS

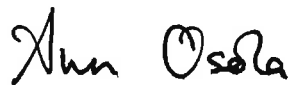
None

Contact: Nathan Drover
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Delegated Decision:

In accordance with Part 20 of the Constitution, where there are no costs to nor objections from frontagers I use my delegated authority to carry out the recommendations contained in the report.

Name: Ann Osola



Position: Head of Transportation and Highways

Date of Decision: 26/9/14

Deadline for call-in:

