

Southend-on-Sea Borough Council

Report of Deputy Chief Executive (Place)

To

Cabinet

On

8th November 2016

Report prepared by Peter Geraghty
Director of Planning & Transport.

Agenda
Item No

Proposed Revisions to the Permanent Vehicular Crossings Policy (PVXs) Executive Councillor: Councillor Tony Cox

A Part 1 Public Agenda Item

1. Purpose of Report

- 1.1 To seek the Cabinet approval to amend the existing Permanent Vehicular Crossing (PVX) Policy, following the outcome of its review in light of feedback from residents and Members.

2. Recommendation

- i) That the issues identified in Section 5 relating to the PVX Policy, process and procedures be noted.
- ii) To agree the following amendments to the PVX Policy.
- Paragraph 5.2(a)
 - Paragraph 5.2(b)
 - Paragraph 5.2(c)
 - Paragraph 5.2(d)
- iii) To agree a preference from options in paragraph 5.3(iii).
- iv) To agree the matters that are not considered to amount to exceptional circumstances set out in paragraph 5.5.
- v) To endorse the approach to refusing applications set out in paragraph 5.6.
- vi) To endorse the approach to exceptional circumstances set out in paragraph 5.8 acknowledging that each application is different and each exceptional circumstances case will be considered on its own merits subject to the decision on paragraph iv above.
- vii) To agree the recommendations in Paragraph 5.9 subject to decisions on (ii to vi) above.
- viii) To endorse the approach to fees set out in paragraph 5.11.

3. Background

- 3.1 The Council agreed a new policy for approving Permanent Vehicular Crossings (PVXs) in March 2013 which was subsequently reviewed in October 2014. A report was considered by the Cabinet on 15th March 2016. This was called in to Place Scrutiny where it was discussed on 11th April 2016. A number of issues were raised and the Portfolio Holder agreed to withdraw the report to take on board the discussions and views expressed by Scrutiny Members. The report has been updated to address those comments.
- 3.2 This report therefore sets out further revisions to the policy and the processes for dealing with applications for vehicular crossings and details a set of amendments for the Cabinet's approval.

4. Legal Requirements

- 4.1 The Council as the Highway Authority has a responsibility to consider applications from the residents to construct a crossover which it may approve with or without modifications.

The Authority may propose alternative works, or may reject the request. In determining whether to use its powers in respect of a request, the Council, as the Highway Authority, must under Section 184 of the Highways Act 1980, have regard to the need to prevent damage to the footway or verge and in respect of Section 184 (1)(a) or (3) have regard to:

- a) The need to ensure, so far as practicable, safe entry to and exit from premises.
- b) The need to facilitate, so far as practicable, the passage of vehicular traffic on the highway network.

5. Proposed Changes to the Policy

- 5.1 A Members' Workshop was held on 14th December 2015 to discuss the existing PVX policy, its operational effectiveness and to enable Members' to suggest any changes that may need to be considered by the Cabinet in its review of the policy. This workshop was open to all Members of the Council and 14 Members attended. The Cabinet at its meeting on 13th March 2016 considered the proposed amendments to the policy which were "Called In" by the Place Scrutiny Committee where the proposals were further discussed on 11th April 2016.
- 5.2 The recommendation changes set out in this report have been developed based on feedback from Members following a Workshop, individual Members' comments, discussions at the Place Scrutiny on 11th April 2016 and customers on about the operation and effectiveness of the policy. The Cabinet is recommended to consider and approve the following revisions to the existing PVX policy:-
- a) Instruct Officers to make necessary contractual arrangements with the existing term contractors to facilitate construction of all future PVX upon approval. As the existing contracts have been awarded through competitive process, this will enable better value for money, reducing heavy construction costs that have been incurred by the residents who sought quotations through independent

contractors on the approved list. It is expected that the change in these arrangements will enable the Council to negotiate a better price for customers, alleviating a serious concern of residents and Members.

- b) Full Width PVX -. Extension of PVX to cover full width of the property has been raised as an issue as a number of residents are seeking to extend full width. This was discussed in detail at the Place Scrutiny where some Members expressed their concerns in this regard. It was the view of the Members that a full width PVX will lead to loss of parking for others as only the property owner would be able to park there if the street is unrestricted. Where a street is restricted the width of the PVX will be covered by yellow lines, leading to loss of space which may otherwise be used for residents parking or pay & display as appropriate. Furthermore, the cumulative effect of approving full width crossings, needs to be borne in mind, as these would diminish the kerb line segregation between the footway and carriageway and thereby increase the risk to pedestrians from vehicles mounting the footway. As such applications can only be considered under the exceptional circumstance where officers will consider these from wider traffic, safety, and parking and accessibility perspective.
- c) Tree and Root Protection – To use of the National Joint Utilities Code of Practice - This requires measuring the circumference at 1.5m height of the tree and multiplying this by a factor of 4 to enable effective area for tree root protection. This proposal follows the same principle as the British Standard, but the multiplying factor is 4 rather than 12. This is proposed on the basis of hand digging for exploratory investigations to assess the presence of the roots and whether the tree can be safely retained through root protection measures. It is proposed that the cost associated with such works is borne by the applicant.
- d) If a proposed PVX application necessitates the need to amend an existing Traffic Regulation Order (TRO), the application would have to be accompanied by a legal undertaking by the applicant to agree to pay the cost associated with amending or removing the TRO including advertisements, contractor's costs and administration time. TRO's are subject to a separate statutory process and there is no guarantee that having followed this process, the alteration or changes would be approved.

5.3 Exceptional Circumstances and Review of Applications - There was considerable discussion at the Place Scrutiny meeting on 11th April on the operation of the existing "Exceptional Circumstances" applications. It was noted that the past applications under exceptional policy have largely not been as a result of any exceptional needs put forward by the applicants. These have largely been based on not having the site measurements as required by the policy or on the basis that there are existing PVXs in the vicinity. Members were of the view that decisions regarding inadequate measurements to meet policy requirements are not exceptions unless there are very minor differences in terms of shortage of space, i.e. 5mm-10mm. It was suggested examples of what did and did not constitute exceptional circumstances might be provided (this is covered below).

The Cabinet is asked to consider various options below as discussed at the Place Scrutiny in this regard and indicate their preference.

- i) Maintaining *status quo* where the decisions in relation to “Exceptional Circumstances” applications are made by Ward Councillors by majority decision. It needs to be noted that this may put Ward Councillors in a difficult position with regard to dealing with the decisions of this nature with their constituents. However, there is also a view amongst Members that they are well familiar with their areas and they are probably best placed to take such decisions.
- ii) To set up a Member Level Independent Panel to deal with all exceptional circumstances applications where there are substantial reasons to deviate from the policy due to exceptional needs of the residents. This Panel can be fully trained in terms of the policy, the legislation and the responsibilities in this regard. The Panel could comprise of three Councillors who would neither be the Ward Councillors nor residents of the Ward relating to the application under consideration and a decision will be based on simple majority. Panel Members will need to complete necessary decision paperwork, detailing reasons for their decision. However, this does mean setting up another panel, placing additional demand on Member’s time.
- iii) To add this to the remit of the Traffic & Parking Cabinet Committee/Working Party. This option was discussed at the Place Scrutiny and if this is the one that the Cabinet prefers, it is suggested that this becomes part of the remit of the Traffic & Parking Working Party (not the Cabinet Committee). If this is the preferred option, it will require change in the “Terms of the References” of the Working Party (not the Cabinet Committee to avoid the need for such applications to go through the Cabinet and the Full Council process). It will also enable the applicant and the Ward Councillors who may come to the Working Party to make their case for decision by the Working Party. If adopted, this will ensure a full and proper hearing by Members of the Working Party who will need to be provided with the appropriate training.
- iv) Appeal’s Panel - There was a suggestion that the decisions of this kind may be added to the remit of the existing Panel. However, technically this is not an appeal but rather an application under the “exceptional circumstance”. As such it is not considered appropriate to add this to the remit of this Panel.

The Cabinet is asked to indicate their preference in this regard.

- 5.4 Members’ views are also sought in respect of an issue that has arisen recently. Home owners who have either had an application for planning permission refused or been advised that permission would not be granted are circumventing the process by making an application for highways consent under exceptional circumstances and persuading Members to approve it. The Cabinet is asked to endorse the current policy which states that a planning consent where required must be granted before an application is made under this policy. Also there is no guarantee that if planning permission is granted that Highways approval will automatically be granted. It is also noted that failure to meet the necessary policy requirements cannot be used for the purpose of considerations under the exceptional circumstances.

The criterion for exceptional circumstances applications is part of the current published policy and the Cabinet is asked to endorse it.

5.5 The following are not exceptional circumstances;

- Existence of existing PVX's
- The existence of parking and waiting restrictions generally
- The number and/or size of vehicles in a household
- Lack of on street parking
- Job requirements i.e., shift working.

5.6 The Cabinet is asked to endorse the approach which is to refuse applications where:

- The application is considered to be detrimental to the efficient and safe use of highway
- There is a conflict with other legislation/policy.
- Other permissions are required and have been refused or not yet obtained (i.e. planning permission)
- Minimum policy standard have not been met with regard to the size of the parking area.
- Where availability of on street parking will be adversely affected.
- Inability to protect statutory undertakers apparatus
- Where there will be a need to relocate or remove a street lighting column/equipment where it impacts on safety and illumination standards.

5.7 The above list is by no means exhaustive. If the revised policy requirements are unmet then the application will be refused. However, if the Cabinet wish to continue with the exceptional circumstances as discussed in 5.2(b) above, then it is recommended that the applicant demonstrates such exceptional need based on their individual circumstance which are difficult to pre-empt until such applications are submitted given it is the site being considered for suitability against the policy requirements.

5.8 Applications under the exceptional circumstances will only be considered if the applicant can demonstrate their exceptional needs. Each application under this process will be different and as a guidance, the following may be considered as exceptions based on individual merits of the case:-

- If the applicant or a household resident has a substantial and permanent disability (for 12 months or longer) and experience great difficulty in accessing their home and can demonstrate dependency on a vehicle. This will only be an exception if there is no disabled parking bay outside the property.
- Due to serious illness or other disability there is medical need for a car parking space close to the property and there is evidence to support that the level of on street parking makes it exceptionally difficult to find a parking space nearby.

- If there is an adjoining wall between the two properties and the owners could legally agree to remove this to enable meeting the requirements of the policy for circulation area.
- If there is a common shared area between two properties, which meets minimum policy requirement
- Any other medical and/or physical needs that may be regarded as an exception to the policy.
- Properties that are short of the required measurement by 5 – 10mm.

5.9 It is proposed that no changes are made to the remaining policy or the criteria which is to ensure safety, free flow of traffic and protection of the local environment.

5.10 The proposed changes are being recommended to deal with the issues raised by Members and residents during the review process. If agreed, these will be incorporated into the PVX policy. Explanatory and guidance material for future applicants will also be amended to reflect the proposed changes.

5.11 The application fee level for PVX applications under highways legislation will be reviewed on an annual basis as part of the fees and charges.

6. Other Options

6.1 If the proposed changes are not agreed by the Council, the only option is to continue with the system that currently exists.

7. Reason for Recommendation

7.1 The changes proposed are in response to feedback from Members and the customers.

8. Corporate Implications

8.1 The revised policy and procedures will meet the aims of the Council's vision including:

- Clean, ensuring a well maintained and attractive street scene, parks and open spaces.
- Prosperous, enable well planned quality developments that meet the needs of the Southend residents and businesses.
- Excellent, deliver cost effective, targeted services that meet the identified needs of our community.
- Safe, ensure that works are carried out safely and are safe for highway users.

8.2 Financial Implications

8.2.1 The cost of administering and processing an application and the construction costs are to be funded by the applicant. The changes to the policy will result in additional work for officers in managing the process and this will be absorbed by the Department for Place.

8.2.2 Charges for applications and administration are reviewed annually and agreed by the Council. The cost of construction is dependent on the works required and will cover future maintenance costs.

8.3 Legal Implications

8.3.1 The proposed policy and approach will enable the Council to comply with its statutory duty under Section 184 of the Highways Act 1980 in a more effective and efficient manner. There will be liabilities for those agreeing the design of PVXs arising from the CDM Regulations.

8.4. People Implications

8.4.1 There will be additional impact on staff and resources arising from managing the contractors and this will be undertaken using in-house staff.

8.5 Property Implications

8.5.1 The proposals will ensure that the highway is better protected against damage caused by unauthorised access across the footpath.

8.6 Consultation

8.6.1 During the review, consultation has taken place with various teams within the Council and the policy has also been discussed at Special Members' Workshop.

All Council Members were sent a copy of the issues raised at the Workshop meeting and invited to provide any additional feedback.

8.7 Equalities and Diversity Implications

8.7.1 During the re-design both equality and diversity issues were considered and the proposed service is believed to accommodate both.

8.7.2 Everyone is provided with equal access and opportunity to make an application. The service is primarily available via the Council's Website, an online application can be made or relevant paper copies are available to download and/or print. Where access to our online service is unavailable, paper copies can be posted upon request.

8.7.3 Where an application is to create access for a disabled person living or intending to live in the premises it is proposed that the application fee is exempt, (all other costs relating to construction will remain the responsibility of the applicant). This is to ensure consistency with existing planning procedures (and evidence of disability will be required to qualify for this discount).

8.7.4 The revised policy and criterion also aims to ensure both the Planning Service and Highways Service assessment are consistent specifically in respect of the minimum parking area required.

8.8 Risk Assessment

8.8.1 There are no relevant risk issues arising from the changes to the policy other than those set out in the report.

8.9 Value for Money

8.9.1 The proposed new process will provide better value for money as the works will be undertaken by term contractors which have gone through a competitive tendering process.

8.10 Community Safety Implications

8.10.1 It is important that any procedure provides an outcome that does not lend to situations detrimental to pedestrians or highway safety. The new process will lend to better outcomes and decisions.

8.11 Environmental Impact

8.11.1 The proposed process and criteria aim to strike a balance between a request for a permanent vehicular crossing and the need to clearly and decisively protect the environment specifically having regard to the protection of all existing highway and the general street scene and amenity including grass verges.

9. Background Papers

Southend Design & Townscape Guide

Southend Streetscape Manual

Highways Act 1980

Cabinet report June 2013, September 2014 and 11th March 2016
11th April 2016 Place Scrutiny

10. Appendices

None