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**Decision Session - Executive Member for  
Transport and Planning**

10 November 2016

Report of the Corporate Director of Economy and Place

**Policy on Streets maintained at private expense and Highway  
Powers relating to urgent repairs**

**Summary**

1. A report was considered on 11 February 2016 by the Executive Member in which it was resolved to seek a review of the existing policy on private streets. The current policy dating from 2005 was appended to that report. The Executive Member is asked to note the contents of this report covering the issue of streets within the city boundary which are maintained at private expense and endorse it as a refresh of the substantive policy.

**Recommendations**

2. It is recommended that:-
  - a. This review is noted and the advice accepted.
  - b. The methodology for the undertaking of a Private Streetworks (PSW) scheme (at 34) is ratified
  - c. To consider amending the council contribution towards initial preparatory estimates/design, above the current 50%.
  - d. To require officers to re consult the 12 streets ranked highest (as listed in **Annex A**) and those which have previously submitted a petition expressing an interest.
  - e. That any requests submitted in line with the above will require a report to the Executive making recommendations and seeking the necessary resources to progress.

Reason: To ensure that a policy on private streets in the city is endorsed.

## Background

3. In 2005 an extensive piece of work was undertaken and presented to the Executive to set out a clear overarching council policy, providing a pragmatic and legally sound process, relative to the matter of private streets.
4. Individuals who have chosen to purchase properties within a private street are liable to maintain their street. If a private street could provide wider public benefits by being adopted and maintained at the public expense, there is a process whereby 75% of the frontagers can apply to the Street Works Authority (Council) for works to be carried out to adoption standard so that the liability is then taken on by the Highway Authority. There is a financial burden placed on the frontagers in pursuing this process. The Council can contribute towards this, but in order to ensure that public funds are properly allocated, and such contribution benefits the wider public interest, a robust policy is in place.
5. This policy is based on a clear methodology used to assess the priority of streets and is crucial in ensuring any public funds used to assist individual frontagers in the private street adoption process has a clear wider public benefit.
6. The purpose of the statutory powers is to ensure public safety, and to provide wider public benefit by adopting private streets in certain circumstances – not to enable public funding to be given to benefit private individuals in maintaining their private streets.
7. In conclusion the policy prioritised a list of 12 streets (out of in excess of 100 maintainable at private expense, at the time), being referred to as streets *prospectively maintainable at highway expense* (see **Annex A**). These were streets which it was considered had the greatest potential benefit to the general public with regards to highway and safety matters, in that they were connected to existing adopted streets and were through routes or connected existing loops open to through traffic (rather than for example, culs-de-sacs). **Annex B** is a list of the other remaining private streets.

8. The 12 streets were then ranked according to condition and safety (at the time). Account was also taken of the presence of street lighting, drainage and overall usage in terms of number of properties with a direct frontage and likely access by others. To assist in the ranking the council's own established criteria, used annually in connection with the Highway Condition Survey, were used. However to reflect the very significant difference in standards between a well maintained private highway and a poorly maintained one, the previous grading of 1 to 3 (now 1-5) was replaced by 1 to 10 to give greater scope for assessing condition and safety.
9. The system identified typical highway defects – fine crazing of pavement surface, minor loss of aggregate, minor deterioration of trench reinstatement, minor cracking, worn surface, cracking, gaps, depressions, evidence of standing water, trips hazards, problems with joints, edge defects to help assist in determining the rating of the highway.
10. The condition and safety element was combined with existing street lighting and drainage and its overall usage to identify priority, ranking the worse condition/safety aspects, lack of adequate street lighting and drainage.
11. Consultation then followed for the 12 highest ranked streets, seeking initial interest in the possible progression of a PSW scheme in line with the approved methodology. All property owners received a letter outlining the process and seeking their comments and the level of support in principle.
12. This direct consultation at the time of the policy preparation in 2005 did not generate any indication of adequate support (75%>) from any of the streets. The overall average level of interest in progression was 34%, with only one street above 70%, this being Melton Drive, with 71%. For reference the total estimated cost of undertaking a PSW scheme for that street was at that time calculated at £229k, which would have resulted in an apportionment to each of the 7 frontagers of approximately £29k. Given the very substantial costs estimated for all the priority streets, the outcome of the consultation was in reality, not unexpected.

13. Since that time a small number of PSW enquiries have been made to the council and residents have been directed to the policy. There have been no submissions demonstrating the level of support required. Officers have provided assistance to one street not on the priority list, (Malham Grove), where a group of residents expressed initial interest. In order to guide residents as to the possible scope and implications of progressing this in a formal manner, officers prepared a very initial pre-estimate for the works required, which was in excess of £90k. This was purely for some resurfacing and without an inspection or remedy for any sub structural elements, lighting or drainage. The residents did not wish to progress the matter.
14. In 2015 2 petitions were received in respect of 3 streets off Heslington Lane (Nevison Grove, Stirling Grove and Wilsthorpe Grove) and streets in the Rydal Avenue area of the city. The majority of these streets are not on the priority list. The number of signatures fell substantially short of the criteria. However paragraph 21 below refers to further consultation being undertaken on streets previously subject to petitions.

### **Review & Policy Refresh**

15. As part of the refresh of the policy officers have consulted with the Association of Public Service Excellence (APSE), which can be helpful in posing questions to other local authorities on matters of policy and procedure. Officers have issued a set of questions on two occasions. This has unfortunately resulted in only a single response from one council, who advised that they do not have any proposals to implement any PSW schemes. It is considered that the lack of response from other authorities is an indication that PSW schemes are not seen as something which local authorities are at this time readily progressing or giving priority towards.
16. In addition, further research has been undertaken through the internet to look up other council's policies on PSW. This indicates that many councils have a webpage and/or pdf which sets out their policy. All those reviewed reference the legislation (Section 205-218 Highways Act 1980), and procedures to be followed under a PSW scheme.

This indicates that the policy of the City of York is reasonable, pragmatic and closely aligned with the over arching legislation in place.

17. There have been no changes to the legislation since the original policy came into place.
18. The current policy established the potential for the council to provide a modest level of support to seek to reduce the overall cost to frontagers (property owners). This would reduce the costs of both design and construction in comparison with a scheme being procured directly by the frontagers, through a private contractor.
19. It is considered that the current offer from the authority which would reduce overall costs remains a reasonable one. A couple of authorities (Gateshead and Brighton) appear to have policies in place in which in certain circumstances may provide a contribution. Brighton's policy suggesting they may do so only if there is considerable benefit to the community at large, i.e. not simply the immediate street frontagers. Further enquires with officers from these councils has revealed that they have not progressed any PSW in recent years.
20. The current offer of support (from the council) in establishing the scope of preliminary design work required to bring a street to an adoptable standard (and the associated costs), is set at a 50% contribution. Given that a capital funding allocation is currently available, it may be considered that to offer an additional level of support (related solely to initial preparatory works), to any of the top 12 ranked streets, who express interest in progressing a PSW, would be a worthwhile proposal.
21. Given the passage of time since the original consultation of residents took place, it may be considered beneficial, to re-consult residents/property owners living on the 12 streets ranked highest. In addition letters could be sent to residents living on the streets which have submitted petitions in recent years but which did not meet the original criteria. The list of 12 highest ranked streets and streets which have submitted recent petitions is included in **Annex A**.
22. It is therefore recommended that initial letters are sent out to residents in the 12 prioritised streets and the petition streets

explaining the Council's updated policy on the adoption of Private Streets including an initial pre estimate, that costs allocated to residents on a frontage length basis would be in the region of £3k per metre length of the street subject to more detailed investigation. This letter will also include, again as an early indication, a total pre estimate cost for each street, based on previous work. If more than 75% of residents indicate that they are supportive of progressing the PSW/adoption process, then further investigation would be undertaken using the Capital budget allocation to give a more accurate cost estimate. With a formal further report to the Executive for funding in order to progress any request.

**Duties and Powers relating to the undertaking of repairs in private streets to obviate danger, Section 230 Highways Act 1980 (outside of the PSW and adoption procedure/policy).**

23. For clarity, streets, roads, footways and footpaths can ONLY exist in one of three distinct legal types:-
  1. A highway maintainable at the public expense
  2. A highway maintainable at private expense
  3. A private road/footway or footpath
24. The policy and update refers specifically to 2. The difference between 1 and 2 is the maintenance aspect. In all other respects they are identical.
25. With regard to this, as Highway Authority, the Council has a statutory duty to protect highway rights even if the Council are **not** responsible for maintaining the highway in question. This means:-
  - the Council must ensure that the highway can be used in safety and therefore the Council have powers to require the owner to undertake the necessary repairs to the minimum standard necessary to provide the absolute minimum level of safety. If the Council are unable to secure these repairs – because the owner cannot be traced for example – then the Council have powers to

undertake the work. A legal charge can be put on the land so that if the land is sold these costs can be recovered.

26. The Highways Act section 230 (1) provides a way of dealing with urgent repairs to a private street. This section states that:

*“Where repairs are needed to obviate danger to traffic in a private street the streetworks authority may by notice require the owners of the premises fronting the street to execute...such repairs as may be so specified”.*

27. If the frontagers fail to carry out the specified repairs within a timescale set out in the notice, then Section 230 (4) enables the authority to execute the repairs and recover the expenses from the frontagers. Given these powers, it is therefore clearly in the interests of owners of properties that front a private street to keep it in a reasonable condition.

28. Section 230 (7) states that:

*“...the street works authority...may in any street that is not a highway maintainable at the public expense, execute such repairs as are in their opinion urgently required to prevent or remove danger to persons or vehicles in the street.”*

29. This is a power the council may use to carry out repairs to remove a hazard or danger without charging the frontagers. It is a power not a duty. There is no obligation on the street works authority, the council, to undertake any repairs in a private street. The power should only be used as an exception. This is because the risk of carrying out repairs in private street by the council may be misunderstood and used as evidence that the street is a highway maintainable at public expense.

30. In summary in relation to urgent necessary repairs, section 230 gives the council the power to either fund any repairs they may wish to carry out in a private street or alternatively require the frontagers to undertake and/pay for the repairs.

## **Methodology for undertaking a PSW scheme (leading to adoption)**

31. The process laid out in the Private Streetworks Act is complex but has three key elements:-
- Formal approval of the adoption of an unadopted highway by the Highway Authority
  - Design and construction of the required works to the satisfaction of the Highway Authority
  - Apportionment of the costs
32. The first requires that the council passes the appropriate resolutions as the process unfolds. The Executive Member for Planning and Transport would be expected to make these decisions recognising that the conclusion of the process is the acceptance of an additional maintenance liability for the community.
33. Consistent with the current policy the Executive Member is asked to ratify the following 10 step process for a scheme on the ranked priority list:-

### Ten Steps Guide

1. Report to the Executive Member of Planning and Transport seeking a resolution to “execute the street works.”
2. Landowners are assisted to design a scheme and an estimate is prepared.
3. The scheme is submitted to The Executive Member for Planning and Transport for a resolution to approve the scheme. At this point the highway would be designated ‘Prospectively maintainable at public expense’
4. Notices of the resolution to approve the scheme are published in local newspapers and on the street affected by the works and each landowner notified of the estimated cost they will have to pay. This cost is based upon the proportion of frontage each landowner has to the highway
5. Objections from landowners who do not accept the scheme can then be lodged. These need to be based upon 6 specific points set out in the Highways Act.



(These grounds will be advised in the advertisement at 4 above)

6. Objections are then reported to the Executive Member for Planning and Transport with recommendations for action. The Executive Member does not have the power to overrule these objections but can modify the scheme so as to take into account objector's views. If the objections cannot be resolved then a magistrate's court hearing is convened.
  7. If the magistrate does not uphold the objections then the works can start and after it is finished the total final costs of the works are calculated. These are then divided between the landowners. In the event that the objections are upheld the process stops and the designation of the highway as 'prospectively maintainable' lapses. The road is then removed from the priority list
  8. A notice is served on the householders stating the part of the total costs they have to pay.
  9. Objections to payment can be made by those who do not wish to pay (based on the 6 points as before) and these objections are heard at the magistrate's court for resolution.
  10. The scheme can now be implemented, the highway brought up to standard and adopted.
34. With regard to step 2 it was previously recommended that the council may wish to assist the landowners in undertaking this work subject to:-
- a. The work being undertaken by the councils highway design service
  - b. 50% of the cost being met by the landowners (the balance coming from the works budget allocated at the time, circa £8k)
35. Engineering expertise is also required at steps 7 – to undertake the final design and finalise costs – and 10 – to obtain contractors and supervise the works. It was highlighted that the council needed to be satisfied at step 7 that the final design is suitable for adoption and this would involve checking proposals for conformity with the council's specifications. There is also an involvement at step 10 with the council undertaking periodic checks on the construction to ensure that

the specified materials are being used and in accordance with the requirements of the detailed design. This combined involvement is normally covered by a fee of 2.0% of the estimated works costs plus £500 for the checking process and 8.0% of the estimated works costs for approving the proposed design and supervision of the works. Such costs are in addition to the costs of actually doing the design work.

36. It was recommended that the council may wish to assist the landowners in undertaking this work by waiving both fees subject to:-

a. The work being undertaken by the councils highway design team

b. An all inclusive fee of 15% of the estimated cost of the works being met by the landowners

### **Financial Implications**

37. See paras 20-23. The financial impact will be dependent on the level of interest coming forward from the streets identified.

### **HR Implications**

38. In the event of resident support aligned to the policy for a PSW scheme, a further report will be required, which will assess and make recommendations with regards to the financial implications and necessary staff resourcing.

### **Contact details:**

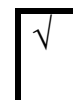
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#### **Chief Officer responsible for the report:**

Neil Ferris  
Corporate Director of Economy and  
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**Report  
Approved**



**Date** 1/11/2016

### **Wards Affected:**

**All**

**For further information please contact the author of the report**

### **Background Papers**

None

**Annexes:** Annex A- Streets Ranked by methodology

Annex B- List of Highways Maintainable at Private  
Expense, which are secondary to those ranked  
and listed as prospectively maintainable  
highways