CABINET

13 October 2015

Title: Domestic Vehicle Footway Crossover (Dropped Kerb) Policy	
Report of the Cabinet Member for Environment and Cabinet Member for Crime and Enforcement	
Open Report	**For Decision**
Wards Affected: All	**Key Decision:** Yes
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Accountable Divisional Director: Robin Payne, Divisional Director of Environment Services	
Accountable Director: Anne Bristow, Strategic Director for Service Development and Integration	

Summary

This report seeks Cabinet approval of a policy for the administration, approval of dropped kerbs and footway crossing applications. The policy sets out the criteria for granting approval and also the steps taken to enforce where offending is identified.

The report also sets out the enforcement approach being taken, as well as the approach being taken to assist residents meet the costs of complying with the policy.

Recommendation(s)

The Cabinet recommend to agree:

(i) The Domestic Vehicle Footway Crossover Policy as set out at Appendix 1 of the report;

(ii) The enforcement approach as set out in section 4 of the report; and

(iii) The approach to assisting residents by amending the Adaptations Grant Scheme as set out in paragraph 9.5 of the report.

Reason(s)

The proposals will support the Council's ambitions of promoting social responsibility by ensuring a fair and effective regulation of dropped kerb applications.

1. Introduction

1.1 The adoption of the Domestic Vehicle Footway Crossover Policy, better known as a 'dropped kerb policy', referred to will result in safer pavement parking, help to improve traffic flow, address the increase in the number of cars on the road and will provide a more efficient and streamlined service for residents.

1.2 The proposed policy for the enforcement of illegal activity will also provide a balanced approach between crossover applications and cases of non-compliance.

1.3 The Council currently receives complaints from the public, residents, pedestrians and motorists and the policy will address these concerns through enforcement where necessary, and also support the Council priority 'Enabling social responsibility'.

1.4 The adoption of a dropped kerb policy will improve pavement parking for Barking and Dagenham residents. The Council also has a duty under the Care Act 2014, to prevent, reduce or delay the need for Social Care or Health Services and the proposed policy will support the discharge of this prevention duty for people with mobility problems.

2. Background

2.1 A vehicle crossover is the area in between the road and the front of a property where the vehicle crosses from the road to the property. Often it is a driveway with a dropped kerb. A vehicle can access over the footway (pavement) from the carriageway (road) where permission has been granted. The dropping of the kerb is the engineering change that the Authority makes when granting permission to cross the footpath, although increasingly the boundary between the carriageway and the footpath can be found to be on the same level (shared surface).

2.2 Residents have no right to cross the footway to access their off road parking without a dropped kerb. Residents wishing to drive across the footway to gain access to park on their property must make an application to the local authority under s184 of the Highways Act 1980 ("the Act") to have a vehicle crossover constructed.

2.3 Permission to cross the highway is a significant advantage for the user because it allows them to keep their vehicle off the road and to gain some control over parking in front of their property. It supports measures to improve the safety of vehicles from crime, it allows ease of delivery by vehicle, and for those with mobility problems it can make access easier.

2.4 Granting such permissions will ensure that the correct engineering is in place to avoid damage to the highway and allows the safety of the crossing point to be formally assessed. However, it does take away on-street parking space and in areas where parking is a pressure, it is important to ensure that the net effect is the same or an increase in parking space. For this reason, second crossing points servicing a single dwelling may be unhelpful unless it releases additional off-street parking. Overall the benefits of a regulated approach to footpath crossing are seen as a positive investment in the highway. It is also important that sufficient attention is paid to the needs of pedestrians, particularly those with buggies or wheelchairs.

2.5 By Minute 212 of the Cabinet meeting on 20 December 2005, a Footway Crossing Provision and Charging Policy was introduced with a flat rate fee of £470 for a standard crossing. The introduction of this policy was to reduce the number of vehicles unlawfully crossing the public footway to gain access to off-street parking and to support the previous Council priority, 'Supporting people through tough times'. This fee has been reviewed to bring the cost of construction and maintenance in line with current costs.

2.6 Despite previous attempts to encourage residents to make applications through low cost dropped kerbs, the crossing of the footpath without permission has remained a significant practice and the measures and policy outlined in this report are intended to provide and establish a clear policy basis for our approach.

3. Legal Requirements

3.1 The Council is the Highway Authority for all roads in the borough, with the exception of the A13 and A406 North Circular Road which is under the authority of Transport for London. Residents may request the Highway Authority to construct a crossover and the Highway Authority may approve the request 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 footway crossings, the Council, as the Highway Authority, must consider the need to prevent damage to the footway / verge and, in determining the works to be specified in the notice, shall also 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.

c) The need to maintain safe pedestrian passage.

d) The stability and protection of the footway.

3.2 The Highway Authority must have regard to the primary considerations set out in the Act. Consideration should always be given to whether any concerns / problems can be overcome by the Highway Authority exercising its power to modify the request or propose alternative works. Each case must always be considered on its own merits.

3.3 If the Highway Authority does agree to the provision of a crossover it must provide the occupier with an estimate for the costs of the works, and once this amount has been paid, the crossing must be constructed.

3.4 Residents who permit vehicles to cross the public footway / verge to access their property may commit an offence contrary to section 16 – London Local Authorities and Transport for London Act 2003. The maximum fine upon subsequent conviction is £1,000.

3.5 Authority to approve dropped kerb applications and to enforce against illegal crossing has been delegated to the Corporate Director.

4. Dropped Kerb Policy

4.1 The policy proposed at Appendix 1 sets out the criteria and the approach that officers would take to deal with the approval of applications and the enforcement against those who offend.

4.2 The criteria for application are set out in the policy and formalise the approach that officers have taken to assess the primary considerations as set out in the Act. This includes all matters relating to the crossover specification, preparation of the property and relevant consents, impact on controlled parking zones, and criteria for supporting disabled residents with access requirements.

4.3 Specifically the policy proposes a number of new approaches:

It streamlines the process by:

- Removing the separate requirement for Housing consent so that this will be undertaken within the same application.
- Providing deemed consent for purpose built, shared surface locations where crossing forms part of the original planning consent.

Improves the look and feel of an area by:

- The attachment of conditions that limit or further regulate use of the access point (including restrictions on larger commercial vehicles).
- Including the repair and damage caused to the pavement by unauthorised crossing and recovering the cost from applicants.

Supporting residents by:

- Arranging for courtesy white lines as part of the application.
- Prioritising the needs of disabled residents and where appropriate providing financial support.

4.4 A number of residents have raised concerns that whilst they wish to have a dropped kerb, the relatively high cost (typically over £1000) is a barrier. A separate report elsewhere on the agenda proposes the introduction of a scheme that will enable residents to pay by instalments.

5. Enforcement

5.1 In January 2015 a pilot scheme was introduced to identify properties in the borough which do not have a dropped kerb and whose residents are therefore parking illegally. So far 1,200 properties have been identified. It is anticipated that based on the current rate of offending being identified, the proactive enforcement programme will need to continue to 2017/18. It is important to remember that all residents can bring themselves within the law, either by regularising their position or by parking legally elsewhere.

5.2 Costs of this action are being met by the fees adjustments for 2016 and costs fed into specific applications for enforcement.

5.3 If a property is identified as allowing vehicles to access a hard-standing on the property without the assistance of an approved vehicle crossing, Enforcement Officers will write to the occupant of the property to explain that it is an offence to

cross the public footway / verge without the assistance of an authorised vehicle crossing and in contravention of section16 of the London Local Authorities and Transport for London Act 2003. Enforcement Officers will request that the occupant desists from crossing at that point and invite him/her to make an application for a vehicle crossing. This letter will give non-compliant residents three weeks to make an application for a dropped kerb.

5.4 At the expiration of the three week application period if no application has been received an additional letter offering seven additional days to apply for a dropped kerb is then sent.

5.5 Upon subsequent inspection if it appears to enforcement officers that vehicles are still crossing the public footway / highway without the assistance of an approved vehicle crossing, a prohibition notice will be served on them under the provisions of section 16 of the 2003 Act. This notice allows 28 days from the date of the notice to desist crossing at this point or alternatively to make an application for an authorised vehicle crossing. This notice has a right of appeal giving 21 days to appeal the notice.

5.6 Should the occupier of a property that permits vehicles to cross the public footway / verge without there being in place an authorised vehicle crossing persist in doing so contrary to the service of a prohibition notice; the Council reserves the right to install bollards on the highway to prevent access to said private property as well as referring the matter to its solicitors for the consideration of prosecution.

5.7 Where at any stage enforcement action has been required the costs of this action will be added to the application fee. No application will be approved without full payment of all enforcement costs. The Council will write to the non-compliant resident at each stage confirming the outstanding balance of enforcement costs where appropriate.

5.8 The fees, charges and enforcement cost schedule will be advertised on the Council's website; which are subject to yearly review.

6. Legal Implications

Implications completed by: Michael Lynch, Senior Lawyer

6.1 Under section 16(1) of the London Local Authorities and Transport for London Act 2003, where there is evidence to show that an occupier of a premises adjoining or having access to a highway is habitually taking or permitting to be taken a mechanically propelled vehicle across a kerbed footway or verge in the highway to or from the premises, a relevant authority (in this case, the London Borough of Barking and Dagenham) is permitted to serve a notice on that occupier, requiring him/her to cease taking or permitting to be taken mechanically propelled vehicles across the kerbed footway or verge.

6.2 The word habitually co-notates a requirement that there must be evidence that the occupier has parked his/her vehicle across the kerbed footway or verge in the highway, on more than one occasion before the Local Authority would be in a position to serve a notice under section 16. The Local Authority must also take into

consideration a number of factors before deciding whether to issue such a notice on an occupier, specifically those factors as set out in section 16(3) of the Act:

- the need to prevent damage to a footway or verge;
- the need to ensure so far as practicable, safe access to and egress from premises;
- the need to facilitate, so far as practicable, the passage of vehicular traffic in and parking of vehicles on highways; and
- the need to prevent obstruction of the footway or verge

6.3 It follows that it will not always be appropriate for the Local Authority to issue a notice under section 16(1) on an occupier. Each case would need to be treated in its own right. If served, the notice served by the Local Authority must give the occupier at least 28 days from the date in which the notice is served, to cease the activity of taking or permitting to be taken mechanically propelled vehicles across the kerbed footway or verge. The notice must inform the occupier of his/her ability to lodge an appeal against this notice, the fact that the Local Authority has the power to carry out works to prevent the vehicle from taken across the footway or verge, and the power of the Local Authority to construct a vehicle crossing (kerb) over the footway, and any reasons why the Local Authority may be unlikely to execute such works if requested to do so.

6.4 If a person on whom a notice is served knowingly uses a footway or verge as a crossing in contravention of a notice under section 16(1), knowingly permits it to be used in this way, or without reasonable excuse removes, damages, alters or defaces any works executed that may be carried out by the Local Authority in default, he/she is liable to be prosecuted, and faces a maximum level 3 (£1,000) fine in the Magistrates Court if convicted of the offence.

6.5 The approach as set out in paragraphs 5.3 to 5.6 of the report are consistent with the Council's and the Department's enforcement policy. It is noted at paragraph 5.7 that where the Council has initiated enforcement action, they reserve the right to add to the costs of any subsequent application for a vehicle crossing made by an occupier, the costs of bringing the enforcement action. Following the decision of the Supreme Court in R (on the application of Hemming (t/a Simply Pleasure Ltd) and others v Westminster City Council [2015] UKSC 25 on 29 April 2015, reasonable enforcement costs have been recoverable by the Council by including these costs in the calculation of the costs to the Council. Such costs will therefore be considered by the Council in setting the level of the licence fees it levies for subsequent years. Previously such enforcement costs were not recoverable.

7. Financial Implications

Implications completed by: Carl Tomlinson, Group Finance Manager

7.1 Section 24 of the attached Dropped Kerb policy sets out the financial arrangements of the policy. The cost of administering and processing an application, and the cost of construction, are to be funded by the applicant. If enforcement action is required, costs will be recouped from the individual concerned. The policy is not expected to incur additional cost to the council.

7.2 Charges for application and administration are reviewed annually and agreed by Cabinet. The charges for 2015/16 were agreed by Cabinet (Minute 50, 18 November 2014) at £150 application fee and £306 administration fee.

7.3 The cost of construction is dependent on the works required and will include a one off payment against future maintenance. Where on inspection it is evident that damage to the footpath has been caused through unauthorised crossing by vehicles, any associated works of repair will be included in the cost of works quoted.

7.4 Residents who subsequently make an application after enforcement action will need to cover the cost of the associated action before their application will be approved. Residents that continue to cross the footway without applying for a dropped kerb will be prosecuted with a view to recovering costs.

7.5 The Council's MTFS includes additional income expectation of £125k in 2015/16 and £125k in 2016/17 in respect of regulatory activity. Income received through application of the attached policy will contribute towards this position. The policy is not expected to incur additional cost to the council.

7.6 The Council's position in respect of offering residents the ability to pay by instalments for goods and services received is discussed as part of a separate paper on the same Cabinet agenda.

8. Options Appraisal

8.1 Do nothing

8.1.1 The previous approach of relying on affordable crossovers to promote compliance has not worked. The costs now in place from 2016 and outlined in this report will allow for the true costs of applications, installations and enforcement are passed on to the applicant.

8.1.2 If the policy is not adopted officers will continue to only apply existing practice for assessing primary considerations under the act.

8.2 Adopt Report Proposals

8.2.1 Adopting the proposals in this report and the policy at Appendix 1 will allow the improvements outlined at 4.3 above to be implemented.

9. Other Implications

9.1 **Contractual Issues -** The Council currently uses a contractor to install authorised footway crossovers. The construction of the cross over is monitored through normal contractual procedures.

9.2 **Staffing Issues -** The Street Enforcement and Network Management Service are responsible for processing cross over applications and enforcing this against individuals that are crossing the footway without authorisation. Currently four extra officers are designated to this project for a programme that will continue whilst the level offending can sustain the costs of dedicated enforcement.

9.3 **Customer Impact -** The adoption of the policy document will give clear and concise guidelines to residents who wish to make an application for a footway cross over which will have a positive impact on the customer. The policy will balance the needs of residents who wish to drive their vehicles across the footpath, the needs of residents who want to walk along the street and the needs of those who want to be able to park on-street.

The intention is to ensure that the processes here of application, payment and enquiry will be developed as digital by design. As processes of enforcement continue the volumes anticipated for compliance will make this a priority area for the service.

There is intention to provide a universal payment by instalments plan for applicants. This process has been set out by the Director Finance in his report which is an item on the agenda for this Cabinet entitled Payment by Instalments.

9.4 **Safeguarding Children -** The proposals will support general road safety and children are a group that are at greatest risk from collisions with vehicles.

9.5 **Health Issues -** The Care Act 2014 provides a new emphasis and role for local authorities to actively promote well being and independence rather than respond only in a crisis.

An important element of supporting the well being approach is to work with people to prevent, reduce or delay the impact (on them) of their particular needs wherever possible.

In turn this should delay the need for more complex health or social care services, enhance their quality of life as well as saving resources and costs in the longer term. An example of this is the approach already taken by the Council to the adaptations grants scheme which provides for adaptation grants for older disabled people up to £4,000 that could be used for stair lifts, showers, down stairs WC and so on.

A detailed prevention frame work was adopted by the Health and Well Being Board at its meeting on the 12th May 2015.

It is proposed that the Adaptations Grants scheme, as exampled above, is now extended to include domestic vehicle cross over schemes. This would require a minor amendment to the qualifying criteria. Specifically, the current criteria" have significant difficulties using facilities in your home due to being older or disabled" should be amended to include:

- Where vehicle transport is regularly required and this directly supports the needs of the individual to maintain community, social, health and well being, thus delaying or preventing deterioration, a grant (currently up to £4,000) from the specific adaptations scheme could be made.

To support this, an additional capital amount will be made available from the Public Health Grant to support the anticipated small, but important, number of people who may be considered.

The use of this grant will be carefully monitored within the first 6 months of its operation. If agreed, the current public leaflets will be amended accordingly.

9.6 **Crime and Disorder -** The policy criteria proposed will support vehicles being taken off street where crime prevention can be more easily facilitated by residents.

9.7 **Property / Asset Issues -** The proposals here will ensure that the highway is better protected against damage caused by unauthorised access across the footpath.

9.8 **Risk Management -** The proposals here will ensure that the borough better regulates the risk of damage and injury caused by unauthorised and unsafe access across the footpath. Costs associated with enforcement will be met by applicants and resources will be monitored to ensure that they continue to match the income from enforcement.

9.9 **Impact on Council Priorities -** The adoption of this policy will promote social responsibility by ensuring we have a fair process for approving applications and robust arrangements for enforcing against those that offend.

Public Background Papers Used in the Preparation of the Report: None

List of appendices:

- **Appendix 1 -** Domestic Vehicle Footway Crossover Policy (October 2015)