

REPORT TO: Urban Renewal Policy and Performance Board.

DATE: 25 November 2009

REPORTING OFFICER: Strategic Director, Environment

SUBJECT: Proposed Policy for Vehicle Access Crossings over Footways and Verges

WARDS: Boroughwide

1.0 PURPOSE OF THE REPORT

1.1 To seek endorsement of a revised enforcement policy for the illegal crossing of vehicles over footways and verges, and to establish a clear policy for the construction of access crossings. The aim is to minimise the problems encountered in enforcement using the existing policy (which was approved by the Executive Board on 16 November 2000 following a report to Policy and Performance Board (Planning, Transportation and Development) on 11 October 2000) and problems experienced in recovering the costs of constructing the access crossings from offenders.

2.0 RECOMMENDATION: The Board supports the following recommendations and forwards its comments to the Executive Board for consideration:

(1) That access crossings only be permitted and constructed in accordance with the criteria set out in 3.2.1 of this report.

(2) The application procedure be adopted as set out in paragraph 3.3.2 of this report.

(3) Should a programmed structural footway maintenance scheme be carried out by the Council within 2 years of an owner/tenant having paid for a crossing, then a partial or full refund will be offered in accordance with Appendix 7. This will be available, if requested, up to 12 months after the completion of the maintenance works. A crossing will also be offered, where appropriate, at a reduced cost or free of charge (depending on the scope of works), if structural maintenance works are to be carried out as set out in paragraph 3.4.2 of this report.

(4) The enforcement procedure set out in the report the Executive Board on 16 November 2000 following a report to Policy and Performance Board (Planning, Transportation and

Development) on 11 October 2000 be amended as set out in paragraph 3.5 of this report.

(5) For the avoidance of doubt, and in accordance with Section 184 of the Highways Act 1980, it is agreed that the Council shall construct any or all access crossings within the Borough and seek to recharge the costs to the frontage property owner.

(6) The revised policy and procedure for the construction and enforcement of crossings over footways and verges be supported.

3.0 BACKGROUND

3.1 Introduction

A vehicle access across a footway (please note that reference to footways throughout this report can also include verges or cycleways) requires a properly constructed access crossing to prevent the footway or any utility apparatus lying under the footway suffering damage as a consequence. The practice of vehicles repeatedly crossing footways, which have not been strengthened, not only causes damage to the surface and to any equipment beneath it, but also in many cases poses a hazard to pedestrians and other lawful users of the footway. In addition, it is also the custom of some property owners to deposit objects such as planks of wood, metal ramps and even concrete in the drainage channel to aid access. These practices could cause serious injury to members of the public and damage to the vehicles that the public may be travelling in or on and may result in claims for compensation being brought against the Council, quite apart from the extra maintenance costs incurred in regularly repairing the damage caused, or removing the unlawful obstructions.

The sections below explain the issues to be considered and proposed courses of action for each of the following:

- Criteria for acceptance of a crossing;
- Application Procedure;
- Incorporation of crossings into the Council's Footway Structural Maintenance Programme (including a refund mechanism); and
- Enforcement & recovery of costs.

3.2 Acceptance of a crossing

3.2.1 Proposed Criteria

It is important when making a decision on the acceptability of any access crossing (whether by request or following an enforcement procedure) that it is based on an assessment of highway safety and on

whether certain planning requirements can be met that would enable planning permission to be given, if required.

It is proposed that the following criteria be used to assess the highway safety of an access proposal, these being:

- The size of curtilage available – a large car must be able to fit within the curtilage of the property without overhanging the footway (or cycleway or highway verge), to avoid causing a hazard to pedestrians (or cyclists) or obstruct access to services. As a general rule the space required within the curtilage for a standard car will be 4.8m x 2.4m but this may vary depending on the specifics of the site;
- There must be sufficient visibility when exiting and entering the driveway in accordance with appropriate highway standards. These take the form of visibility splays and stopping sight distances, which vary depending on the type and speed limit of road;
- The access crossing should usually be situated a minimum of 1.8m from the end of any curve radius leading into or out of a junction, whilst still complying with visibility criteria. However, there may be exceptions on lightly trafficked estate roads, providing that road safety is not compromised; and
- It is considered that, where parallel parking alongside the kerb is happening on a road, this should not preclude an access crossing, and an appropriate number of marked bays may need to be removed. It may also be necessary to install an 'H bar' marking to deter obstruction of the access, where there are no marked bays or loading restrictions. However, perpendicular parking bays are usually privately owned, and access crossings behind these will generally not be permitted, except where a single landowner is involved.

The criteria to be taken into consideration when assessing whether planning permission is required are as follows:

- Planning permission is required to create an opening onto a highway that is a classified road (ie. a road which has a number in the national road system, starting M, A, B or C). The type and speed limit of certain roads (together with the highway safety criteria above) may mean that they are unsuitable for a private access crossing. This would be established during the planning application process; and
- In line with the Pitt Report¹, should the area of the new hard surface within the property exceed 5m², then planning permission will be required where the new hard surface is not porous or does not drain to a soakaway within the property boundary.

It should also be noted, however, that other factors are taken into consideration when assessing a planning application (for an access crossing on a classified road) such as visual amenity as well as highway safety.

1. In response to recommendation 9 of the Pitt Review (Householders should no longer be able to lay impermeable surfaces as of right on front gardens and the Government should consult on extending this policy to back gardens and business premises), from 1 October 2008 new rules have applied for householders wanting to pave over their front gardens. Government advice to householders is as follows:

You will NOT need planning permission if a new driveway uses permeable (or porous) surfacing which allows water to drain through, such as gravel, permeable concrete block paving or porous asphalt, or if the rainwater is directed to a lawn or border to drain naturally. If the surface to be covered is more than five square metres, planning permission will be needed for laying traditional, impermeable driveways that do not control rainwater running off onto roads.

3.2.2 Proposal

Only those access crossings which comply with the requirements outlined in 3.2.1 above should be permitted. It is intended that the above requirements will be summarised, with illustrations, to form the basis of an advertisement in the local press, and a public information leaflet, which will also contain information about the enforcement procedure.

3.3 Application Procedure

3.3.1 Issues

A owner or occupier may request the Council to construct an access crossing at the their own expense, provided it is considered acceptable (in highway and planning terms as outlined above). The application is required to be made by the submission of a letter or e-mail of the request to the appropriate Section Leader. It is proposed that future applications may be submitted via an online application form.

As indicated in 3.2 above, road safety, planning and drainage issues (relating to the Pitt Report) may prevent the construction of an access crossing at the location requested. The householder will be advised that planning permission will be required if the drainage criteria set out in the public information leaflet (Para 3.2.2 above) cannot be met or if the proposal is on a classified road.

3.3.2 Proposal

Subject to a satisfactory site survey and consultation with the Council's Development Control Staff, a letter as shown in Appendix 1A incorporating a quotation for the construction of the crossing will be sent for acceptance and signing by the occupier(s) or by the owner if a tenanted property. Once accepted, works will be programmed for completion within 8 weeks. If the site survey or consultation with Development Control Staff indicates that there would be road safety or planning issues that would warrant a refusal, then a letter will be sent to the occupier(s) (and owner if a tenanted property), indicating the reasons why (See Appendix 1B). Should the occupier(s) then cross the footway illegally, enforcement as per Para 3.5 would follow.

3.4 Incorporation of crossings into the Council's Footway Structural Maintenance Programme

3.4.1 Issues

During the implementation of programmed footway maintenance works, a number of illegal access crossings can be encountered, which, if left, could result in long term damage to the footway and any statutory undertaker's apparatus underneath. In order to address this situation, occupiers are normally offered the opportunity to have a legal crossing constructed, as part of the footway maintenance works.

Occupiers who had recently paid for a legal access crossing have raised concerns that some people were getting them provided free of charge or at reduced rates, as part of the above offer, when they had to pay full price.

3.4.2 Proposal

For future maintenance programmes it is proposed that a letter be sent to occupier(s) (and owner where known if a tenanted property) notifying them of the proposed footway maintenance works (see Appendix 1C) and offering them the opportunity to have a legally constructed vehicle access crossing, if they do not already have one, at a reduced cost or free of charge, depending on the scope of the works to be carried out. In addition, anybody affected by the footway maintenance works, who has paid for a legal access crossing within the last 2 years (which is a reasonably foreseeable interval for programming of footway works) will be offered a full or partial refund, again depending on the scope of the works carried out.

More detail on how this refund mechanism would operate is presented in Appendix 7.

Should anyone with an illegal access crossing not take up the offer and continues to cross the newly constructed footway, illegally, then enforcement as per Para 3.5 would follow.

3.5 Enforcement and Recovery of Costs

3.5.1 Issues

Gaining access to properties by the illegal crossing of footways and verges is still a common Boroughwide occurrence. Briefly, the current enforcement process involves:

- A complaint being received / notification from a highway inspection;

- Notice being served on the offender, currently assumed to be the occupier of the property whether owner or tenant (if the location of the crossing is acceptable); and
- The offender then has three options: 1) comply with the terms of the notice and have the access crossing constructed by the Council at their cost; 2) sign a declaration that he/she will refrain from illegally accessing their property; or 3) they can appeal to the Secretary of State against the notice served on them. However, if the offender does none of the above, then a formal crossing is constructed by the Council's Highways Department, after advising the occupier, and attempts are made to recover the costs from the offender.

The current policy and procedures were set out in the report to the Executive Board on 16 November 2000 following a report to Policy and Performance Board (Planning, Transportation and Development) on 11 October 2000. This is shown in Appendix 2 and outlined the way in which certain enforcement situations would be dealt with.

Whilst there was no protocol for prioritisation of enforcement action included in the October/November 2000 reports, it has become general practice for complaints and notifications regarding illegal access crossings to be prioritised for enforcement, due to limited resources and the volume received. This is on the basis of risk to highway users, with those in an unacceptable position or with hazards such as ramps being given priority. It is intended to continue with this practice.

Recovering the costs of constructing the crossings has posed problems in the past. In some cases bailiffs have been called in to recover debts with limited success, which has resulted in £6k of debt being written off, over the last year.

The installation of bollards, to prevent all cases of illegal crossing, as an alternative to constructing the crossing has been considered. However, due to the provisions of the Highways Act, this could only be carried out if the crossing was deemed detrimental to road safety. ie. unacceptable. (This was actually included in the October 2000 report as a possible course of action). It should be noted that this will also result in a non recoverable cost being incurred by the Council, but is likely to be less than that incurred for a full access crossing construction.

3.5.2 Proposal

It is therefore proposed, where there are illegal crossings but it is possible to construct acceptable crossings that the practice of the Council, as Highway Authority, constructing the crossings and recharging the costs be continued. However a number of additional actions are proposed to encourage offenders to comply:

- Where a property is rented the enforcement letter and notice is to be sent to both the occupier(s) **and** owner if a tenanted property to give additional scope for recovery of the costs;
- Inform the occupier(s) (and the owner if a tenanted property) that should a programmed structural footway maintenance scheme be carried out within 2 years of them having paid for a crossing, then a partial or full refund will be offered, depending on the scope of the work carried out (as described in 3.4 above). This will hopefully encourage them to pay for the crossing and avoid the need for legal proceedings; and
- In the event of the costs being written off, the Council's Land Charges Section be advised to enable a land charge be attached to the property, which would allow for the costs to be recovered when the property is sold.

In addition, where it is deemed that on the grounds of highway safety and / or planning implications, that an access crossing is unacceptable, a letter will be sent to the occupier(s) instructing them to cease using the crossing, as shown in Appendix 3. If the occupier(s) persists in using the access crossing, physical measures, such as bollards, may be used to prevent further use.

Amendments are proposed to the letter of notice (advising of the Council as Highway Authority constructing an access crossing and recovering the costs), as shown in Appendix 4, to also advise of highway scheme implications. The notice would be sent to both the occupier(s) and owner if a tenanted property. This allows more avenues for recovery of costs. The letter has also been amended to formally allow the offender to sign an undertaking that they will no longer cross the footway.

The enforcement procedure would be applied as shown on the flow chart in Appendix 5, with the changes proposed by this report being indicated in bold type. The procedure to be followed should the access position be considered detrimental to highway safety is also shown in the same flowchart.

3.6 REVISED POLICY AND PROCEDURE

The above proposals, together with the existing policy and procedure make up a revised policy and procedure for the construction and enforcement crossings over footways and verges as attached in Appendix 6.

4.0 POLICY IMPLICATIONS

- 4.1 These recommendations serve as an addendum to, but do not replace, the existing enforcement policy for the illegal crossing of vehicles over footways and verges (which was approved by the Executive Board on 16

November 2000 following a report to Policy and Performance Board (Planning, Transportation and Development) on 11 October 2000) with a view to minimising the problems encountered in enforcement using the existing policy and problems experienced in recovering the costs of constructing the access crossings from offenders. The recommendations are also intended to establish a clear policy for the legal construction of access crossings.

5.0 OTHER IMPLICATIONS

5.1 The recommendations would have financial resource implications as follows:

- The full or partial refund of the costs paid by householders would need to be borne by the maintenance scheme budget, as would any crossings constructed for free or at a reduced rate as part of the maintenance scheme. These costs would be able to be accommodated from the existing allocation.
- The costs resulting from enforcing non compliance are currently borne by existing revenue budgets. It is hoped that these costs will be reduced by offering the incentives and the penalties to be imposed as set out in 3.5.2 above.
- Potential for reduction in claims, resulting from the effective removal of potentially dangerous alterations or additions to the footway.

6.0 IMPLICATIONS FOR THE COUNCIL'S PRIORITIES

6.1 Children and Young People in Halton

The recommendations should result in a more effective enforcement process, and a more legible approach to constructing new crossings, creating a safer environment for all, including children and young people.

6.2 Employment, Learning and Skills in Halton

There are no direct impacts, but improvements in the quality of the footway network are likely to encourage walking, which has positive benefits for accessing employment and education.

6.3 A Healthy Halton

There are no direct impacts, but improvements in the quality of the footway network are likely to encourage walking, which has positive benefits for health.

6.4 A Safer Halton

The recommendations should result in a more effective enforcement process, and a more transparent approach to constructing new crossings; creating a safer environment for all, by removing hazards such as damaged footways and placement of obstructions to allow "bumping up" onto kerbs. The policy should also encourage people to park within their own curtilage and reduce on street parking.

6.5 Halton's Urban Renewal

The recommendations should result in a more effective enforcement process, and a clearer approach to constructing new crossings. This will assist with visual amenity by removing hazards such as damaged footways and placement of obstructions to allow "bumping up" onto kerbs. It will also assist with the adoption of the principles of the Pitt Report to ensure that surface water drainage within new urban development is dealt with in a sustainable manner.

7.0 RISK ANALYSIS

- 7.1 The only risk relating to the approach described is one of financial resources, should the offering of access crossings, either free of charge or at a reduced rate, not significantly increase the level of compliance with enforcement notices (where it is hoped that savings can be made from not having to write off the costs of constructing illegal crossings due to non payment, and possibly some savings from fewer instances of claims or repairs).

8.0 EQUALITY AND DIVERSITY ISSUES

- 8.1 There are no direct implications but improvements in the quality of the footway network will be of particular benefit to those members of the public who are elderly or disabled.

9.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972

| Document | Place of Inspection | Contact Officer |
|------------------------------------------------------------------------------------------|----------------------------|------------------------|
| Highways Act 1980 Section 184 | Rutland House | Jonathan Farmer |
| Enforcement Policy – Vehicle crossings over footways and verges 11 October 2000 | Rutland House | Jonathan Farmer |
| Pitt Report | Rutland House | Jonathan Farmer |

Appendix 1A – Quotation Letter

Dear Sir / Madam,

HIGHWAYS ACT 1980 SECTION 184 VEHICLE ACCESS CROSSING AT ?????, CHESHIRE

I refer to your recent application for a vehicle access crossing. Below is a quotation for the construction of the access crossing, subject to the following:

1. Halton Borough Council is required to carry out all works within the highway. The cost to construct an access crossing at the above address will be £???. The work will be carried out by the Council's maintenance contractor to the appropriate specification. The cost can be spread over a 6 or 12 month period under a Bank Direct Debit. If you would like to proceed with the works, please sign the enclosed acceptance form and return it with the Direct Debit form (if required) or a cheque for the full amount.
2. This estimate is for the construction of a new / widening your existing vehicle access crossing consisting of ??No. dropped kerbs and ??No. transition kerbs including the formation of footway as marked and agreed on site. This estimate is fixed for a period of three months. Requests for work to be carried out after the expiry date of this quotation will be subject to a review of cost.
3. In carrying out this work the Council will be responsible for the location and adjustment of public utility services should this be necessary. However, all work is confined to the adopted public footway, kerb, verge or carriageway and will not include any work on privately owned land.
4. If you are not the owner of your home, you must obtain permission from your landlord for the work to be carried out. The signature of your landlord, or his authorised representative, must be included on the acceptance form. If your landlord wishes to pay for the cost of the works, they should complete and return the forms with payment.

Please note, this offer of construction of a vehicle access crossing, does not infer the right to construct a hard standing within the curtilage of your property, as this is covered under separate planning legislation. The attached sheet gives further information on this matter.

Yours faithfully

Engineering Technician

*Enclosed: Acceptance Form
Direct Debit Form
Pitt report paragraph*

Appendix 1B – Refusal Letters

Dear Occupier(s),

HIGHWAYS ACT 1980 SECTION 184 HIGHWAYS ACT 1980 VEHICLE ACCESS CROSSING AT ?????, CHESHIRE.

I refer to your recent application for a vehicle access crossing. On this occasion, I am unable to agree to the construction of an access crossing at the location requested on the grounds of highway safety/planning considerations, for the following reason(s):

I attach a copy of Section 184 of the Act, together with a copy of Schedule 14 of the Act for your records.

Yours faithfully

Section Leader

Dear Sir/Madam

HIGHWAYS ACT 1980 SECTION 184 HIGHWAYS ACT 1980 VEHICLE ACCESS CROSSING AT ?????, CHESHIRE

I refer to your tenant's recent application for a vehicle access crossing. On this occasion, I am unable to agree to the construction of an access crossing at the location requested on the grounds of highway safety /planning considerations, for the following reason(s):

.

I attach a copy of Section 184 of the Act, together with a copy of Schedule 14 of the Act for your records.

Yours faithfully

Section Leader

Appendix 1C – Notification of options in the event of maintenance scheme

Dear Occupier(s),

PROPOSED FOOTWAY RECONSTRUCTION, *** ROAD**

As part of the Council's current structural maintenance programme, it is intended to reconstruct the footway outside your property.

This work could offer you the opportunity to have a legally constructed vehicle access crossing for your property, if one does not already exist. It is an offence under Section 184 of the Highways Act 1980 to permit / take a vehicle across a footway to gain access to a property, unless the footway has been strengthened to protect both the footway and any utility apparatus that lies beneath it.

The construction of this access crossing would be subject to the restrictions detailed on the attached information sheet, and if you are not the owner of the property, confirmation of acceptance from your landlord will be required. Please note that not all properties within the maintenance programme area will comply with these restrictions, so it may not be possible to provide an access crossing to every property.

The cost of this crossing would be greatly reduced from that you would pay if an application were made after the footway has been reconstructed.

Please note, this offer of construction of an access crossing, does not infer the right to construct a hard standing within the curtilage of your property, as this is covered under separate planning legislation. The attached sheet gives further information.

Should you wish to take up this offer, please contact the writer to discuss further.

Yours faithfully

Section Leader

Dear Sir/Madam (for owner - send if known to be tenanted property)

PROPOSED FOOTWAY RECONSTRUCTION, *** ROAD**

As part of the current structural maintenance programme, it is intended to reconstruct the footway outside your property.

I attach a copy of a letter sent to your tenant, offering the construction of a vehicle access crossing at the property, should one be required. Please note the requirement for you to give permission prior to construction of the access crossing.

Yours faithfully

Section Leader

Appendix 2 – Policy and Procedure from October/November 2000 report – Enforcement Policy – Vehicle Crossings over Footways and Verges

The way forward is to establish a Council Policy that clearly defines when enforcement or another course of action is necessary.

Enforcement action is recommended where:

(i) A crossing is considered to be detrimental to road safety.

Action- *Serve notice on owner/occupier stating intention to close access. Where it is considered necessary in the interest of road safety to close an access, and the owner/occupier continues to gain access to the property across the footway a bollard/barrier will be erected to prevent access.*

(ii) The owner/occupier of the property takes/permits a vehicle across the footway to gain access to their property.

Action -*Serve notice on owner/occupier stating intention to construct access crossing and recharge costs.*

(iii) The owner/occupier has deposited an object in the channel to aid access thus creating a hazard to persons lawfully using the highway.

Action – *Remove hazard and serve notice on owner/occupier stating intention to construct access crossing and recharge costs.*

(iv) The access is defective and has been constructed recently by the owner occupier and not Halton Borough Council on their behalf.

Action - *Serve notice on owner/occupier stating intention to reconstruct access crossing and recharge costs.*

Other courses of action are recommended:

(i) Where the access is defective (unless patently brand new).

Action – *Repair under Routine Maintenance Programme.*

(ii) Where a request is received from a member of the public for an access crossing where there is not one at present.

Action – *This will be constructed, if appropriate, by the Council and the costs incurred met by the applicant prior to construction.*

However, it should be noted that under Section 184(11) Highways Act 1980 the highway authority may approve the request with or without modification, or may propose alternative works or reject the request.

In determining how to exercise their powers under this subsection an authority shall have regard to the matters mentioned below:

(a) the need to ensure, so far as practicable, safe access to and egress from premises; and

(b) the need to facilitate, so far as practicable, the passage of vehicular traffic in highways

Where it is considered necessary in the interest of road safety to reject the application, and the owner/occupier continues to gain access to the property across the footway a bollard/barrier will be erected to prevent access.

Any enforcement action taken will be pursued under the highways act 1980 Section 184. Action under this section should:

- (i) Eradicate the unlawful incursion onto the footway, the obstruction of gullies, and danger to highway users (i.e. damaged surfaces, concrete, wood etc in the channels) and,
- (ii) Reduce maintenance costs, and damage to buried pipes, cables etc.

It should also be noted that any access on a classified road would require planning approval prior to any works being undertaken.

This will ensure a correct and consistent standard of construction of access crossings and protect the Council's interests.

Operation of the Policy

It is proposed that the policy be implemented on a Boroughwide basis.

Where a complaint has been received from the general public the area will be visited by a Highway superintendant to establish what course of action is to be pursued e.g. repaired under general maintenance or by enforcement action.

Where a problem is identified by the Highway Superintendant during a section 58 inspection, again this will be dealt with either by general repairs or by enforcement.

Where enforcement action is pursued a standard letter and notice will be served on the owner or occupier if it is a tenanted property.

The Notice will state the Council's intention to construct a vehicular access crossing and recharge the costs incurred in doing so, should the owner/occupier continue to illegally cross the footway.

Where an access crossing has been constructed incorrectly action may be taken however old the access crossing may be. However, the Council will only be able to recover expenditure against the person who built (or authorised the building of) the defective crossing.

Publicity

If the Committee approves the policy, it is proposed to advertise its existence in the local papers to ensure that offenders/potential offenders are aware of the situation,

An information sheet has been prepared and can be supplied on request. Ideally these information sheets should be displayed in all the Council's information centres.

Appendix 3 – Enforcement letter where location is deemed unsafe by the Council as Highway Authority

Dear Sir/Madam,

RE : ILLEGAL ACCESS CROSSING AT

It has been brought to my attention that you take or permit a vehicle to be taken across the footway to gain access to your property at the above location.

The Council in appropriate circumstances can issue notice under Section 184(1) to enforce the construction of an access crossing, but only if it is safe to do so. However, in this location it is unsafe because

Therefore you should cease crossing immediately as failure to do so may result in the Council taking action to prevent access.

If you have any queries or require any further clarification on this matter please contact the above on extension 3130.

Yours faithfully,

Engineering Technician

Appendix 4 – Revised enforcement letter where location is deemed safe by the Council as Highway Authority

Dear Occupier(s) (also send to owner if a tenanted property)

**HIGHWAYS ACT 1980 - SECTION 184.
VEHICLE CROSSINGS OVER FOOTWAYS AND VERGES.
LOCATION:.**

It has been brought to my attention that you take or permit a vehicle to be taken across the footway to gain access to your property at the above location. This is an offence under the Highways Act 1980 and should cease forthwith.

A vehicle access across a footway requires a properly constructed access crossing to prevent the footway or any utility apparatus lying under the footway suffering damage as a consequence. These works can only legally be carried out by the Highway Authority or its contractors.

In view of this, I enclose a formal notice stating that Halton Borough Council as Highway Authority intends to construct an access crossing and recover the expenses incurred from you. Should the Council carry out a structural maintenance programme affecting your property within a 2 year period of the access crossing being constructed, you may be eligible to a full / partial refund depending on the work carried out.

Should you no longer wish to cross the footway, please complete and return the enclosed 'undertaking to cease crossing' form, within the Notice period.

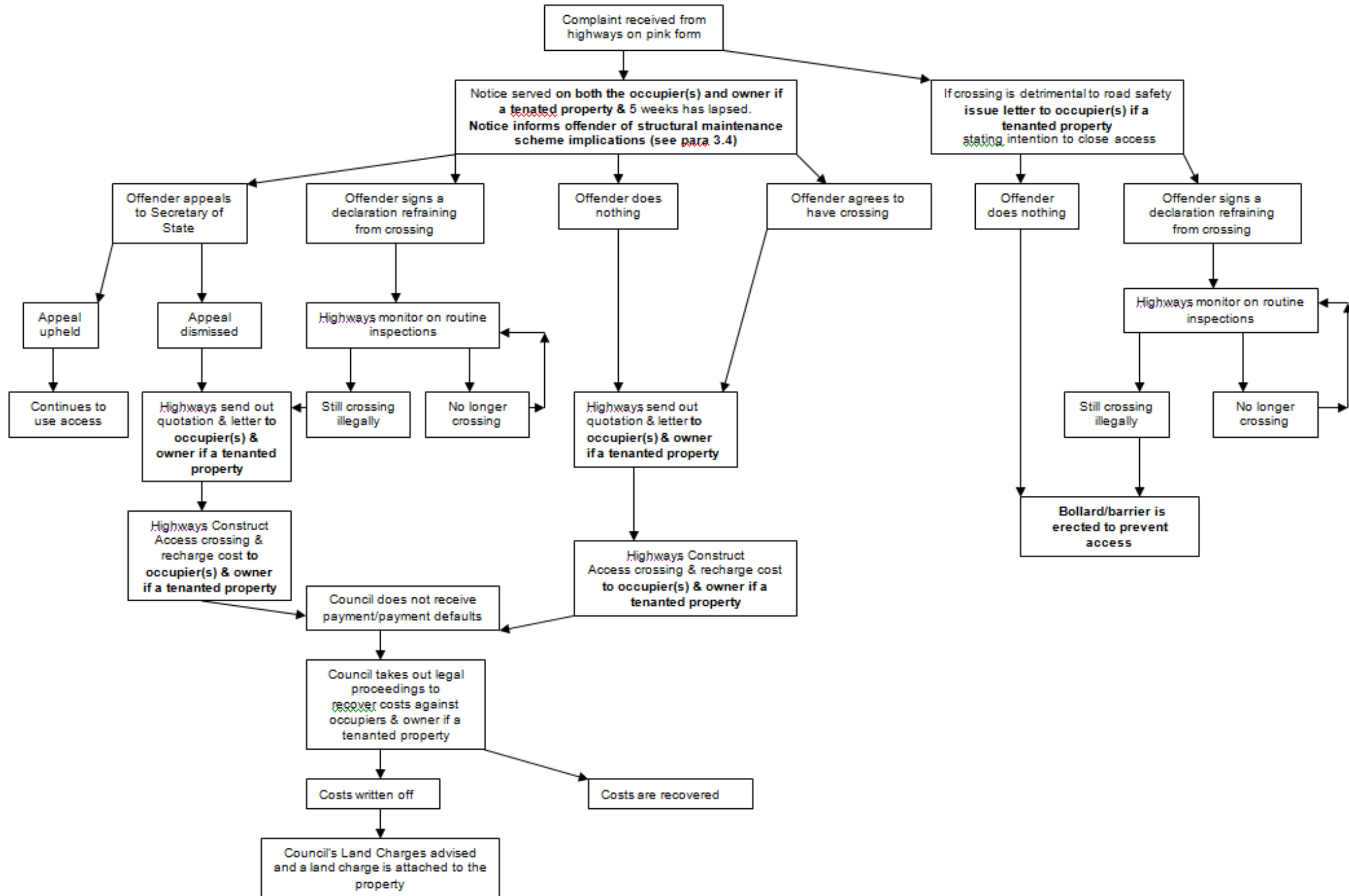
If you are in any doubt as to the meaning of this notice you are strongly advised to obtain your own independent legal advice.

Yours faithfully,

Operational Director

*Enclosed: Formal Notice
Undertaking to cease crossing pro forma*

Appendix 5 - Enforcement procedure flowchart



Appendix 6 – Revised policy and procedure for the construction and enforcement of crossings over footways and verges

Criteria for acceptance of a crossing

Only those access crossings which comply with the requirements outlined below should be permitted:

Relating to highway safety:

- The size of curtilage available – a large car must be able to fit within the curtilage of the property without overhanging the footway (or cycleway or highway verge), to avoid causing a hazard to pedestrians (or cyclists or obstruct access to services). As a general rule the space required within the curtilage for a standard car will be 4.8m x 2.4m but this may increase depending on the specifics of the site;
- There must be sufficient visibility when exiting and entering the driveway in accordance with appropriate highway standards. These take the form of visibility splays and stopping sight distances, which vary depending on the type and speed limit of road;
- The access crossing should usually be situated a minimum of 1.8m from the end of any curve radius leading into or out of a junction, whilst still complying with visibility criteria. However, there may be exceptions on lightly trafficked estate roads, providing that road safety is not compromised .
- It is considered that, where parallel parking alongside the kerb is happening on a road, this should not preclude an access crossing, and an appropriate number of marked bays may need to be removed. It may also be necessary to install an 'H bar' marking to deter obstruction of the access, where there are no marked bays or loading restrictions. However, perpendicular parking bays are usually privately owned, and access crossings behind these will generally not be permitted, except where a single landowner is involved.

Relating to planning:

- Planning permission is required to create an opening onto a highway that is a classified road. The type and speed limit of certain roads (together with the highway safety criteria above) may mean that they are unsuitable for a private access crossing. This would be established during the planning application process.
- In line with the Pitt Report¹, should the area of the new hard surface within the property exceed 5m², then planning permission will be required where the new hard surface is not porous or does not drain to a soakaway within the property boundary.
- It should also be noted, that other factors are taken into consideration when assessing a planning application, which would be for an access crossing on a classified road, such as visual amenity as well as highway safety.

Application procedure

A owner or occupier may request the Council to construct an access crossing at their own expense, provided it is considered acceptable (in highway and planning terms as outlined above). The application is required to be made by the submission of a letter or e-mail of request to the appropriate Section Leader. It is proposed that future applications may be submitted via an online application form.

Road safety, planning and drainage issues (relating to the Pitt Report) may prevent the construction of an access crossing at the location requested. The householder will be advised that planning permission will be required if the drainage criteria set out above cannot be met or if the proposal is on a classified road.

Subject to a satisfactory site survey and consultation with the Council's Development Control Staff, a letter as shown in Appendix 1A incorporating a quotation for the construction of the crossing will be sent for acceptance, and signing by the occupier(s) or by the owner if a tenanted property. Once accepted, works will be programmed for completion within 8 weeks.

However, it should be noted that under Section 184(11) Highways Act 1980 the highway authority may approve the request with or without modification, or may propose alternative works or reject the request. In determining how to exercise their powers under this subsection an authority shall have regard to the matters mentioned below:

- (a) the need to ensure, so far as practicable, safe access to and egress from premises; and
- (b) the need to facilitate, so far as practicable, the passage of vehicular traffic in highways

If the site survey or consultation with Development Control Staff indicates that there would be road safety or planning issues that would warrant a refusal, then a letter will be sent to the occupier(s) (and owner if a tenanted property), indicating the reasons why (See Appendix 1B). Should the occupier(s) then cross the footway illegally, enforcement would follow as set out below ie. erection of bollard.

Incorporation of crossings into the Council's Footway Structural Maintenance Programme

For future maintenance programmes it is proposed that a letter be sent to occupier(s) (and owner where known if a tenanted property) notifying them of the proposed footway maintenance works (see Appendix 1C) offering them the opportunity to have a legally constructed vehicle access crossing, if they do not already have one, at a reduced cost or free of charge, depending on the scope of the works carried out. In addition, anybody affected by the

footway maintenance works, who has paid for a legal access crossing within the last 2 years (which is a reasonably foreseeable interval for programming of footway works) will be offered a full or partial refund, again depending on the scope of the works carried out.

More detail on how this refund mechanism would operate is presented in Appendix 7

Should anyone with an illegal access crossing not take up the offer and continues to cross the newly constructed footway, illegally, then enforcement would follow as set out below.

Enforcement and Recovery of Costs

Where there are illegal crossings but it is possible to construct acceptable crossings, the Council, as Highway Authority, will construct the crossings and recharge the costs, following the service of a notice. The following is proposed to encourage offenders to comply:

- Where a property is rented the enforcement letter and notice is to be sent to both the occupier(s) **and** owner, if a tenanted property, to give additional scope for recovery of the costs;
- Inform the occupier(s) (and the owner, if a tenanted property) that should a programmed structural footway maintenance scheme be carried out within 2 years of them having paid for a crossing, then a partial or full refund will be offered, depending on the scope of the work carried out (as described above). This will hopefully encourage them to pay for the crossing and avoid the need for legal proceedings; and
- In the event of the costs being written off, the Council's Land Charges Section be advised to enable a land charge be attached to the property, which would allow for the costs to be recovered when the property is sold.

In addition, where it is deemed that on the grounds of highway safety and / or planning implications, that an access crossing is unacceptable, a letter will be sent to the occupier(s) instructing them to cease using the crossing, as shown in Appendix 3. If the occupier(s) persists in using the access crossing, physical measures, such as bollards, may be used to prevent further use.

The letter of notice (advising of the Council as Highway Authority constructing an access crossing and recovering the costs) as shown in Appendix 4 also advises the offender of highway scheme implications. The notice should be sent to both the occupier(s) and owner if a tenanted property. This allows more avenues for recovery of costs. The letter also formally allows the offender to sign an undertaking that they will no longer cross the footway.

The enforcement procedure should be applied as shown on the flow chart in appendix 5.

Enforcement action is recommended where:

(j) A crossing is considered to be detrimental to road safety / or may have planning implications making it unacceptable:

- **Action** - *Where it is deemed that on the grounds of highway safety and / or planning implications, that an access crossing is unacceptable, a letter will be sent to the occupier(s) instructing them to cease using the crossing, as shown in Appendix 3. If the occupier(s) persists in using the access crossing, physical measures, such as bollards, may be used to prevent further use.*

(ii) The owner/occupier of the property takes/permits a vehicle across the footway to gain access to their property.

- **Action** -*Serve notice on owner/occupier stating intention to construct access crossing and recharge costs.*
- *Where a property is rented the enforcement letter and notice is to be sent to both the occupier(s) **and** owner, if a tenanted property, to give additional scope for recovery of the costs;*
- *Inform the occupier(s) (and the owner, if a tenanted property) that should a programmed structural footway maintenance scheme be carried out within 2 years of them having paid for a crossing, then a partial or full refund will be offered, depending on the scope of the work carried out (as described above). This will hopefully encourage them to pay for the crossing and avoid the need for legal proceedings; and*
- *In the event of the costs being written off, the Council's Land Charges Section be advised to enable a land charge be attached to the property, which would allow for the costs to be recovered when the property is sold.*

(iii) The owner/occupier has deposited an object in the channel to aid access thus creating a hazard to persons lawfully using the highway.

- **Action** – *Remove hazard and serve notice on owner/occupier stating intention to construct access crossing and recharge costs.*
- Also apply the last 3 bullet points in ii)

(iv) The access is defective and has been constructed recently by the owner occupier and not Halton Borough Council on their behalf.

- **Action** - *Serve notice on owner/occupier stating intention to reconstruct access crossing and recharge costs.*
- Also apply the last 3 bullet points in ii) above

Other (non enforcement) action is proposed

i) Where the access is defective (unless patently brand new).

- **Action** – *Repair under Routine Maintenance Programme.*

Any enforcement action taken will be pursued under the Highways Act 1980 Section 184. Action under this section should:

- (j) Eradicate the unlawful incursion onto the footway, the obstruction of gullies, and danger to highway users (i.e. damaged surfaces, concrete, wood etc in the channels) and,
- (ii) Reduce maintenance costs, and damage to buried pipes, cables etc.

It should also be noted that any access on a classified road would require planning approval prior to any works being undertaken.

This will ensure a correct and consistent standard of construction of access crossings and protect the Council's interests.

Operation of the Policy

It is proposed that the policy be implemented on a Boroughwide basis.

Where a complaint has been received from the general public the area will be visited by a Highway Superintendent/Inspector to establish what course of action is to be pursued e.g. repaired under general maintenance or by enforcement action.

Where a problem is identified by the Highway Superintendent/Inspector during a routine inspection, again this will be dealt with either by general repairs or by enforcement.

Where enforcement action is pursued a standard letter and notice will be served as set out above.

The notice will state the Council's intention to construct a vehicular access crossing and recharge the costs incurred in doing so, should the owner/occupier continue to illegally cross the footway.

Where an access crossing has been constructed incorrectly, action may be taken however old the access crossing may be. However, the Council will only be able to recover expenditure against the person who built (or authorised the building of) the defective crossing.

APPENDIX 7

SCOPE OF REFUNDS DUE TO FOOTWAY RECONSTRUCTION SCHEMES

Anybody affected by the footway maintenance works, who has paid for a legal access crossing within the last 2 years (which is a reasonably foreseeable interval for programming of footway works) will be offered a full or partial refund, depending on the scope of the works carried out.

Actual invoiced amounts to occupants are based on constructional costs plus HBC and contractors' administrative costs. Any refunds given would be based on constructional costs only.

| TYPE OF SCHEME | TYPE OF REFUND |
|----------------------------------------|------------------------------------------------------------------------------------------------------------------------------------|
| Full reconstruction including kerbs | Full refund less administrative costs |
| Full reconstruction excluding kerbs | Full refund less costs associated with additional kerbing required to form access crossing, less administrative costs |
| Resurfacing including kerbs | Full refund less costs associated with sub base required to form access crossing, less administrative costs |
| Resurfacing excluding kerbs | Full refund less costs associated with additional kerbing and sub base required to form access crossing, less administrative costs |
| Surface course overlay including kerbs | Refund of costs associated with additional kerbing required to form access crossing. |