



Notice of Non-key Executive Decision

Subject Heading:	Land at 75 North Street, Hornchurch authority to enter into an agreement under s38 and s278 Highways Act 1980
Cabinet Member:	Cllr Osman Dervish Environment
SLT Lead:	Dipti Patel Assistant Director of Environment
Report Author and contact details:	John Deasy LLB (Hons) Highways Engineering Manager Development Control 01708 434675 John.deasy@havering.gov.uk
Policy context:	Havering Local Development Framework (2008) Havering Local Implementation Plan 2018/19 Delivery Plan
Financial summary:	<p>The full costs of the s278 and s38, legal fees, technical fees and implementation of works will be met by the developer.</p> <p>Income to be received by the Council from the development totals £0.033m of which £0.018m will be held for future maintenance</p> <p>The Council will also hold a deposit of £0.088m to cover costs of making good possible works in default</p>

Relevant OSC:	Environment
Is this decision exempt from being called-in?	No

The subject matter of this report deals with the following Council Objectives

Communities making Havering	[]
Places making Havering	[X]
Opportunities making Havering	[]
Connections making Havering	[X]

Part A – Report seeking decision

DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

This Executive Decision authorises the Council entering into a highway agreement made under section 38 and section 278 of the Highways Act 1980 (as amended) to allow new roads to be adopted (s38) and changes to the highway to be made (s278) in pursuance of the following planning consents;

- 75 North Street Hornchurch RM11 1ST – P0995.18

CANNOT LOCATE PLANNING APP OR APPROVAL

AUTHORITY UNDER WHICH DECISION IS MADE

Council's Constitution:

Part 3, Section 3.8.3, paragraphs (b) and (v);

(b) Other than in those matters delegated to the Lead Member following consideration by the Highways Advisory Committee, to exercise all powers and duties in respect of maintaining and improving highways, providing facilities, and interference with highways arising under Parts IV, V, VII, IX and XIV of the Highways Act 1980; and

(v) To exercise all powers and duties under the Highways Act 1980 that are not delegated to the Leader or Cabinet Member.

STATEMENT OF THE REASONS FOR THE DECISION

The following development has planning consent which includes the construction of a 5 storey residential building. In addition and to facilitate the construction of this building there is also a requirement for a layby and an access to be built under the aforementioned agreements with associated works as follows:-

- 75 North Street Hornchurch RM11 1ST – P0995.18

Where new estate roads are concerned, developers are required to enter into an agreement made under S38 of the Highways Act 1980 in order for the roads to be adopted by the Council as public highway, maintainable at public expense.

Where works are required to make changes to the existing highway (new junctions, accesses or related works), developers are required to enter into an agreement made under S278 of the Highways Act 1980 in order for the works to be able to take place.

Where a development has both S38 and S278 works, then a hybrid agreement is used.

OTHER OPTIONS CONSIDERED AND REJECTED

For the adoption of new roads (S38), there is an option for the Council to decline to adopt the roads. However, given that the developer will undertake to construct them to the Council's standards and to pay the fees and contributions required by the Council, the adoption of the roads will provide public amenity to those living within the development and accessing Beam Park Station.

For the S278 works, the alternative option of doing nothing is not considered appropriate given the developments have planning consent and the Council cannot use its highway powers to frustrate the lawful implementation of a planning consent in terms of providing new access.

PRE-DECISION CONSULTATION

None

NAME AND JOB TITLE OF STAFF MEMBER ADVISING THE DECISION-MAKER

Name: John Deasy

Designation: Highways Engineering Manager

Signature: *John Deasy LLB (Hons)*

Date: 23 October 2019

Part B - Assessment of implications and risks

LEGAL IMPLICATIONS AND RISKS

The Council's Constitution requires a formal decision to be taken before an agreement made under either S38 or S278 of the Highways Act 1980 can be entered into and the authority for such is delegated to the Assistant Director for Environment.

S38 of the Highways Act 1980 provides for the "power of highway authorities to adopt by agreement".

Where a development has been granted planning consent which includes new roads and it is deemed that they will be of benefit to the public and they meet the Council's requirements on geometry and structural design, then adopting these roads as highway maintainable at public expense is considered acceptable.

S38 of the Highways Act 1980 makes further provisions so that the costs associated with making the agreement, the works, other highway authority costs and maintenance payments are recoverable from the developer through the agreement.

S278 of the Highways Act 1980 provides for "agreements as to the execution of works" if the highway authority is satisfied that they will be of benefit to the public.

Where a development has been granted planning consent which includes physical changes to the existing highway network, it is deemed that the works will be of benefit to the public given the principles and details of the changes have been examined

through the planning process.

S278 of the Highways Act 1980 makes further provisions so that the costs associated with making the agreement, the works, other highway authority costs and maintenance payments are recoverable from the developer through the agreement.

FINANCIAL IMPLICATIONS AND RISKS

The legal and technical fees associated with the works will be secured with the S38 and S278 agreements to ensure the Council's reasonable costs are met.

Technical fees are calculated as 12.5% of the full project cost, subject to a minimum fee of £6,500 per project. The technical fee allows for at least 72 hours of staff time per project with larger scheme providing a larger fee and therefore more hours of staff time. In all cases it is anticipated that this work will be contained within the allowed hours.

The full costs for the implementation of the works totalling £0.088m will also be met by the developers through the S38 / S278 agreement.

As part of the agreements, the developers will pay a maintenance contribution fixed at 20% of the full project cost to the Council to help cover future maintenance costs. This sum will be held under a specified project code and monitored through the road adoptions revenue budget.

Provisions will be made by way of Bond or Deposit for the making good works defaults. Assuming the projects are completed without defects both deposit or bond value will be returned to the developer(s). In the case of the agreement set out in this report, the developer will provide a deposit to the value of £0.088m.

The income generated from the developer through the agreement is set out below:

<u>Item</u>	<u>£m</u>
Technical Fees	£0.011
Maintenance Contribution	£0.018
Legal Fee - Flat rate of £0.004	£0.004
Total	£0.033

**HUMAN RESOURCES IMPLICATIONS AND RISKS
(AND ACCOMMODATION IMPLICATIONS WHERE RELEVANT)**

None arising from this decision.

EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS

The Council has a general duty under the Equality Act 2010 to ensure that its highway network is accessible to all. Where infrastructure is provided or substantially upgraded, reasonable adjustments should be made to improve access. In considering the impacts and making improvements for people with protected characteristics (often, but not limited to disabled people, the young and older people), this will assist the Council in meeting its duty under the Act.

Havering has a diverse community made up of many different groups and individuals. The council values diversity and believes it essential to understand and include the different contributions, perspectives and experience that people from different backgrounds bring.

The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the council, when exercising its functions, to have due regard to:

- (i) the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (ii) the need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
- (iii) foster good relations between those who have protected characteristics and those who do not.

Note: 'Protected characteristics' are: age, sex, race, disability, sexual orientation, marriage and civil partnerships, religion or belief, pregnancy and maternity and gender reassignment.

The council demonstrates its commitment to the Equality Act in its decision-making processes, the provision, procurement and commissioning of its services, and employment practices concerning its workforce. In addition, the council is also committed to improving the quality of life and wellbeing of all Havering residents in respect of socio-economics and health determinants.

The Technical Approval process which leads to the drawings supporting the S38 and S278 agreements will give consideration to ensuring the Council's duties are met.

Part C – Record of decision

I have made this Executive Decision in accordance with authority delegated to me by the Leader of the Council and in compliance with the requirements of the Constitution.

Decision

Proposals agreed.

Details of decision maker

Signed x



Name: Dipti Patel

Assistant Director Environment

Date: 26/11/19

Lodging this notice

The signed decision notice must be delivered to the proper officer, Debra Marlow, Principal Democratic Services Officer in Democratic Services, in the Town Hall.

For use by Committee Administration

This notice was lodged with me on 27/11/19

Signed A. H. am

Non-key Executive Decision

BACKGROUND PAPERS

None.