

Gateshead Council - Private Street Works Guide

December 2003

PRIVATE STREET WORKS & ADOPTION BY THE COUNCIL

Frequently Asked Questions

There are many reasons you may want to contact us in relation to making up a street. We repeatedly get asked questions about private streets and street works, so we have prepared some answers for to the most commonly asked questions under the following headings.

1. **What is a 'Private Street'?**
2. **Who meets the cost of making up a Private Street under the Private Street Works Code?**
3. **Will I benefit if my street is made up?**
4. **How do I get my street made up?**
5. **What happens if my street is to be made up?**
6. **Can I object at this stage?**
7. **What are the grounds of objection to the provisional apportionment?**
8. **If I think that my premises derive little or no benefit from the proposed works compared with other people, may I object under point 7 (f)?**
9. **Where may the resolution, plans and other documents be seen?**
10. **How is the work done?**
11. **How is the final apportionment made and then what happens?**
12. **What are the grounds for objection to the final apportionment?**
13. **What other rights do I have?**
14. **How and when do I pay?**
15. **What happens when deposits against the road charges have already been paid to the Council?**

1. What is a 'Private Street'?

A 'private street' is a road, which is not maintainable at public expense. This means that the Council, as the Highway Authority, is under no obligation to carry out repairs or cleansing to the street, even though it could be a public right of way to which highway and traffic law can be applied.

It may have been in use as a highway for many years but its condition is not to a standard which will permit the highway authority to adopt (take over responsibility for) the street without further works being carried out. It may for example be unpaved, without kerbs, footways, surface water sewers, gullies and lighting or any of these features, and its surface is probably in a bad condition.

Under the provisions of Sections 205 to 218 of the Highways Act 1980 (the Private Street Works Code), the Highway Authority, that is the Council, may resolve to make up a private street by providing any or all of the missing features or by improving the standard of any existing features. This procedure enables the Council to carry out the necessary remedial works.

If appropriate after completion of the works the Council may carry out the necessary procedures to adopt the street as a highway maintainable at the public expense. There may be cases where the frontagers wish the existing street to remain private to enable them to have control over the use of the street, e.g. parking or security measures. In addition, frontagers may wish to see different materials used than those, which would be employed if the street was made up to adoptable standards.

2. Who meets the cost of making up a Private Street under the Private Street Works Code?

The owners of buildings and/or land adjoining the street, having a frontage or an access to frontage on the street, are responsible for the cost generally on a frontage length basis. This is calculated by dividing the cost of the scheme by the total chargeable frontage length in the street to arrive at a cost per metre, which is then multiplied by the length of each frontage to arrive at the cost to the owners.

In certain circumstances the Council may decide to be responsible for the total cost of the works or make a contribution to the cost. The Council may also adjust the apportionment made purely on frontage considerations to take into account any special benefit derived by any frontage(s) from the making up of the street.

3. Will I benefit if my street is made up?

The most apparent and immediate benefit is obviously that the condition and appearance of the street and your local environment are improved and this should increase the value of your property. If the street is formally adopted as a highway maintainable at public expense there are additional benefits in that from the date on which the street is adopted, the frontagers have no further liability for the:-

- ◆ *The cleansing and maintenance of the street*
- ◆ *For any claims made in respect of accidents in the street due to any failure to carry out repairs to the street*

4. How do I get my street made up?

It is best to enquire and ascertain the wishes of the other frontagers. If a majority are in favour of making up the street you should write to the Head of Highways and Construction requesting that an assessment of the proposal, possibly including a preliminary estimate of costs, be carried out.

A proforma response to the Head of Highways and Construction to request a Private Street Works scheme assessment is attached. Experience has shown that it is often best for one resident to act as a co-ordinator to secure the agreement of other residents. Each frontager who desires the road to be made up should sign the proforma.

If the amount of work required to complete the street appears to be minimal, then a group of residents may be able to arrange for a private contractor to carry out this work on their behalf. You should however consult the Head of Highways and Construction before you consider this option, as there is no guarantee that adoption of the street will follow unless the Council's specification is adhered to.

Usually, however, it is the Council, which prepares the scheme and arranges for the work to be carried out and the following sections assume this is the case.

5. What happens if my street is to be made up?

The Council will pass a resolution called "The First Resolution" which authorises the Head of Highways and Construction to prepare a private street works scheme for the street.

The street is then surveyed and design work carried out. Plans and sections are drawn up and a specification prepared for the works needed to bring the street up to an acceptable standard. During the design stage you and the other frontagers of the street may be requested to agree measurements of property frontages to the street.

On completion of the documentation required for the scheme, the Head of Highways & Construction prepares an

estimate of the total cost of the scheme and indicates the proposed method of distributing this among the frontages. This is called the Provisional Apportionment.

It should be noted that the amounts shown in the Provisional Apportionment are based on estimates at this stage and may not be the final costs payable.

At this stage the Council will pass a resolution called "The Second Resolution" which approves the plans estimates and Provisional Apportionment submitted by the Head of Highways & Construction, and may also authorise the implementation of adoption procedures to follow the completion of the works.

Notice of the "Second Resolution" will be published in the local press and Notice of the Provisional Apportionment will be sent to every frontager informing them of the apportionment applicable to their property or land.

6. Can I object at this stage?

An owner of premises shown in the Provisional Apportionment as being liable to be charged with any part of expenses of executing street works, has a right to object to the proposed scheme on any of the grounds specified in Section 208 of the Highways Act 1980. These grounds are listed in question 7 (below). Objections must be made in writing within one month of the date of the first publication of a notice in the local press to the address shown in the Notice of Provisional Apportionment.

The Council considers the objections and if they cannot be resolved between the Council and the objector they will be submitted to the Magistrates Court who will arrange a hearing to determine them. If the Magistrates rule against the Council then the Council may either modify the scheme or abandon it.

7. What are the grounds of objection to the Provisional Apportionment?

There are six grounds of objection defined in the Highways Act 1980 and they are:

- (a) that the alleged private street is not a private street;
- (b) that there has been an error in respect of the resolution, notice, plans, sections or estimate;
- (c) that the proposed works are insufficient or unreasonable;
- (d) that the estimated costs of the proposed works are excessive;
- (e) that any premises should be excluded from or inserted in the Provisional Apportionment;
- (f) that the Provisional Apportionment is incorrect in respect of some matter of fact to be specified in the

objection or where the Provisional Apportionment is made with regard to other considerations than frontage, in respect of the degree of benefit to be delivered by any premises, or of the amount or value of any work already done by the owner or occupier of premises.

The degree of benefit relates to the particular demands or needs of certain types of properties calling for a higher construction specification than would normally be required or for the fact that some properties have flank or rear frontages to the street.

8. Where may the resolution, plans and other documents be seen?

Relevant documents, including plans and estimates are made available for inspection by members of the public at the places mentioned in the Notice of Provisional Apportionment in order that the full information can be looked at and considered prior to any possible objection.

Should any further clarification be required then enquiries should be sent to the address given in the Notice.

9. How is the work done?

The Council's own contractor's will carry out the works at the rates established under the relevant Council contracts.

On completion of the works, the actual cost of the work carried out on the site is determined and the contractor paid. This sum together with scheme design and supervision fees and other fees such as statutory undertakers fees and accommodation works incurred by the Council form the basis of the Final Apportionment.

10. How is the Final Apportionment made and then what happens?

The Final Apportionment is drawn up in exactly the same ways as the Provisional Apportionment but of course shows the actual amount of money due, is then served on the owners of the premises included in the Final Apportionment. There is a further right of objection at this stage on any of the grounds specified in Section 211 of the Highways Act 1980 as set out in the answer to question 12 (below).

11. What are the grounds for objection to the final apportionment?

The grounds for objection as laid down in Section 211 of the Highways Act 1980 are:

- (a) that there has been an unreasonable departure from the specification, plans and sections;

- (b) that the actual expenses have without sufficient reason exceeded the estimated expenses by more than 15%;
- (c) that the Final Apportionment has not been made in accordance with Section 211.

Any objection that is received which the council cannot resolve is referred to the Magistrates Court for decision.

12. What other rights do I have?

An aggrieved person has a right of appeal directly to the Secretary of State for the Environment on any ground(s) other than grounds on which an objection could have been made against the Provisional or Final Apportionment's. The appeal must be made within 3 weeks of the receipt of an account demanding payment, which is sent after service of the Notice of Final Apportionment, and a copy of the appeal must at the same time be sent to the Council. The Secretary of State's decision is final and binding on both parties.

13. How and when do I pay?

The Council may allow the frontagers to make payments in annual instalments, plus interest, over a period of up to 30 years. Secondly, in exceptional circumstances, the Council may decide only to recover the interest on a charge from the frontager and to defer reclaiming the principal sum until such time as the property is sold. Alternatively the local Social Security Office may be able to assist frontagers with the payment of interest charges in cases of extreme hardship.

Interest is payable on the amount apportioned from the date of service of the Notice of Final Apportionment at a rate fixed from time to time by HM Treasury. Payment can be made in full on the service of the Notice or on receipt of the first account in which case no interest will be charged. All enquiries in respect of payment should be made to the Strategic Director of Finance & IT at the address shown on the Notice of Final Apportionment or first account.

14. What happens when deposits against the road charges have already been paid to the Council?

If a deposit has been made under s219 of the Highways Act 1980 by a frontager(s), the frontager(s) will still be liable for works expenses, but the money deposited plus any interest that has accrued therein will be deducted from the sum shown in the Final Apportionment. The balance will be entered into the account demanding payment. If you believe that the Strategic Director of Finance & IT has omitted to deduct this money from your account, you should inform him direct.