

REPORT FROM: NEIGHBOURHOOD SERVICES MANAGER

TO: COLNE AND DISTRICT COMMITTEE

DATE: 9 JUNE 2016

Report Author: Peter Atkinson
Tel. No: 661063
E-mail: peter.atkinson@pendle.gov.uk

HAVERHOLT ROAD, COLNE

PURPOSE OF REPORT

To provide councillors with costs to resurface Haverholt Road in Colne, along with information on the Private Street Works Code.

RECOMMENDATIONS

- (1) That councillors resolve whether Neighbourhood Services should consult all the affected households to seek their willingness in principle to contribute to resurfacing works to a “fit for purpose” standard, whilst keeping the street unadopted.
- (2) That the outcome of the consultation be reported to a future meeting of this Committee.

REASON FOR RECOMMENDATIONS

To improve the condition of the street.

BACKGROUND

1. The minute of the meeting of this Committee on 12 May 2016 reads:

“It was reported that the residents had requested the road be re-surfaced. The majority of the road was unadopted with one section owned by the County Council.

RESOLVED

That the Neighbourhood Services Manager be asked to submit a report to the next meeting on costs to resurface Haverholt Road, Colne, along with details of how requests for private street works are administered.

REASON

In response to a request received from the residents and to inform councillors about the procedure for private street works.”

A plan is attached at Appendix 1.

THE PRIVATE STREET WORKS PROCEDURE

2. This is contained in Part XI of the Highways Act 1980. Relevant sections are at Appendix 2 to this report.

DELEGATION TO PENDLE BOROUGH COUNCIL

3. These functions are delegated by the highway authority, Lancashire County Council, to Pendle under the Public Realm Agreement (which replaced the old Highways Agency Agreement).

SCRUTINY REVIEW

4. In 2008, the Council conducted a review of the "Value for Money of the Residual Highways Agreement". (This is now called the Public Realm Agreement.) This included 11 items, one of which was Private Street Works.

The relevant extract from the Review is set out below.

"Private Street Works

- 3.137 Private streets are public highways that are privately maintained and LCC has the same responsibilities for these unadopted highways as for adopted ones apart from that of maintenance. It therefore has a duty to keep them in a safe condition.
- 3.138 Maintenance responsibility generally lies with the owners of property or land having a frontage to the highway.
- 3.139 Private street works are a low priority for LCC.
- 3.140 In Pendle where 15% of the highway network is unadopted, however, private street works have been a priority.
- 3.141 It is estimated that the cost of bringing all the unadopted streets in Pendle up to adoptable standard would be around £28.5 million.
- 3.142 We have carried out approximately 33 schemes since 1974 to surface private, unadopted streets and bring them up to an adoptable standard. This compares, for example, with Burnley's one scheme in the same period.
- 3.143 Under these schemes, residents pay for the works, although in the past LCC contributed a third.
- 3.144 On completion of the works, the County Council can adopt them as highways maintainable at public expense.
- 3.145 There is no longer any contribution from the County Council and Pendle can no longer adopt streets on the County Council's behalf.
- 3.146 There is now a reluctance on the part of LCC to adopt streets on completion of the works. LCC requires that the street should be 'of sufficient public utility'.
- 3.147 Whether LCC can legally refuse to adopt highways which are made up to adoptable standard is questionable.

- 3.148 The District Highways Manager told us that if a street was made up to the County Council's standards it would be adopted.
- 3.149 Completed schemes have averaged one per year since 1974 although requests received average around four per year.
- 3.150 No schemes have been completed since 2004.
- 3.151 When the Lancashire Local – Pendle Committee was asked for any comments it had on the operation of the Residual Highways Agreement, it highlighted the issues of Private Street Works where schemes had been put forward but not progressed by LCC.
- 3.152 There were four such schemes in Pendle which it was important should be completed.
- 3.153 Schemes that do not reach fruition are costly in terms of staff time.
- 3.154 It is a particularly time-consuming process requiring input from both Legal and Financial Services with internal market charges currently standing at around £13,000 per year.
- 3.155 The District Council has no responsibility for unadopted highways unless it is itself a frontager.
- 3.156 However, it does have powers to carry out urgent repairs to prevent danger to those using the street and to recover costs from frontagers.
- 3.157 Under the Residual Highways Agreement, however, this requires the consent of LCC.
- 3.158 All local authorities can also carry out work 'for the promotion or improvement of the environmental well-being of their area'.
- 3.159 Using this power would require the agreement of all land owners involved and may commit the authority to a maintenance liability.
- 3.160 Only two other Lancashire Councils who responded to our survey carry out any private street works and both indicated, in common with Pendle, that their LCC District Office referred enquiries to them.
- 3.161 The others indicated that they did not have such enquiries referred to them by LCC."

5. Leading on from this, in 2009 a "Review of Unadopted Streets" was undertaken.

Extracts from the Recommendations are set out below.

- "5.4 That Lancashire County Council be requested to review its policy on Private Street Works in East Lancashire via a Scrutiny Task Group with a view to
 - (a) relaxing the requirement for an 80% degree of willingness to more than 50%, and
 - (b) removing the criteria that the street should be a front street.
- 5.5 That Lancashire County Council be requested to
 - (a) provide the same assistance and advice on unadopted street issues to residents as Pendle did previously, and
 - (b) consider providing a budget for contributions towards Private Street Works schemes.

5.7 That the Council's policy be amended to provide as follows –

- (a) If the Private Street Works Procedure is to be implemented, the Council takes action.
- (b) If the Council is the owner/frontager on an unadopted street, then it takes action using mainstream funding.
- (c) Generally, in all other cases, the Council refers the matter to Lancashire County Council.
- (d) In exceptional circumstances and only when the potential for a Private Street Works scheme has been pursued without success, Area Committees, as their discretion, may make a contribution from their existing capital budget towards repair works subject to
 - (i) a properly costed scheme being drawn up;
 - (ii) frontagers entering into an Agreement that the Council will not have any future liability."

ESTIMATES

6. These are:

- £99,000 for a scheme to an adoptable standard; or
- £33,300 for a minimum "fit for purpose" scheme.

Details are at Appendix 3 to this report.

DISCUSSION

7. Regarding "adoptability" of a street, there are several issues;

- (a) Are there enough houses to make it "in the public interest" to adopt?
- (b) Is it "geometrically" acceptable?
- (c) Is it of sufficient construction (subbase and bitmac, etc)?
- (d) Is the highway drainage adequate?
- (e) Is the lighting adequate?

The answers are "yes" to (a) and (b).

They are "no" to (c), (d) and (e) at present but with funding could be "yeses".

8. The cost of the works would normally be apportioned to the frontagers in proportion to their frontage. In this instance, there are 11 frontagers but 39 properties, including Robinson Street, Moore Street and Dale Street, are accessed from the road.
9. Costs can also be apportioned according to the degree of benefit that a property owner may derive from the work. Should anyone object to the proposals, it may result in a court hearing to resolve the matter. Because it is very difficult to prove to the courts the actual degree of benefit derived by one owner relative to that of another, the highway authority (LCC) takes the stance that this procedure should only be used where all of the owners are in agreement.

10. Where costs are apportioned to the frontagers, it is Council policy that the scheme should only proceed where a majority of frontagers are in favour of the scheme. Due to the large number of residents who are not frontagers using the road, it is very unlikely that a majority of the 11 frontagers would be willing to finance the works.
11. If the degree of benefit method were to be used, due to the large number (39) of property owners involved, it is extremely unlikely that all of them would be in agreement.

IMPLICATIONS

Policy: As set out in the report.

Financial: As set out in the report.

Legal: As set out in the report.

Risk Management: None arising directly from the report.

Health and Safety: None arising directly from the report.

Sustainability: None arising directly from the report.

Community Safety: None arising directly from the report.

Equality and Diversity: None arising directly from the report.

APPENDICES

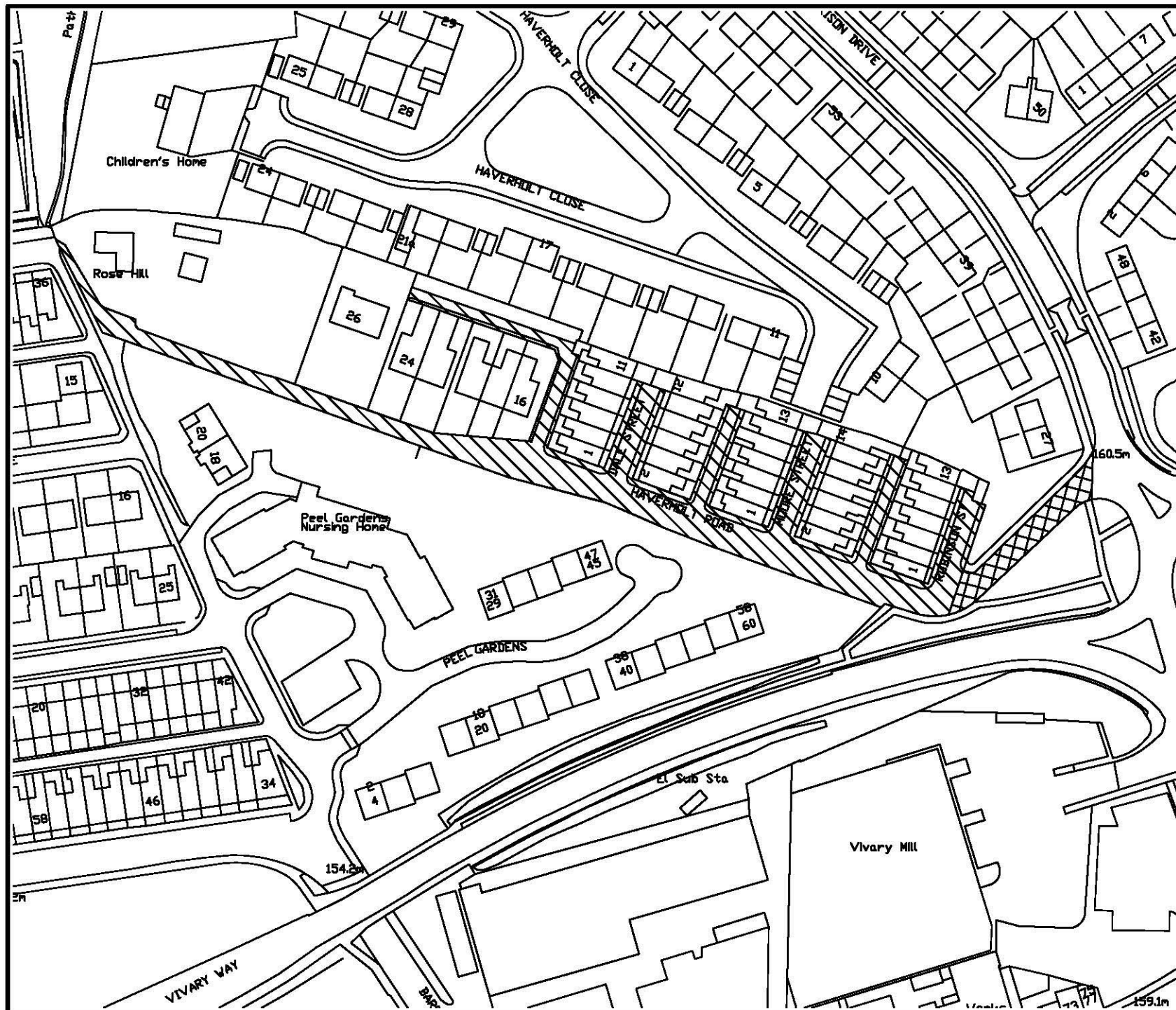
Appendix 1: Plan of Haverholt Road, Colne.

Appendix 2: The Private Street Works Code.

Appendix 3: Estimates for Haverholt Road, Colne.

LIST OF BACKGROUND PAPERS

None.



Borough

Pendle

Appendix 1

Revisions

No.	Detail	Date

Neighbourhood Services

Neighbourhood Services Manager:

Peter Atkinson BSc (Hons), DipT, CEng, MICE, MCHIT

Elliott House, 9 Market Square, Nelson,

Lancashire BB9 0LX

Tel: (01282) 661661

Fax: (01282) 661043

Service

Neighbourhood Services

Project

Location Plan

Description

Haverholt Road, Colne

LCC-owned

Unadopted

Scale

NTS

Drawn By

MH

Checked by

PA

Date

19 May 2016

Drawing Number

/

Highways Act 1980

The private street works code

205 Street works in private streets.

- (1) Where a private street is not, to the satisfaction of the street works authority, sewered, levelled, paved, metalled, flagged, channelled, made good and lighted, the authority may from time to time resolve with respect to the street to execute street works and, subject to the private street works code, the expenses incurred by the authority in executing those works shall be apportioned between the premises fronting the street.
- (2) Where the authority resolve to execute street works with respect to a part only of the street (other than a part extending for the whole of the length of the street), the expenses incurred by them in executing the works shall be apportioned only between the premises fronting the length of the street which constitutes or comprises that part.
- (3) Where an authority have passed a resolution under subsection (1) above, the proper officer of the council shall prepare—
 - (a) a specification of the street works referred to in the resolution, with any necessary plans and sections,
 - (b) an estimate of the probable expenses of the works, and
 - (c) a provisional apportionment apportioning the estimated expenses between the premises liable to be charged with them under the private street works code; and the specification, plans, sections, estimate and provisional apportionment shall comprise the particulars specified in paragraphs 1 to 4 of Schedule 16 to this Act and shall be submitted to the authority, who may by a further resolution (hereafter in the private street works code referred to as “the resolution of approval”) approve them with or without modification or addition as they think fit.
- (4) If, in the case of a street outside Greater London, the street works referred to in the resolution under subsection (1) above include the sewerage of the street, the proper officer of the county council shall, when preparing the specification required by subsection (3) above, consult the council of the district in which the street works are to be carried out.
- (4A) In the case of a street in Wales—
 - (a) subsection (4) above does not apply; but

- (b) if the street works referred to in the resolution under subsection (1) above—
 - (i) are to be carried out in a part of the street which is treated as being in the area of a street works authority other than the local Welsh council for it; and
 - (ii) include the sewerage of the street, the proper officer of the council which are the street works authority shall, when preparing the specification required by subsection (3) above, consult the local Welsh council for it.
- (5) After the resolution of approval has been passed, a notice containing the particulars specified in paragraph 5 of Schedule 16 to this Act shall—
- (a) be published once in each of 2 successive weeks in a local newspaper circulating in the area of the street works authority, and
 - (b) be posted in a prominent position in or near to the street to which the resolution relates once at least in each of 3 successive weeks, and
 - (c) within 7 days from the date of the first publication under paragraph (a) above, be served on the owners of the premises shown in the provisional apportionment as liable to be charged; and during one month from the said date a copy of the resolution of approval, and the approved documents or copies of them certified by the proper officer of the council, shall be kept deposited and open to inspection free of charge at all reasonable hours at the offices of the street works authority and also [in the case of a street situated in a non-metropolitan district, at the offices of the council of that district] [and, in the case of any part of a street in Wales which is treated as being in the area of a street works authority which are not the local Welsh council for it, at the offices of the local Welsh council.
- (5A) For the purposes of this section, the local Welsh council for a street in Wales are the council of the county or county borough in which it is situated.]
- (6) Where a notice is served on an owner of premises under subsection (5)(c) above it shall be accompanied by a statement of the sum apportioned on those premises by the provisional apportionment.

206 **Incidental works.**

A street works authority may include in street works to be executed under the private street works code with respect to a street any works which they think necessary for bringing the street, as regards sewerage, drainage, level, or

other matters, into conformity with any other streets, whether maintainable at the public expense or not, including the provision of separate sewers for the reception of sewage and of surface water respectively.

207 Provisional apportionment of expenses.

- (1) In a provisional apportionment of expenses of street works under the private street works code, the apportionment of expenses between the premises liable to be charged with them shall, subject to the provisions of this section, be made according to the frontage of the respective premises.
- (2) The street works authority may, if they think just, resolve that in settling the apportionment regard shall be had to the following considerations:—
 - (a) the greater or less degree of benefit to be derived by any premises from the street works;
 - (b) the amount and value of any work already done by the owners or occupiers of any premises.
- (3) The authority may—
 - (a) if they think just, include in the apportionment any premises which do not front the street, but have access to it through a court, passage, or otherwise, and which will, in the opinion of the authority, be benefited by the works, and
 - (b) fix, by reference to the degree of benefit to be derived by those premises, the amount to be apportioned on them.

208 Objections to proposed works.

- (1) Within one month from the date of the first publication of a notice under section 205(5)(a) above, an owner of premises shown in a provisional apportionment of expenses as liable to be charged with any part of the expenses of executing street works with respect to a private street or a part of a private street may, by notice to the street work authority, object to their proposals on any of the following grounds:—
 - (a) that the alleged private street is not a private street or, as the case may be, that the alleged part of a private street is not a part of a private street;
 - (b) that there has been some material informality, defect or error in, or in respect of, the resolution, notice, plans, sections or estimate;
 - (c) that the proposed works are insufficient or unreasonable;
 - (d) that the estimated expenses of the proposed works are excessive;

- (e) that any premises ought to 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 derived by any premises, or of the amount or value of any work already done by the owner or occupier of premises.
- (2) Where premises are owned jointly by 2 or more persons, a notice under subsection (1) above may be given on behalf of those persons by one of their number, if he is authorised in writing by a majority of them to do so.

209 Hearing and determination of objections.

- (1) If an objection is made under section 208 above within the period there specified, and is not withdrawn, the street works authority may, after the expiration of that period, apply to a magistrates' court to appoint a time for hearing and determining all objections so made within that period, and shall serve on the objectors notice of the time and place so appointed.
- (2) At the hearing the court shall hear and determine the objections in the same manner as nearly as may be as if the authority were proceeding summarily against the objectors to enforce payment of a sum of money summarily recoverable. The court may quash in whole or in part or may amend the resolution of approval, specification, plans, sections, estimate and provisional apportionment, or any of them, on the application either of an objector or of the authority, and may also, if it thinks fit, adjourn the hearing and direct further notices to be given.
- (3) The costs of any proceedings before a magistrates' court in relation to objections under the private street works code are in the discretion of the court, and the court may, if it thinks fit, direct that the whole or a part of any costs ordered to be paid by an objector or objectors are to be paid in the first instance by the authority, and charged as part of the expenses of the works on the premises of the objector, or, as the case may be, on the premises of the objectors in such proportions as may appear just.

210 Power to amend specification, apportionment, etc.

- (1) Subject to the provisions of this section, the street works authority may from time to time amend the specification, plans, sections, estimate and provisional apportionment for any street works proposed under section 205 above.

- (2) If the street works authority propose to amend the estimate so as to increase the amount of it, then, before the amendment is made, a notice containing the particulars specified in paragraph 6 of Schedule 16 to this Act shall—
- (a) be published once in each of 2 successive weeks in a local newspaper circulating in the area of the street works authority, and
 - (b) be posted in a prominent position in or near to the street to which the resolution of approval relates once at least in each of 3 successive weeks, and
 - (c) within 7 days from the date of the first publication under paragraph (a) above, be served on the owners of the premises shown in the provisional apportionment as liable to be charged; and, during one month from the said date, a document certified by the proper officer of the council giving details of the amendment of the estimate and of the consequential amendment of the provisional apportionment shall be kept deposited and open to inspection free of charge at all reasonable hours at the offices of the street works authority and also [in the case of a street situated in a non-metropolitan district, at the offices of the council of that district] [and, in the case of any part of a street in Wales, the Welsh council for the county or county borough in which it is situated, if different from the street works authority in whose area it is treated as situated.]
- (3) Where a notice is served on an owner of premises under subsection (2)(c) above it shall be accompanied by a statement of the sum apportioned on those premises by the provisional apportionment as proposed to be amended.
- (4) Within one month from the date of the first publication of a notice under subsection (2)(a) above, objections may be made and, if made, shall be heard and determined in like manner, and subject to the like provisions with respect to the persons entitled to be heard and otherwise, as objections under section 208 above.

211 Final apportionment and objections to it.

- (1) When any street works to be executed under the private street works code have been completed, and the expenses of them ascertained, the proper officer of the council shall make a final apportionment by dividing the expenses in the same proportions as those in which the estimated expenses were divided in the original or amended provisional apportionment, as the case may be, and notice of the final apportionment shall be served on the owners of the premises affected by it.

- (2) Within one month from the date on which notice of the final apportionment is served on him, the owner of any premises shown in the apportionment as liable to be charged may, by notice to the authority, object to the apportionment on the following grounds, or any of them:—
 - (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 per cent;
 - (c) that the apportionment has not been made in accordance with this section. Objections under this section shall be determined in the like manner, and subject to the like provisions with respect to the persons entitled to be heard and otherwise, as objections to the provisional apportionment.
- (3) The final apportionment, subject to any amendment made to it by a court on the hearing of objections to it under this section, is conclusive for all purposes.

212 Recovery of expenses and charge thereof on premises.

- (1) A street works authority may from time to time recover from the owner for the time being of any premises in respect of which any sum is due for expenses of street works the whole or any portion of that sum together with interest at such reasonable rates as the authority may determine from the date of the final apportionment.
- (2) The sum apportioned on any premises by the final apportionment or, as the case may be, by that apportionment as amended by a court, together with interest from the date of the final apportionment is, until recovered, a charge on the premises and on all estates and interests therein.
- (3) A street works authority, for the purpose of enforcing a charge under subsection (2) above before it is registered under the Local Land Charges Act 1975, have the same powers and remedies under the Law of Property Act 1925 and otherwise as if they were mortgagees by deed having powers of sale and lease and of appointing a receiver.
- (4) A street works authority may by order declare the expenses apportioned on any premises by a final apportionment made by the proper officer of the council or, as the case may be, by that apportionment as amended by a court, to be payable by annual instalments within a period not exceeding 30 years, together with interest from the date of the final apportionment; and any such instalment and interest, or any part thereof, may be recovered from the owner or occupier for the time being of the premises. Schedule 13 of

this Act applies in relation to any sum paid by an occupier of premises under this subsection.

213 Power for limited owners to borrow for expenses.

The owners of any premises, if they are persons who under the Compulsory Purchase Act 1965 are empowered to sell and convey or release lands, may charge those premises with—

- (a) such sum as may be necessary to defray the whole or a part of any expenses which the owners of, or any other person in respect of, those premises for the time being are liable to defray under the private street works code, and
- (b) the expenses of making such a charge; and, for securing the repayment of that sum with interest, may mortgage the premises to any person advancing that sum so, however, that the principal due on any such mortgage shall be repaid by equal yearly or half-yearly payments within 20 years.

214 Financial provisions.

- (1) A street works authority shall keep separate accounts of all money expended and recovered by them in the execution of the private street works code.
- (2) A street works authority may from time to time borrow money for the purpose of providing temporarily for expenses of street works in private streets.
- (3) If the whole or a part of a loan raised in respect of expenses of street works is outstanding at the date when any sum is recovered in respect of the expenses of those street works under section 212 above, the sum so recovered shall be applied in repayment of the loan.

217 Objections only to be made as provided by private street works code.

No objection which could be made under any provision of the private street works code shall be made in any proceeding or manner otherwise than as provided by that code.

Estimates for Improvement to Haverholt Road Colne

16/5/2016

Works to an adoptable standard	£99,199.25
Overlay to a working specification	£33,267.15

For full reconstruction to LCC Adoptable standards

Item	Description	Unit	Qty	Rate	Cost
1	Excavate and dispose to a max depth of 485mm to allow for new road construction	m ³	461	£30.00	£13,830.00
2	Provide and lay new 125 x 255mm pcc kerb, including concrete bed and haunch, all excavation and disposal	m	130	£34.00	£4,420.00
3	Provide and lay new 125 x 150mm dropped kerb, including concrete bed and haunch, all excavation and disposal.	m	4	£33.00	£132.00
4	Provide, lay and lap suitable geotextile	m ²	950	£1.00	£950.00
5	Provide, lay and compact in 100mm layers, Mot type 1 stone depth 300mm.	m ²	950	£17.70	£16,815.00
6	Provide lay and compact 32mm ns dense bitmac roadbase to BS4987 Part 1 (6:5) with 150 or 200 pen bit. Depth 70 mm	m ²	950	£14.20	£13,490.00
7	Provide lay and compact 20mm ns dense bitmac basecourse to BS4987 Part 1 (6:5) with 150 or 200 pen bit. Depth 70 mm	m ²	950	£14.25	£13,537.50
8	Provide, lay and compact 45mm depth rolled asphalt wearing course to BS594 with 100 pen bitumen. 14mm ns buff coloured coated chippings to be rolled into finished surface at a min. rate of 9kg/m ²	m ²	950	£20.40	£19,380.00
9	Sweep off area, apply suitable tack coat and overlay missing wearing course to Robinson Street.	m ²	30	£15.00	£450.00
10	Reset existing small service boxes	nr	2	£40.00	£80.00
11	Reset manhole covers	nr	3	£95.00	£285.00
12	All existing gullies to be reset where necessary, cleaned out and jetted upon completion of works	nr	7	£80.00	£560.00
13	Make good to existing setts in side streets.	m	22	£50.00	£1,100.00
14	Excavate and dispose of damaged flags	m ²	10	£95.00	£950.00

	and replace and lay on new 30mm depth 3:1 mortar bed new sandstone flags to match existing.				
15	Take up and relay on new 3:1 30mm depth mortar bed uneven flags to existing footpath	m ²	10	£25.00	£250.00
16	Existing gully to be square cut round, excavated down and reinstated with full road construction.	m ²	2.5	£50.00	£125.00
17	Reset any existing stone channel with new concrete bed and haunch, to include all excavation and disposal necessary.	m	10	£25.00	£250.00
18	Replace and damaged or missing stone channel with new concrete bed and haunch, to include all excavation and disposal necessary.	m	10	£95.00	£950.00
19	Preliminaries	%	1	3%	£2,626.64
20	Contingencies	%	1	10%	£9,018.11
Total					£99,199.25

For full reconstruction to a useable finish

Item	Description	Unit	Qty	Rate	Cost
1	Excavate and dispose to a max depth of 165mm to allow for new road construction	m ³	157	£15.00	£2,355.00
2	Provide and lay new 125 x 150mm dropped kerb, including concrete bed and haunch, all excavation and disposal.	m	4	£33.00	£132.00
3	Provide, lay and lap suitable geotextile	m ²	950	£1.00	£950.00
4	Provide, lay and compact Mot type 1 stone depth 100mm.	m ²	950	£8.00	£7,600.00
5	Provide lay and compact 14mm ns dense bitmac basecourse to BS4987 Part 1 (6:5) with 150 or 200 pen bit. Depth 65 mm	m ²	950	£14.50	£13,775.00
6	Reset existing small service boxes	nr	2	£40.00	£80.00
7	Reset manhole covers	nr	3	£95.00	£285.00
8	All existing gullies to be reset where necessary, cleaned out and jetted upon completion of works	nr	7	£80.00	£560.00
9	Make good to existing setts in side streets.	m	22	£50.00	£1,100.00
10	Excavate and dispose of damaged flags and replace and lay on new 30mm depth 3:1 mortar bed new sandstone flags to match existing.	m ²	10	£95.00	£950.00
11	Take up and relay on new 3:1 30mm depth mortar bed uneven flags to existing footpath	m ²	10	£25.00	£250.00
12	Existing gully to be square cut round, excavated down and reinstated with full road construction.	m ²	2.5	£50.00	£125.00
13	Reset any existing stone channel with new concrete bed and haunch, to include all excavation and disposal necessary.	m	10	£25.00	£250.00
14	Replace and damaged or missing stone channel with new concrete bed and haunch, to include all excavation and disposal necessary.	m	10	£95.00	£950.00
	Preliminaries	%	1	3%	£880.86
	Contingencies	%	1	10%	£3,024.29

Total

£33,267.15