

**NORTH SOMERSET COUNCIL
DECISION**

DECISION OF: COUNCILLOR ELFAN AP REES. THE EXECUTIVE MEMBER FOR STRATEGIC PLANNING, HIGHWAYS, ECONOMIC DEVELOPMENT AND HOUSING.

WITH ADVICE FROM: THE DIRECTOR OF DEVELOPMENT AND ENVIRONMENT.



DECISION NO: 17/18 DE 211

SUBJECT: North Somerset Council Vehicle Dropped Kerb Policy

KEY DECISION: NO

BACKGROUND:

Vehicle dropped kerbs for access/egress to premises are undertaken via means of section 184 (Highways Act) application to North Somerset Council Highways. We currently receive in the region of 300-400 applications a year. The proposed policy seeks to update and provide further clarity on expectations when applying for or undertaking a vehicle dropped kerb.

DECISION:

To approve the proposed Vehicle Dropped Kerb Policy.

REASONS:

The need for a formalised policy in respect of vehicle dropped kerbs has arisen to provide greater clarity over requirements relating to applications and those undertaking the works. It also provides greater clarity if/where refused applications are referred to the Local Government Ombudsman.

OPTIONS CONSIDERED:

To continue with the status quo retaining this document as guidance only.

FINANCIAL IMPLICATIONS:

There are no financial implications to The Council in respect of this decision.

LEGAL POWERS AND IMPLICATIONS:

Section 184 of the Highways Act 1980 requires the occupier of any premises to gain consent from the Highway Authority.

CONSULTATION:

This policy has been brought together consulting with various NSC officers, including those in Planning, Transport Policy and Streets & Open Spaces.

RISK MANAGEMENT:

Having a formal policy in place provides a robust position for the Council to operate from and reduces potential for appeals. It is recommended that this policy be reviewed on an annual basis to ensure that it reflects any changes to working practices so that it is fit for purpose.

EQUALITY IMPLICATIONS:

Have you undertaken an Equality Impact Assessment? No

For information Manual for Streets refers to the need for local highway and planning authorities to comply with the Public Sector Equality Duty, (previously the Disability Equality Duty), under the Equality Act 2010. Whilst highway policies must be applied taking into account the duty and the needs of disabled people, highway safety criteria does not make a distinction between disabled and able bodied people. Impairment should not be a factor in the Highway Authority's safety considerations.

CORPORATE IMPLICATIONS:

There are no cross directorate implications, however, providing greater clarity and direction will act as an enabler to increased customer satisfaction, and contributes to our One Council approach supporting the way we want to work in the future.

BACKGROUND PAPERS:

Current vehicle dropped kerb information:

<http://www.n-somerset.gov.uk/my-services/parking-travel-roads/parking/dropped-kerbs/about-dropped-kerbs/>

Outcome of LGO investigation April 2016:

<http://www.lgo.org.uk/decisions/transport-and-highways/other/15-013-991>

SIGNATORIES:

DECISION MAKER(S):

Signed:  Executive Member for Strategic Planning,
Highways, Economic Development and Housing

Date: 14/11/17

WITH ADVICE FROM:

Signed:  Director of Development & Environment

Date: 14/11/17

North Somerset Council

Vehicle Dropped Kerb Policy



By: Paul Watkins
Directorate: Development & Environment

Introduction

This document identifies North Somerset Council's (NSC) policy, as the Highway Authority (HA), to regulate the provision of vehicle dropped kerbs. A vehicle dropped kerb is an area of lowered pavement and kerbs (strengthened to take the weight of a vehicle) which provides vehicle access from the carriageway across a footway or verge into a private driveway or parking space.

A full review of the previous policy has been carried out and a number of amendments have been made to take account changes to regulations and guidance.

This policy outlines North Somerset Council's requirements regarding the location and construction of domestic vehicle dropped kerb facilities, as well as highlighting a number of related issues, in order to illustrate where vehicle dropped kerbs will be permitted and the application process.

It should be observed that local precedence is not a factor in considering whether an application should be granted or refused, as a number of existing crossings were approved when traffic conditions were significantly different to today. Policies and assessment criteria can alter to reflect changing conditions. The circumstances of each application are considered on its own merits and therefore applicants should be advised to seek advice at an early stage in the application process in order to avoid potentially abortive work.

Legislative background

A landowner has a common law right of access to the adjacent highway; however, the right of access is restricted by planning and highways legislation. Vehicle access to the public highway is regulated and controlled through the grant of planning permission (through the Local Planning Authority) and by the issue of consent from North Somerset Council (as the Highway Authority) through Section 184 of Highways Act 1980 for the provision of a vehicle dropped kerbs.



Some applications for a vehicle dropped kerb facility require planning permission, but all applications require permission from the Highway Authority through the issue of a Section 184 consent. There are circumstances when an application must be made through both the planning and highway approval processes.

The location of a vehicle access and construction of a vehicle dropped kerb raise a number of potential highway safety, amenity and maintenance issues. The Council has a duty to protect members of the public through the planning and highway approval processes.

In exercising its powers and in determining the extent of the works, section 184 of the highway act states that the HA shall have regard to:

- The need to prevent damage to a footway or verge
- The need to ensure, as far as practicable, safe access and egress from premises
- The need to ensure, as far as practicable, the safe passage of traffic both vehicular and pedestrian in highways.

Equality Act 2010

Manual for Streets refers to the need for local highway and planning authorities to comply with the Public Sector Equality Duty, (previously the Disability Equality Duty), under the Equality Act 2010. Whilst highway policies must be applied taking into account the duty and the needs of disabled people, highway safety criteria does not make a distinction between disabled and able bodied people. Impairment should not be a factor in the Highway Authority's safety considerations.

Planning Permission

On classified roads (Road Classification Guidance), the common law right of access is restricted by legislation contained in the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), where the change to a vehicle access or creation of a new access requires planning permission. This is in response to growth in the level of traffic, vehicle speeds and the associated accident risk that could potentially result from traffic turning onto and off the road at numerous points.



Planning permission may be required for an alteration to an access (depending upon the works) and will be required for the creation of a new access where any of the following apply;

- a. It is a classified road (see road classification guidance).
- b. The property is within an Article 4 direction area where permitted development rights to construct a footpath crossing have been removed or for the removal of a front boundary wall.
- c. It is in a conservation area where it involves the removal of a wall adjacent to highway which exceeds 1 metre in height.
- d. The property is a Listed Building.
- e. The property is anything other than a house or is a commercial premises.
- f. On all roads where the proposed access creates an obstruction to the view of persons using any highway used by vehicular traffic, so as likely to cause danger to such persons.

The granting of planning permission only relates to planning permission and it does not give permission for a vehicle dropped kerb from the Highway Authority.

More information and guidance on planning applications and planning permission including associated fees can be found on our planning webpages and on the national planning portal website [check if you need planning permission](#)

It is the applicant's responsibility to check/carry out own research if planning permission is required. The Council charges a fee for advising if planning permission is required (see fees and charges).



Vehicle Dropped Crossing Application Process

On receipt of an application, including a sketch and/or photos identifying where the dropped crossing is proposed to be installed and the associated fee. The application will be checked by one of our officers who will carry out an initial assessment of the proposal. If further information is required the applicant may be contacted at this stage.

In determining the application, we may:

- Approve the application as submitted
- Approve the application with certain conditions
- Propose alternative arrangements
- Refuse the application

If the location, dimensions, surface materials, or construction specification does not meet the Council's criteria, North Somerset Council as the Highway Authority reserves the right to refuse an application for the vehicle dropped kerb. The only exception to this is in circumstances when the planning application has been determined via planning consent.

Where permission of a section 184 under the Highways Act is given, this is issued by formal written response and may be subject to conditions. Applicants should note that approval should be kept along with title deeds to the dwelling as this forms part of legal documentation for that property.

Where an application is refused the applicant will be informed of the reason(s) why and the application fee will be returned, minus 50% for the initial assessment. A letter or email explaining why an application has been unsuccessful will be issued to the applicant.

Repeat applications in respect of the same dwelling where refusal has previously been given will automatically be refused, unless it can be evidenced by the applicant that circumstances have changed.

We will endeavour to process applications in 6 weeks from receipt. This may take longer where information is incomplete or where planning permission/advice is required.



The Highway and matters that may affect a dropped kerb application

The common law right of access is restricted by powers given to the Council as Highway Authority (HA) through the Highways Act 1980. Section 184 of the Act gives the HA powers to regulate applications in respect of vehicle dropped kerbs.

Provision of a vehicle access raises a number of issues including highway safety, potential loss of amenities such as trees, public open space in the adjacent highway also needs to be considered.

Where planning permission is also required, an application for a vehicle dropped crossing should only be made once planning approval has been granted. In the event that planning permission is granted, applicants should be advised that a copy of the Planning Decision Notice must also be submitted as part of the application for section 184 approval.

Where planning permission has been refused and proposals originally included any works to a driveway access and/or garage, these will automatically be passed to our North Somerset Council Planning for review. A further charge maybe applicable in relation to review of the application by a planning officer.

Land ownership

The landlord/landowners written consent/permission to park a vehicle on a frontage or to make alterations to the property will be required where a property is rented, or where access is required over third party land including that of a housing association. The Council will not be held responsible in full or part for any land contraventions either before or after installation of a vehicle dropped crossing has been undertaken.

Parking arrangements

The Council will not approve applications that reduce or affect formal on street parking arrangements, for example a lay-by or on-street parking bays.

Dimensions

The minimum depth of a garden frontage must be no less than 4.8 metres (front to back). This depth will increase to 5.5 metres where access is in front of a garage or property front door. At no time shall any vehicle when parked on a private hard standing overhang onto the public highway as this impacts on road safety and impedes the movement of pedestrians and/or vulnerable users.



Where a bay window is located to the front of a property the measurement of 4.7 metres will be taken from the outer wall of the bay window.

A standard vehicle dropped kerb width is 2.7 metres wide (absolute minimum), this maybe increased up to a maximum width of 4.5 metres wide. This excludes tapers.

Where the frontage of a property does not meet the minimum depth requirement (4.7m min) then parallel parking may be considered subject to meeting the minimum dimensions (3m depth x 6m width). Applications for parallel parking proposing to span an entire length of frontage are not permitted for reasons relating to road safety and detrimental impact to on street parking, therefore such requests will automatically be refused.

Trees

A vehicle dropped kerb must be positioned to avoid any trees in the footway or verge. This includes sufficient clearance to ensure that construction does not damage the tree roots and long term health of the tree. Engineered solutions to bridge over tree roots may be submitted. Proposals must include details of measures to protect the trunk, branches and roots during construction.

Applicants are advised to provide a sketch plan showing the position of any trees (including distance from the tree to the proposed vehicle dropped crossing) in the adjacent footway or verge that may be affected by the construction of the footway crossing facility or along the footway or verge where a visibility splay will be required.

Secondary crossing

For reasons relating to road safety and to minimize the loss of on-street kerb side parking, one vehicle dropped kerb/access will be permitted per property. A further secondary vehicle dropped kerb/access may be applied for where:

- The property frontage adjoining the highway is a minimum of 12 meters wide and one of the following;
- The property fronts a classified road and the garden is sufficiently deep enough to allow a drive so vehicles do not have to reverse either onto or off the highway.
- The property is in a street where the majority of properties have off-street parking and demand for kerb-side parking would not be adversely affected.



Highway verge

The preservation of amenity grass areas and wide verges not only benefit the local streetscape but can also help reduce surface water run-off. As such applications for such locations will be considered on a site-specific basis.

Highway infrastructure

In circumstances where a proposed dropped crossing facility is within close proximity of an existing traffic calming feature, traffic signals, lighting column, pedestrian crossing, bus stop or other highway asset, consideration will be given as to whether the traffic calming feature could be moved, whether the proposed vehicle dropped kerb could be modified or whether permission should be refused. The full costs of any mitigation works must be met by the applicant.

A vehicle dropped crossing will not be approved if they are proposed within 10 metres of a junction on an unclassified road or 15 metres of a classified road.

Street Furniture and Public Utilities

Also located in the public highway adjacent a property (footway or verge) can be a number of street furniture items and public utility equipment, such as a street lighting column, road signs, and inspection chambers/markers. Relocation of such items for example to provide a satisfactory visibility splay, may be conditioned as part of any approval.

The location of any street furniture in the verge must be clearly shown on the plans submitted as part of the application. Failure to provide accurate information may result in a delay and/or refusal of the application.

Where the construction of a vehicle dropped kerb requires utility equipment to be relocated, permission must be obtained from the utility company (please note that some utilities may make a charge for this). This is a separate consideration to the planning and highways decision making processes. It is only when the public utility company gives approval that the vehicle dropped kerb can be progressed.

The full cost of relocating street furniture or utilities must be met by the applicant and it should be noted that depending on requirements costs can be significant.



Construction of a vehicle dropped crossing

Where a section 184 Approval under the Highways Act has been granted, the applicant is required to appoint an accredited contractor to apply to undertake and complete the construction work within six months of the approval date. The approval is time limited due to the evolving street scene and community requirements. A new vehicle dropped crossing application and associated fees will be required beyond any expiry. Utility information supplied with any vehicle dropped kerb approval are only valid for three months, if further utility information checks are required additional fees will apply. These can be found in the fees and charges section of our website.

It should be noted that approval for a vehicle dropped crossing must be obtained from the highway authority before any works commence whatsoever. Only then can construction of the hardstanding commence. The hardstanding should be built before a vehicle dropped crossing is installed as it's easier to match the edge of a dropped crossing to a pre-existing driveway.

North Somerset Council maintain a list of contractors who have already demonstrated that they have the minimum amount of public liability insurance required (£5 million) and who are also accredited to work on the highway under New Roads and Street Works Act 1991 (NRSWA qualifications minimum of one supervisor and one operative) other contractors not on this accredited list may be used, but all relevant information as above will be required to be submitted at the application stage. North Somerset Council as the highway authority reserves the right to refuse contractors to work on the highway (removal also from accredited where applicable) where standards of workmanship/quality fall short of that expected.

In some instances due to existing levels of the road/or footway relative to the proposed hard standing, low built vehicles/sports cars may not have sufficient clearance for convenient vehicle access. The applicant should discuss this in the first instance with their contractor and where required with North Somerset Council Network Management Team.

The Council reserves the right to alter a vehicle dropped crossing in the future to accommodate dropped crossings in respect of neighboring properties or any other Highway refurbishment the Council deems appropriate.

Note that gates or any other obstructions across the vehicle entrance to the property or land may under no circumstances open outwards across a footpath or carriageway (Highways Act 1980 – section 53).



Where loose gravel is to form a permeable driveway, measures must be put in place such as a retention strip between the frontage and the public highway (minimum 1 x metre depth back of highway into property boundary) by the full width of the access to ensure the gravel is retained and is not able to spread across the pavement/road and into the surface water drainage system.

Enforcement

Where vehicle dropped crossings have not received authorisation under the Highways Act the Council may undertake the following action;

- Contact will be made with the owner of the property in respect of any unauthorised installation of vehicle dropped kerb or where a property is being accessed by driving over full height kerbs.
- The property owner will be requested to undertake remedial action to either apply retrospectively for a vehicle dropped crossing (subject to meeting the relevant criteria) or to fully reinstate (using a NRSWA accredited contractor) the footway abutting the property (including any reinstatement of the carriageway and/or drainage).

This may incur further charges including but not restricted to;

A site inspection by NSC officer.

Core sample and report to check that the construction meets our specifications.

Notice to cease where crossing a kerb which has not been dropped to access the property.

If the footway has to be reinstated to its original condition, a Section 171 (excavation) licence will need to be applied for.

- Further action may be taken by the Council in carrying out remedial works (as above) and re-charging all costs to the property owner. Where there is refusal to pay for any crossing we construct, we will seek recovery of monies through legal action.

If the works require planning permission and this has not been obtained this will be reported to the planning enforcement team to investigate. If the access would cause a highway danger action could be taken against the owner to remove it. Details of the Councils Local Enforcement Plan are available on the Councils website.



Complaints process and right to appeal

If you are not satisfied with our decision and want to appeal, please email streetworks@n-somerset.gov.uk in the first instance. Please note that you will need to set out the reasons why you consider that we have not applied the criteria correctly. We cannot accept appeals on the basis that the criteria is not agreed with.

Where planning permission is required and planning permission is refused, the applicant will have a statutory right of appeal dealt with by the Planning Inspectorate. For any other complaint our corporate complaints process will apply.

Personal Information

The Council may share an applicant's information with other departments within the Council (including elected ward members), law enforcement agencies, statutory and judicial bodies as required where such an application warrants further action/discussion.

Terms of reference

'Article 4 Direction'

Article 4 Directions are issued by the Council in circumstances where specific control over development is required, primarily where the character of an area of acknowledged importance would be threatened. Because of this they are commonly applied to Conservation Areas. Article 4 Directions are usually applied over an area rather than an individual property and are registered as a Local Land Charge, so that residents will normally be aware of their existence. The effect of the Direction is to remove permitted development rights, thereby necessitating a planning application to be made.

'Conservation Area'

A Conservation Area is defined by the Planning (Listed Buildings and Conservation Areas) Act 1990 as an area of special architectural or historic interest where tighter planning controls are applied. Residents who live in Conservation Areas may be required to make a planning application for certain types of work which do not need an application in other areas.



'Listed Building'

A listed building is a building or other structure officially designated as being of special architectural, historical or cultural significance. A listed building may not be demolished, extended or altered without special permission from the Local Planning Authority

'Permeable Surface Materials'

Changes in planning on the type of materials to be used for paving of front gardens mean that planning permission may be required. Further information relating to this can be found at permeable surfacing of front gardens guidance

'Permitted Development Rights'

Alterations or additions to houses and the surrounding gardens and yards that do not require planning permission are defined as "permitted development rights" in the Town and Country Planning (General Permitted Development) Order 1995

'Section 106 Agreement'

Section 106 of the Town and Country Planning Act 1990 allows a Local Planning Authority to enter into a legally-binding agreement or planning obligation with a landowner in association with the grant of planning permission. The obligation is termed a Section 106 Agreement.

'Vehicle Dropped Kerb'

A vehicle dropped kerb is an area of lowered pavement and kerbs that is constructed to provide vehicle access across a footway (this may include shared/segregated cycleway or footpath) and/or verge into a private driveway or parking space.

- The Council, as Highway Authority, does not have a duty to construct vehicle dropped kerbs on behalf of residents.
- Section 184 of the Highways Act 1980 does give the Highway Authority powers to approve the location and design of vehicle dropped kerbs to be constructed at the applicant's expense.

