Dear Mr Woodley

Stage 3 complaint – Burges estate vehicle crossings

We are writing in response to your letter of 22 July to Andrew Lewis, then Corporate Director for Place, regarding your complaint about the 'council’s failure to insist residents install proper crossovers to their properties to enable access to their hard standing areas'. In particular, you complain that the Council has failed to utilise powers under the Highways Act 1980 to enforce the installation of crossovers to prevent damage to footpaths and subsequently recover the costs from residents. You also had some specific questions in relation to the issuing of enforcement notices.

Can we first apologise for the delay in responding to your letter, which has resulted from a backlog in undertaking Stage 3 complaint investigations.

The Stage 2 complaint letter from Andrew Lewis to yourself (21 July 2016) highlighted the action the Council has taken, and continues to take, against those who cause damage to pavements by driving vehicles over pavements. This includes the range of enforcement action, up to and including prosecution, as well as encouraging residents to apply for a crossing where it has been identified that vehicles are crossing pavements.

As you will know, the Council's policy in relation to permanent vehicular crossings (PVXs) has been the subject of significant deliberation, review and revision over a number of years. This has included a new policy agreed in March 2013, which was subsequently revised in November 2014. You will also be aware that a workshop for councillors was held on 14 December 2015 to discuss the existing PVX policy and its operational effectiveness. Views from the workshop informed a report to Cabinet on 15 March 2016, with the report then called in to the Place Scrutiny Committee on 11 April and the report withdrawn to enable further consideration of members views. The subsequent report to Cabinet on 8 November, therefore, sets out further revisions to the policy and processes.
Section 184(7) of the Highways Act 1980 does grant the powers that you wish the Council to utilise (to install crossovers where vehicles are crossing pavements and subsequently recover the costs from residents) although it does not impose a duty on the Council to use those powers. Adopting such an approach would, however, require a robust policy to be put in place to help govern the process and would have a range of associated considerations and implications which would need to be taken into account before coming into effect. These would include:

1. In relation to installing the drop kerb under section 184(1) of the Highways Act:
   i. Whether the Council has the evidence required of a resident habitually taking a vehicle, or permitting a vehicle to be taken, over a kerb;
   ii. The need for an assessment of whether the kerb is in danger of being damaged due to the use;
   iii. An assessment of whether a resident needs to have planning permission for the driveway (separately enforced);
   iv. Whether the driveway is appropriate for vehicle parking;
   v. Consideration of the response from local residents where the Council insists on installing a crossing or series of crossings;
   vi. Whether the Council has sufficient finances and resources to introduce such a policy, with the potential risk of owners/occupiers not covering the full cost; and
   vii. The impact of more widespread installation of dropped kerbs on local parking, the street scene and potential future developments across the borough.

2. In relation to recharging an owner/occupier under section 184(7) of the Highways Act:
   i. Whether an owner/occupier can afford to pay the cost of the crossing;
   ii. Whether the Council is prepared to chase the debt where a resident refuses to pay and
   iii. Whether the Council could place a charge on the property title deeds (following a successful application to Court to obtain a charging order, or on having obtained the agreement of the owner to repay the cost).

As outlined in the Stage 2 response, consideration of a policy to install crossovers and recharge owners/occupiers, will be part of the review of the Council’s Environmental Enforcement Policy to be undertaken this financial year.

The Council remains committed to tackling drivers who damage pavements and it will continue to take enforcement action and take a range of other measures to maintain the quality of footways and verges.

With regard to your specific questions in relation to enforcement activity:

- There have been 354 enforcement actions undertaken across the borough since October 2014 in relation to vehicles causing damage to pavements and verges. These include a combination of warning letters and the serving of enforcement notices, with 264 enforcement notices issued to residents.
- 40 enforcement notices relate to Thorpe Ward with 13 in roads covered by the BERA area.
- There have been four successful prosecutions relating to drivers driving over pavements. There are currently no cases pending with the Legal Service.
Conclusion
We apologise again for the delay in the response to your request for a Stage 3 investigation and for the failure to keep you notified of this delay. However, we do not uphold your substantive complaint (that the Council has failed to use powers under the Highways Act 1980 to enforce the installation of crossovers to prevent damage to footpaths and subsequently recover the costs from residents). Whilst such an approach is neither a duty under the Highways Act nor is it currently Council policy we will give it consideration as we review the Environmental Enforcement Policy.

This response completes the Council's complaint process. If you consider that we have not addressed you complaint properly you do have the right to refer your complaint to the Local Government Ombudsman.

Yours sincerely

[Signature]
Rob Tiplin
Chief Executive

[Signature]
Councillor John Lamb
Leader of the Council
Mr R Tinlin  
Chief Executive  
Southend-on-Sea Borough Council  
Civic Centre  
Victoria Avenue  
Southend-on-Sea  
Essex SS2 6ER

1st December 2016

Dear Mr Tinlin,

Stage 3 complaint - Vehicular Crossings

Thank you for your letter dated 16th November 2016 signed jointly with Cllr Lamb. It is a shame that the Council failed to meet its policy on response times to its complaints procedures and therefore should be noted that your letter was in response to mine dated 22nd July 2016.

I am extremely disappointed with the outcome of your investigation into my complaint but note the intention to give the matter further consideration. With that in mind I think I should clarify to you my views in the light of your investigation and provide you with additional thoughts to highlight the problem.

I am aware that Section 184 is a permissive power, but the primary thrust of the section and consequently the first paragraph is the provision of PVXs and enforcement, rather than just dealing with resident’s requests. The Council’s policy as referred to in your letter is solely about requests for crossings and their administration. It says nothing about enforcement. Indeed, you state that there is no Council policy to enforce crossovers. If that is the case, on what basis are these enforcement actions, notices and prosecutions you refer to being undertaken? As the current highways policy came into being in 1980 why has the council failed to implement an enforcement policy where residents have failed to request a crossover. This seems to me, a serious lack of judgement by the council. Therefore, what
guidelines are the officers using? Are they making it up as they go along? Does it not occur to anyone that knowing the Council’s policy on requested PVXs and therefore the guidelines, those residents who feel they may not be approved do not bother, and by implication these locations will be the least safe? And of course why should they bother when the Council has no policy on enforcement. Let’s be clear it is often several £000s for a PVX, a significant incentive to avoid paying.

But not only does the Council duck the enforcement, it seems to positively court unsafe and damaging opportunities. In April/May this year, the Council decided to reconstruct the footway between Nos.258 and 300 Thorpe Hall Avenue. At Nos. 260,264 and 266 vehicles were being driven across the footway without the benefit of a crossing. At 280 the vehicle crossing covered only half the driveway. There was an opportunity for those residents to regularise their situation at minimal cost by having the work done as part of the reconstruction work, a system I can assure you is practiced up and down the country. Yet no contact was made with those residents at all, and as a consequence we have vehicles being driven back and forth across a new footway seemingly with Council approval. Who wants to request an expensive PVX when you can just use the footway for nothing? It really does beggar belief that a tight urban authority like Southend-on-Sea, with the parking problems it has, does not have a policy on this issue and the sooner it is tackled the better. In that regard I can only hope that a review of enforcement policy I referred to is brought forward and dealt with urgently.

Yours sincerely

[Signature]

Ron Woodley, Chair BERA

Cc: John Lamb