



DERBY CITY COUNCIL

## AREA PANEL FOUR 29 JUNE 2005

Report of Assistant Director – Highways, Transportation and Waste Management

### Petition requesting Privileged parking on Heath Avenue

#### SUPPORTING INFORMATION

- 1.1 Residents of Heath Avenue request that the street be restricted to Residents' Only parking to prevent non-residents from being able to park on the street. Receipt of a petition proposing this was reported to Area Panel on 30 March 2005. It contains 19 signatures.

Following the submission of the petition, the lead petitioner has also asked about the possibility of un-adopting Heath Avenue so that the residents can manage the parking themselves. This could only be brought about if the street was stopped up and no longer a part of the public highway.

#### 1.2 Officer Comment

Heath Avenue is a Cul-de-sac in Littleover situated off the A5250 Burton Road. The street is located within the busy Littleover District Centre. A private road also runs off the turning head where 4 properties, numbers 21a – 23 Heath Avenue are located.

In the covering letter from the lead petitioner to residents of Heath Avenue it states, *"it can be clearly seen that Heath Avenue, Littleover qualifies under the 'Basic Criteria for Scheme Acceptance' rules, drawn up by the City Council, all providing that more than 75% of the residents are in favour."*

A Parking policy document has been produced by the City Council setting out the basic criteria for residents' privileged parking schemes. The criteria is used to determine which streets are suitable for further investigation and the 2 points that should be satisfied before a residents parking scheme can be considered are:

- Criterion 1 - 'Schemes will not be considered in areas where more than 50% of households have, or have the potential for, off-street parking facility.'
- Criterion 2 - Schemes will only be implemented where, following public consultation, more than 75% of respondents are in favour.

Based on those properties that have direct access on to the publicly maintained Heath Avenue, including those with Burton Road addresses, 14 out of 20, or 70% of the properties already have provisions for off-street parking. As the first basic condition has not been satisfied in this instance, it is not possible to consider a residents parking scheme on Heath Avenue.

As the Area Panel will appreciate residents' parking schemes are usually only considered in those areas where a high proportion of residents are reliant on roadside parking and are regularly precluded from parking near their homes. Such a situation is unlikely to occur where a majority of residents have access to off street parking, which is why the criterion exists. We have made a number of site visits to Heath Avenue. At the times we have visited, there have been parking opportunities available.

- 1.3 With regard to the unadoption of Heath Avenue as requested by the lead petitioner, 'unadoption' means that the street would remain highway with public rights of way over it, however it would not be maintainable by the Highway Authority. To prevent members of the public using Heath Avenue, it would require a 'stopping up' order to be made by the Magistrates' Court.

"If it appears to a Magistrates' Court that a highway as respects which the appropriate highway authority have made an application

- a. is unnecessary, or
- b. can be diverted so as to make it nearer or more commodious to the public the court may by order authorise it to be stopped up."

In the case of Heath Avenue diversion is not an option and therefore before making an application to the Magistrates' Court to stop up the street, the City Council must be wholly satisfied and be able to demonstrate that the street is unnecessary for public use and therefore should not be maintained at the public's expense. To satisfy this requirement there has to be evidence that the highway is not longer in use by the public. There is no such evidence.

As described earlier, Heath Avenue is a traditional street off Burton Road, which, including the private road at the end of the street, serves more than 20 properties. Access by vehicle, and on foot will not only be required by residents and their visitors, including those residents and businesses on Burton Road that enjoy access via Heath Avenue, it would also be necessary to facilitate access for deliveries, refuse collection, postal deliveries and potentially the emergency services. Under these circumstances it is considered that it would be impossible for the City Council to demonstrate that highway rights are 'unnecessary'.

The Council as Highway Authority has both a common law and statutory duty to protect existing highway and therefore attempting to remove highway rights without proper justification and belief would conflict with such duties.

Whilst it is not relevant for considering the test of whether a highway is unnecessary, in practical terms it is exceedingly rare for individuals to want to take responsibility for maintaining the street on which they live, as the residents would be wholly responsible for all maintenance aspects. This would include maintaining the fabric of the road, street lighting, surface water drainage and potentially public liability amongst other things for which the residents would require an appropriate form of insurance.

- 1.4 It is inevitable that some shopper and commuter parking will take place on Heath Avenue because of its proximity to the District Centre. This is the case on a number of other residential streets around the Littleover District Centre, not only here, but at other District Centres also. As the Highway Authority, Derby City Council needs to ensure the safe and expeditious movement of traffic and it is not considered that the parking on Heath Avenue poses any undue road safety hazard to any road users. Obviously, waiting restrictions apply equally to the residents as they do to any other motorist. Currently, there is a no waiting at any time restriction at its junction with Burton Road but there are no proposals to implement any further waiting restrictions at present.

#### **PROPOSED ACTION**

- 2.1 A Residents' Only Parking scheme cannot be considered as it does not meet Derby City Council's Residents' Privileged Parking Scheme criteria.
- 2.2 Un-adopting Heath Avenue is not considered to meet the legal tests defined in the Highways' Act.

<b>For more information contact:</b>	Rizwana Shaheen 01332 715049 e-mail rizwana.shaheen@derby.gov.uk
<b>Background papers:</b>	None.
<b>List of appendices:</b>	Appendix – None.