



## **Highway Safety Inspection Manual: October 2018**

### **SUMMARY**

- 1.1 Council Cabinet received a report in September 2018 to review and adopt the new Highway Infrastructure Asset Management Framework. The Policy and Strategy included in the Framework are key to continuing our asset management approach in maintaining the network and major highway infrastructure. The Highway Safety Inspection Manual: October 2018 is another new document within the Framework and will be the primary evidence used by the authority in any defence against third party claims on the highway, under Section 41 or 58 of the Highways Act 1980.
- 1.2 Highway safety inspections are designed to ensure the network is safe and routinely checked for defects, which may have the potential to create injury or disruption to users of the highway network. Appropriate response times for repair are then issued. The City Council currently operates a system of highway safety inspections based upon the existing “Well Maintained Highways Code of Practice: July 2005” and industry best practice.
- 1.3 In October 2016, the UK Roads Liaison Group launched the new “Well Managed Highway Infrastructure Code of Practice: October 2016”. Commissioned by the Department for Transport, the new code has introduced a step change in emphasis for highway safety inspections. It recommends that the safety inspection and defect repair regimes should be based on risk, in accordance with local needs, context and priorities. There are no longer prescriptive or minimum standards published at which an authority should intervene and repair a defect. It is for local authorities to determine appropriate levels of service and be able to demonstrate clearly what has informed that approach.
- 1.4 Local authorities have had two years to implement the new code. The Highway Asset Team have worked diligently to produce a robust and defensible approach in response to the new code. The new Highway Safety Inspection Manual: October 2018 (Appendix 2) developed predominantly to address carriageway and footway defects, will be implemented soon after Cabinet approval.

### **RECOMMENDATION**

- 2.1 To review and approve the new Highway Safety Inspection Manual: October 2018.
- 2.2 To delegate authority to the Strategic Director for Communities and Place, in consultation with the Cabinet Member for Neighbourhoods and Streetpride to maintain, develop and amend the Manual as necessary from time to time.

## REASONS FOR RECOMMENDATION

- 3.1 The Councils' current Highway Inspection Manual is recognised as industry good practice and has influenced an excellent highway claim repudiation rate (currently 97%). However, it is now inconsistent with new national guidance which defines good asset management practice. Adoption of the new Highway Safety Inspection Manual: October 2018 would enable the council to aim to continue to defend claims robustly.
- 3.2 Recommendation 2 of 36 from the new Code of Practice states that all activities outlined in the Highway Infrastructure Asset Management Framework should be documented and endorsed at a senior level. The new Code of Practice is progressive and its application and adoption by local authorities is keenly anticipated by the legal profession. Progress towards implementation nationally ranges from moderate to well-prepared. Derby City is viewed by the Department for Transport as an exemplar authority on our work to date on highway asset management. The Department for Transport are keen to see that authorities have embraced the opportunities and tools available to manage the network as efficiently as possible. On 28 September, the Department for Transport confirmed that they wish to see Derby City Council's methodology to the risk based approach as a case study for good practice. Cabinet approval for the new Highway Safety Inspection Manual: October 2018 provides a seal of support for the authority's fully compliant approach to the Code of Practice and the appetite to the scale of risk as set out in each of the levels of service.
- 3.3 The new Highway Safety Inspection Manual: October 2018 is in line with our asset management approach and supports the DfT Incentive Fund Self-Assessment process in determining the balance between planned and reactive maintenance activities. It will improve the resilience of the highway network and make effective and efficient use of limited funds.
- 3.4 The new Highway Safety Inspection Manual: October 2018 is a live document and we will be testing the new risk based approach and monitoring on a continual basis. Refining our approach and revising the document is inevitable and by delegating authority to the Strategic Director for Communities and Place in consultation with the Cabinet Member for Neighbourhoods and Streetpride will enable necessary changes to be made swiftly.

## SUPPORTING INFORMATION

- 4.1 The Council is responsible for the maintenance of a large highway network, including over 1,960km of road and footway, 346 structures, 32,000 street lights, 264 traffic signals, approximately 40,000 individual drainage assets and a host of street furniture.
- 4.2 The establishment of an effective regime of inspection, assessment, recording and prioritisation of defect repairs is a crucial component of highway maintenance. It provides a robust framework for the maintenance of the highway to a safe and serviceable manner, as required by Section 41 of the Highways Act 1980.
- 4.3 Although the new “Well Managed Highway Infrastructure Code of Practice: October 2018” is not statutory, it provides highway authorities with national guidance and good practice on highways management. The Code supersedes any existing infrastructure codes including Well Maintained Highways: July 2005, Well Lit Highways: November 2004 and Management of Highway Structures: September 2004.
- 4.4 The guidance was commissioned following the 2010 austerity measures and a recognition that standards set centrally gave little regard to local networks and when and how local authorities would want to repair and maintain the highway. The risk based approach recognises that highway liability risk exposure may differ significantly between one authority and another. The Code of Practice is a cause for optimism and provides greater flexibility as it can be developed to fit Derby’s needs specifically. The DfT recognise that not all authorities will be ready in time for implementation, however the new Code of Practice will go live in mid-October and authorities run the risk of liability exposure by not being adequately prepared.
- 4.5 National guidance is regularly referred to when processing third party claims against highway authorities and a failure to follow this will expose the Council to an increased number of successful highway claims. Currently Derby City have a good repudiation rate of approximately 97%, processing typically on average around 10 new highway claims a month.
- 4.6 The most significant change in the new Code of Practice is the introduction of a risk-based approach. It will change the way in which the highway inspection is undertaken, mainly for footways and carriageway defects, moving away from a rigid intervention system to a flexible risk-based approach, appropriate to the City’s road network. The Code provides 36 recommendations on what needs to be considered when developing a risk based approach across all asset groups. It is important to note that the new Code of Practice is not just about safety inspections, but considers all major asset groups and how they are maintained to achieve the service level of that asset.

- 4.7 Highway Inspectors already complete routine inspections of the network and identify defects, utilising the accredited training they have received and informed judgement. They consider the potential consequences and the likelihood of the risk occurring. It's the evaluation of the risk on site and the subsequent response time that will determine the authority's tolerance for the scale of risk exposure. We need to demonstrate that we have taken reasonable steps to identify and respond appropriately to a defect which has the potential to pose a danger to road users
- 4.8 Derby City have decided to maintain the existing intervention levels in the new Highway Safety Inspection Manual: October 2018, but with more consideration to the response repair time, dependant on where on the network the defect sits.
- 4.9 In implementation of the new Code of Practice and in the event of a third party claim, claimant solicitors will want to be satisfied that authorities have fully considered the characteristics of the network and that there is an evidence based review of our methodology which has determined the course of action the authority is prepared to take.
- 4.10 A clear methodology which provides a consistent approach that each Highway Inspector can follow is key. A framework of intervention criteria allows the Inspector to apply the 'science' against a set of rules, based on what they observe. The 'art' allows discretion on what the Inspector deems is appropriate, given the context of the inspection at that particular time.
- 4.11 Key pieces of work completed towards the implementation of the new Code include:
- A new network maintenance hierarchy for roads, which takes into account the use and functionality of each road section in Derby. Factors considered include:
    - Roads of traffic importance across the UK
    - Routes linking industrial / retail areas, main areas of employment etc.
    - Residential connector roads right through to local estate roads
    - Traffic counts, permit streets, bus routes and a range of local amenities.
    - Planned growth or change of use of the network
  - A new network maintenance hierarchy for footways, following the same principles and understanding the recognised as well as desired lines of pedestrian footfall, particularly to local amenities and prestige areas
  - A resilient network, where priority for maintenance will be given to routes to maintain economic activity and access to key services in extreme events
  - A full review of common types of defect, where on the fabric of the highway the defect sits and what constitutes an emergency response
  - A full review of current inspection frequencies and whether it's appropriate to continue as we are
  - A new defect risk matrix through which an appropriate response is determined, based on defect severity and likelihood of an incident occurring
  - A full review of defect response times to reflect the level of risk associated with the defect. Inspectors will be provided with configured handheld devices which will provide a default response, but the option is available to escalate, if it is deemed appropriate and necessary (with their reasoning documented).

- A review of our customer interface and keeping the public informed of the level of service to expect, subject to where the defect sits on the network
- New processes on how we will deal with defects which do not require immediate action, but warrant possible inclusion in a forward work programme.

4.12 In developing the new Highway Safety Inspection Manual: October 2018, officers at all levels have participated in a number of exercises to discuss the implications of the new Code of Practice, including:

- internal workshops to
  - maximise local knowledge of the network and build the evidence base
  - examine existing processes to see if they're still relevant or appropriate, in relation to the bullets listed in 4.11
  - determine the real risk, irrespective of whether it has the potential to become the subject of a third party claim
  - hear from key authors of the new Code of Practice on what should be considered for an authority like Derby
- attendance at regional and national workshops to benchmark progress, apply best practice and lessons learnt from other authorities to refine our approach, as well as present our own journey to date
- a presentation to the Institute of Highways and Engineers and peers from neighbouring authorities on our understanding and interpretation of what the Code of Practice means for Highway Inspectors
- attendance at mock trials, held with solicitors and barristers to envisage how a claim may transpire, using the new Code of Practice and the potential questions asked of Highway Inspectors and managers responsible for developing policy
- updated training in the general understanding of risk management, as well as defect specific, for example highway tree management
- counselling sessions through the Health and Wellbeing Service to provide support to managers and the team who are delivering a frontline service, facing significant operational changes, which are fervently monitored in the local communities
- working with neighbouring authorities and Derby Homes to ensure parity on networks
- building the competency of Highway Inspectors and managers is key to be able to defend our policy and processes and demonstrate we have followed them correctly and consistently.

4.13 Consultation has been ongoing with our internal insurance, risk and legal officers and with external solicitors. Expertise in the field of highways claims through Weightmans Solicitors has helped further consolidate that we are well advanced in our approach to the Code of Practice. Whilst it is acknowledged that it is impossible to know at this stage what the impact may be, they are confident with what we have produced to date.

Collaboration through the Midland Service Improvement Group and with our surrounding authority, Derbyshire County Council has also informed the development of the manual, ensuring parity and consideration for the neighbouring network.

We are working with Derby Homes to ensure parity on the adjoining housing network of footpaths and hard landscaped areas they wish to include in a safety inspection of their infrastructure assets.

- 4.14 It is expected that introducing the new Highway Safety Inspection Manual: October 2018 will produce more planned and preventative maintenance work, reduce the amount of 'emergency', temporary or carte blanche repairs and increase the number of first time repairs to the highway infrastructure. Through the safety inspection process, we anticipate generating a more informed medium term programme of proactive repairs which can feed into preventative maintenance or pothole grant funding programmes. This medium term programme will sit in between reactive and major capital investment programmes. The response times across the overall network will enable much more efficient and sustainable use of the operational resources, with the shift to delivering the medium term programme over costly reactive repairs. This is all in line with our overall asset management approach.



## OTHER OPTIONS CONSIDERED

- 5.1 The Council retains its existing procedures with the current Highway Inspection Manual and soon to be obsolete “Well Maintained Highways - Code of Practice: July 2005”. However, this approach would not be acknowledged and supported nationally after October 2018 and will inevitably see an increase in successful third party claims against the Authority. In addition, it weakens our position in the Department for Transport Incentive Fund Self-Assessment process, if we are not engaging or embedding our asset management approach in line with national guidance.

### This report has been approved by the following officers:

<b>Legal officer</b> <b>Financial officer</b> <b>Human Resources officer</b> <b>Estates/Property officer</b> <b>Service Director(s)</b> <b>Other(s)</b>	Richard Burton - Solicitor Amanda Fletcher – Head of Finance for Communities and Place  Richard Antcliff - Public Protection and Streetpride
<b>For more information contact:</b> <b>Background papers:</b> <b>List of appendices:</b>	Kully Boden 01332 642013 kully.boden@derby.gov.uk None Appendix 1 – Implications Appendix 2 – Highway Safety Inspection Manual: October 2018

**IMPLICATIONS****Financial and Value for Money**

- 1.1 It is not possible to assess the cost implications of the adoption of the new Highway Safety Inspection Manual: October 2018 as yet. However it is anticipated that it will be managed within existing resources and budgets, by applying good asset management and reducing, where possible, the need for reactive, more costly repairs. Failure to follow the Inspection Manual will expose the Council to an increased number of successful highway claims and the potential for increased legal costs.

**Legal**

- 2.1 The Council has a duty to maintain its highways by Section 41 of the Highways Act 1980. If the Council fails to maintain the highway and, as a result, a person sustains an injury or suffers damage, the Council may be liable to pay compensation. However, if the Council has taken reasonable care to secure that the highway is not dangerous, then it will have a defence, under Section 58 of the Highways Act 1980. Adopting the proposed Highway Safety Inspection Manual: October 2018 will give the Council the best possible chance of defending a claim under Section 58.
- 2.2 The introduction of the new Code of Practice is likely to result in an increase in the number of claims being made as claimant solicitors seek to test the boundaries of the new Code. Over time, a body of case-law will develop which will provide further guidance on the new Code. This should mean that the number of claims reduces over time as the Council responds to any developments in the law. In the meantime, the Council is likely to see an increase in the number of claims and therefore a potential for increase in the legal costs of defending claims.

**Personnel**

- 3.1 None

**IT**

- 4.1 None

**Equalities Impact**

- 5.1 The service levels specified within the new Highway Safety Inspection Manual: October 2018 and the risk-based evaluation process acknowledges the different users of the public highway. The minimum intervention levels specified in the manual are provided as a guide. The vulnerability of all highway users, including cyclists, pedestrians and disabled people to certain highway defects will be reflected in the risk assessment carried out when deciding upon the response to a defect.

**Health and Safety**

- 6.1 Adopting the asset management approach works towards our statutory duty as set out in the Highways Act 1980, to maintain the public highway in a safe manner for all users.

## **Environmental Sustainability**

- 7.1 Reducing the amount of unnecessary 'emergency' or 'temporary' repairs and increasing first time repairs to the highway infrastructure will work towards providing a more resilient network.

## **Property and Asset Management**

- 8.1 None

## **Risk Management and Safeguarding**

- 9.1 The risk matrix adopted to assess the impact and likelihood of defects has been informed by the Councils revised corporate risk policy.

## **Corporate objectives and priorities for change**

- 10.1 The Highway Safety Inspection Manual: October 2018 is aligned to the Council Plan and Derby Plan ambitions, in that making the most of our assets will contribute to a safe, strong and ambitious city.