

OVERVIEW AND SCRUTINY BOARD

A meeting of the Overview and Scrutiny Board was held on 8 December 2010.

PRESENT: Councillors Brunton (Chair), Councillors Dryden, Purvis and Williams.

OFFICERS: B Baldam, J Bennington, I Busby, P Clark, R Chamberlain, P Dyson and B J Glover.

**** APOLOGIES FOR ABSENCE** were submitted on behalf of Councillors Cole, C Hobson, J Hobson, Ismail, Kerr, Khan, Mawston, Sanderson and J A Walker.

**** DECLARATIONS OF INTEREST**

No declarations of interests were made at this point of the meeting.

****MINUTES**

The minutes of the meeting of the Overview and Scrutiny Board held on 3 November 2010 were taken as read and approved as a correct record.

WINTER MAINTENANCE – ENVIRONMENT – SOCIAL CARE

The Senior Scrutiny Officer submitted a report the purpose of which was to indicate the evidence received so far; remind the Board of the terms of reference; and to introduce representatives from the Environment (Transport and Design), Social Care and Strategic Resources (Risk and Insurance) to provide further information.

The Chair welcomed all representatives and gave an indication of the specific areas upon which the Board was examining.

The Head of Transport and Design Services provided an update on the actions taken in preparing and coping with winter weather conditions.

At the Individual Executive Decision Making Meeting of the Executive Member for Streetscene Services and Transport held on 13 September 2010 the Winter Maintenance Plan 2010/2011 had been approved subject to the outcome of the current scrutiny review. A copy of the plan could be accessed from the specific website set up which also included advice on travel and vehicle checks, gritting updates and advice in relation to elderly and vulnerable people. Care staff had also been on local radio providing advice for the elderly and vulnerable people.

Members indicated that it was important to get the message across to the public in terms of what was being done and where advice could be sought. In addition to the information available on the Council's website reference was made to press releases, radio interviews, various documents and work which was progressing on the production of a separate specific leaflet. It was noted that information and further clarification was awaited from the Government regarding issues of liability in terms of clearing pathways. Reference was made to a recent Government press release which stated that 'There's no law stopping you from clearing snow and ice on the pavement outside your home or from public spaces. It's unlikely you'll be sued or held legally responsible for any injuries on the path if you have cleared it carefully. Follow the snow code when clearing snow and ice safely.' The release provided tips on clearing snow and ice from pavements or public spaces.

In terms of the current overall situation it was reported that there was a sufficient supply of salt and regular briefings provided to all Members. As part of the feedback and ongoing communications with various people and organisations efforts were being made to try and dispel the myth that roads had not been gritted if the salt could not be seen.

It was noted that one of the problems of current weather conditions was that if grit was covered with subsequent layers of snow there needed to be traffic on such roads in order for the grit to be

activated. The weather forecasts continued to be monitored in order to determine the optimum time to grit the roads.

During the current weather conditions gritting had focussed on the Priority Routes as shown in the Winter Maintenance Plan. Where possible other clearance had taken place initially focussed on the south of the Town where conditions had been worse.

Members acknowledged the hard work being undertaken by staff in difficult conditions and how well the priority areas were being tackled. Priority 1 and 2 roads were being cleared and treated and other roads connecting to main roads. It was noted that given the high percentage of urban road network the Council was gritting approximately 50% of the total road network for which they were responsible in comparison with more rural areas, which were carrying out about 15%.

In terms of the overall salt stock the Board was advised that there was currently 1,500 tonnes which was about half full with a couple of top up deliveries expected during the week. It was noted that there were no immediate concerns and representatives at Boulby Mine had so far indicated that whilst exceptionally busy there were currently no particular problems or a shortage of supplies. In response to Members' questions regarding the likelihood of a national shortage of salt it was reported that no indication had been given so far although salt was being imported in the South East of England. Although Members referred to information received from the Highways Agency in terms of examining ways of managing shortage of supplies the Officers advised that one of the problems was that the Agency used a different granule size of grit of 10mm for major routes whereas local authorities used 6mm sized granule which was not compatible.

It was recognised that should the Council agree to provide a higher level of service in terms of winter maintenance it was acknowledged that this could involve very high costs in terms of using additional manpower and purchasing specific equipment which was unable to be used for 90% of a year and it would probably impact on other services provided. It was noted that the Council's funding for winter maintenance was backed up by central provision given the very variable nature of winter weather in the UK. Reference was made to comments in the national press comparing the UK with other countries such as Canada and in Scandinavian, which appeared to be more, prepared for extreme snow conditions. It was pointed out that weather was more predictable and on a more consistent basis in such countries unlike in the UK which was very variable.

The Board was advised of other methods of gritting and initiatives, which were being examined elsewhere in the UK to secure improvements. Materials such as pre-wetting salt and together with a brine solution were being used which could be spread more evenly and at a faster rate resulting in a quicker anti-icing effect. It was pointed out however that there was evidence of such material escalating the rate of rusting on certain vehicles.

As previously reported in respect of the last winter period, salt bins continued to be a cause of concern in terms of re-filling and the misuse of them.

The Board was keen to ascertain the significant changes in comparison with the previous year in terms of being prepared for the severe weather conditions. In response, it was indicated that apart from ensuring an appropriate stock of salt, readiness of equipment and salt bins filled reference was made to a recent Emergency Planning Away Day with representatives from various organisations at which the main topic for discussion had been extreme weather conditions. Members were also advised of closer working relationships across the Council services especially during the last month. Reference was made to specific links between Social Care and local NHS organisations in order to identify any arising pressures on services. It was also pointed out that staff at Ayresome Industries had been assisting with snow clearing. In overall terms it was considered that there was a better exchange of information between departments.

In commenting on various performance related indicators it was indicated that such information was not generally available in terms of winter maintenance. It was suggested that further investigation would need to be undertaken in seeking more meaningful indicators such as the costs on the amount per length of road network rather than per head of population and comparative information with local authorities with similar road networks as Middlesbrough.

In response to an enquiry about using Community Payback the Officers confirmed that it had not proved necessary so far but they could make contact and ascertain if there was capacity within their current work programme. Members also referred to the possibility of making contact with local farmers and ascertaining the possibility of using farm vehicles to assist with snow clearing where appropriate. Although it was considered there was scope for farm vehicles to assist in spreading salt it could in certain circumstances make conditions worse. The Officers explained that given current conditions it was better to deploy JCBs and hire additional machines at a competitive price in order to tackle the current compacted snow/ice focussing on priority 2 roads and at appropriate junctions. It was pointed out however that such work needed to be supplemented by gritters to salt the areas where the ice had been cleared. Given the extent of the snow there had been problems in certain confined urban locations as to where to deposit the displaced snow. It was confirmed that additional JCBs had been hired to assist with the clearance of snow/ice from such areas as car parks, schools and accesses to emergency services.

Members sought clarification as to any specific measures the Council had adopted to assist the elderly and vulnerable people. Apart from the provision of additional information including the Council website and use of local radio to raise awareness much work had been undertaken in clearing snow around care homes in order to reduce the risk of falls.

It was confirmed that Social Care had a database of vulnerable people known to the service who maybe at risk in such severe weather conditions but wouldn't necessarily be aware of any informal arrangements with family, friends or neighbours which may have been established. The services needed to be kept informed of such arrangements. It was considered that there was scope for more interaction between the Council and Erimus Housing.

As indicated in the report of the Scrutiny Support Officer the Head of Older People and Physical Disabilities had been asked to present information on the impact on the Social Care service from the increased number of falls sustained during the last winter. Information previously received indicated a significant increase in the number of falls and associated incidents resulting in people attending hospital.

The Head of Older People and Physical Disabilities confirmed that as part of the ongoing links with the local NHS representatives it was apparent that there had been a general increase in the number of falls throughout the year not necessarily all related to the severe weather conditions of the last or current winter periods. The Hospital Social Work Team had reported an increase in referrals generally over the winter period so far.

Specific reference was made to current services such as the Telecare system which included a fall detector and links with the Falls Prevention Services and information available identifying those more at risk. As a preventative measure it was recognised that it was very difficult to quantify the success of the Falls Prevention Service. Irrespective of the weather Carelink had received approximately 150 calls per month in respect of falls which were not necessarily categorised. Given that it was not possible to clear all footpaths it was considered better if vulnerable people remained at home and given additional support if family/friends or neighbours were unable to assist.

In general terms it was acknowledged that there were higher demands on the Social Care services and that changes in the demographic composition in terms of an increasing ageing population was one the main factors.

ORDERED that the information provided be noted and incorporated into the overall review.

WINTER MAINTENANCE RESPONSIBILITIES

In the introductory report of the Scrutiny Support Officer reference was made to information received regarding concerns about the clearing of snow in public areas with particular regard to subsequent falls by the public resulting in compensation claims against the organisation which had cleared the snow.

The Council's Risk and Insurance Manager outlined the main points of a briefing paper previously circulated.

It was noted that it was well established law that there were no liabilities for non-feasance (failure to act), unless the party concerned was under a positive duty to act, and failed to do so. In the case of property, which included open spaces such as parks and car parks, positive duties to act had been created by the Occupiers Liability Act 1957, which imposed on occupiers 'a duty to take such action as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purpose for which he is invited or permitted by the occupier to be there.'

In relation to winter maintenance, the extent of this duty had been clarified by the Court of Appeal in two cases as outlined in the report relating to *Fildes v International Computers* 1984 and *Murphy v City of Bradford Metropolitan Council* 1991.

In the case of adopted highways, the legal position prior to 2000 was that Highway Authorities were responsible for clearing snow and ice by virtue of the Appeal Court's interpretation of the Highways Act 1959 (*Haydon v Kent County Council* 1978). It was pointed out however that the interpretation was reversed by the House of Lords decision in 2000 in the case of *Goodes v East Sussex County Council*. The basis of the decision had been that the Highways Act had imposed an absolute duty to maintain the highway, and as it was clearly impossible to keep roads and pavements absolutely free of ice and snow, the duties should not be interpreted as extending to winter maintenance. Parliament responded to such a change in the law with the passage of the Railways and Transport Safety Act 2003, which inserted a new Section, 41 (1A) into the Highways Act 1980, which became effective on 31 October 2003. The legislation created a new duty on Highway Authorities 'to ensure, so far as is reasonably practicable, that safe passage along a highway is not endangered by snow or ice.'

Although to the best of the Council's knowledge there were no Appeal Court cases as yet interpreting the new duty the report indicated a number of County Court decisions in respect of *Macdonald v Leicester City Council* 2006 and *Pace v City and County of Swansea* 2007.

It was noted that the essence of the legal requirements for winter maintenance whether in relation to Highways or otherwise was to take such measures as were reasonably practicable to ensure the safety of the public.

In order to meet the test of reasonableness, and be sufficient to successfully defend claims, a winter maintenance system needed to; -

- be documented clearly, and in detail, including evidence of work undertaken.
- prioritise the most important routes and areas, taking account of the expected type and volume of traffic, including for example the proximity of old person's homes or schools, and physical features such as slopes.
- be responsive to both forecasts and actual weather.
- Include suitable instruction of operatives regarding the standard of gritting required.
- ideally, include the placing of warnings for particular hazards, such as ponding water, which becomes frozen.

The Board was advised that because of such duties failure to clear snow and ice could certainly result in liability for subsequent accidents. It was explained that whilst clearing a path did not render such action liable for subsequent accidents it was not impossible that in certain circumstances a liability could follow. It was noted that it would have to be in specific circumstances such as clearing snow but leaving untreated underlying ice exposed as a result.

In relation to the proposed arrangements with the Probation Service it was possible that a claim could be brought against either the Council or them. In the unlikely event of a claim against the Probation Service it was considered extremely difficult to see how this could succeed except in circumstances in which the Highway Authority or property owner were not also liable. It was suggested that the Probation Service could be offered an indemnity in relation to claims arising from accidents in areas they had cleared or treated on behalf of the Council. The Board was advised that this would not materially increase the Council's risk, and would hopefully avoid the

possibility of them being dissuaded from providing a valuable service to both the Council and public.

Reference was made to the recent Government release as previously reported which although provided some guidance there was still considered to be an urban myth about liabilities around persons being injured after a fall on a cleared pathway.

In overall terms in commenting on possible ways of assisting the public, Members suggested that the Council could consider the purchase of appropriate snow shovels at cost price although it was pointed out that there might be difficulties as to where they could be stocked and how and where they could be sold.

With reference to the Final Report Members agreed that it should be compiled and considered by the Executive as soon as possible. A copy of the draft conclusions and recommendations was circulated at the meeting.

ORDERED as follows: -

1. That Officers be thanked for the information provided which was noted and should be incorporated into the overall review.
2. That in order to expedite the process the draft Final Report, conclusions and recommendations be refined to take into account the outcome of this meeting and that the Final Report be circulated to the Chair, Vice-Chair for comment prior to submission to the Executive.