



**AGENDA ITEM 10**

**OVERVIEW AND SCRUTINY BOARD**

**13 DECEMBER 2011**

**FINAL REPORT OF THE ENVIRONMENT SCRUTINY  
PANEL - FOOTPATH REPAIRS**

**PURPOSE OF THE REPORT**

1. To present the Environment Scrutiny Panel's findings, conclusions and recommendations following its investigation of the topic of footpath repairs.

**BACKGROUND**

2. Middlesbrough Council maintains over 900km of footpaths, with a gross replacement value of almost £146m. Their repair and maintenance represents an important aspect of maintaining the borough's infrastructure, with residents regarding the state of repair of footpaths as one of the indicators of general environmental conditions in the Borough. The scrutiny panel sought to investigate how footpath repairs and maintenance are carried out in Middlesbrough.
3. The panel investigated this topic over the course of four meetings held between 15 August and 27 October 2011. A final meeting was held on 24 November 2011 to consider a draft final report. A Scrutiny Support Officer from Legal and Democratic Services co-ordinated and arranged the submission of written and oral evidence and arranged witnesses for the investigation. Meetings administration, including preparation of agenda and minutes, was undertaken by a Governance Officer from Legal and Democratic Services.
4. A record of discussions at panel meetings, including agenda, minutes and reports, is available from the Council's Committee Management System (COMMIS), which can be accessed via the Council's website at [www.middlesbrough.gov.uk](http://www.middlesbrough.gov.uk).
5. This report has been compiled on the basis of information submitted to the scrutiny panel by officers from the Council's Environment Service and from site visits that were arranged to view pavements in Middlesbrough. The panel also heard information from officers of Stockton Borough Council, Redcar and Cleveland Borough Council and Erimus Housing.
6. The membership of the scrutiny panel was as follows:

Councillors Kerr (Chair); Clark (Vice-Chair), Biswas, Davison, C Hobson, Lancaster, McPartland, Saunders and P Sharrocks.

## **TERMS OF REFERENCE**

7. The scrutiny panel's findings are set out below in respect of the agreed terms of reference, as follows:

To investigate how footpath repairs and associated issue are dealt with in Middlesbrough - including:

- a) Procedures for repairs and maintenance, including reporting and inspection systems.
- b) The legal position concerning vehicles crossing footpaths, particularly whether enforcement action can be taken by the local authority or police.
- c) The position regarding the installation of vehicular pavement crossings by householders.
- d) An examination of performance standards and best practice.
- e) The scale of outstanding repairs and budgetary implications.
- f) The position regarding third party claims against the Council as Highway Authority.

## **THE SCRUTINY PANEL'S FINDINGS**

8. The scrutiny panel's findings are set out below against each of the terms of reference.

**TERM OF REFERENCE: *"To examine procedures for repairs and maintenance, including reporting and inspection systems;" AND "To consider the scale of outstanding repairs and budgetary implications."***

9. Due to links and overlap between the above terms of reference, these are dealt with together in the following sections of the report. Information is set out below in respect of:

- Legal duties and responsibilities
- Reporting systems and procedures and inspection frequencies
- Levels of intervention
- Performance standards
- Scale of Outstanding Repairs and Budget Implications

### **Legal Duties and Responsibilities**

10. The scrutiny panel was advised that the Council has a statutory duty under the Highways Act 1980 to maintain the public highway (principally roads and footpaths) in a safe condition. The Act also includes a duty to "assert and protect the rights of the public to the use and enjoyment of the highway."
11. In practice, the authority is not required to repair every defect that it is aware of but must undertake regular inspections and have a clear maintenance policy in place. In this context, the Highways Act 1980 provides the Council with a statutory defence against claims where it can establish that reasonable care has been taken to "secure that the part of the highway to which the action relates was not dangerous to traffic".

## Current Reporting Systems and Procedures and Inspection Frequencies

12. Maintenance of footpaths (and carriageways) is carried out on both a planned and a reactive basis. Planned maintenance includes scheduled reconstruction or footpath replacement schemes, while reactive maintenance involves day to day repairs that are identified through maintenance inspections or reports from the public/elected Members.
13. Footpaths can require repairs for a number of reasons, including:
- Vehicles parking on them, resulting in damage to flagstones and surfacing materials.
  - Tree roots causing damage.
  - Heavy usage.
  - Materials coming to the end of their lifespan.
  - Damage caused by adverse weather, eg freeze thaw action in winter.
14. In terms of damage by tree roots, reference was made to the Council's Tree Policy, which was introduced following the Environment Scrutiny Panel's 2008 review of Countryside Matters.
15. In accordance with the policy, the Council currently inspects all trees that are either on the public adopted highway, or are on public open space but within falling distance of a public adopted highway. This includes street trees in the town centre. These inspections have been carried out in order to establish the condition of the trees and to identify any urgent remedial treatments. A rolling five-year inspection programme for these trees is being introduced as part of this regime.
16. Middlesbrough's footpaths network is divided into six main inspection areas. Cyclical inspections are undertaken, with frequencies based on a hierarchy system, as illustrated in the following table:

Category	Hierarchy Description	General Description	Inspection Frequency
1a	Prestige Walking Zone	Prestige areas with exceptionally high usage.	1 Month
1	Primary Walking Route	Busy urban shopping and business areas; main pedestrian routes linking interchanges - such as railways and bus stops etc.	1 Month
2	Secondary Walking Route	Medium usage routes through local areas feeding primary routes, local shopping centres, large schools etc.	3 Month
3	Link Footway	Linking local access footways through urban areas and busy rural footways.	6 Months
4	Local Access Footway	Footways associated with low usage, short estate roads to the main routes and culs de sac.	12 Months

17. These inspections are used to identify potential dangers and also as reactive safety inspections in response to any third party reports that are received.

Inspections also cover parks and open spaces, plus corporate land that may not be part of the adopted highway but still falls within the Council's responsibility.

18. Defects are identified and categorised in accordance with Middlesbrough Council's Highway Safety Inspection Manual. This document is based on the national Roads Liaison Group's 'Well Maintained Highways Code of Practice for Highway Maintenance Management', which sets out minimum standards for highway inspections and, together with other relevant documents, aims to achieve a common set of procedures applicable throughout the United Kingdom. The documents also seek, where practicable, to reconcile and harmonise maintenance practice on local and strategic road networks.
19. Inspections identify the need for either routine or emergency maintenance work and can also identify any unlawful obstruction or interference with the highway, with action then taken as necessary. Following inspections, instructions are issued via highway management software to the Infrastructure Maintenance Division for works to be carried out.
20. Reactive maintenance work can cover a wide range of repairs, including:
  - Tarmac patching
  - Pothole repairs
  - Drainage - blocked gullies or missing covers
  - Renewal of faded road markings
  - Damaged flags or kerbs
  - Identifying illegal footpath crossings
  - Any other potential hazard to the highway user
21. Defects are categorised and dealt with in priority order, as follows:
  - Category 1: Where prompt attention is required due to imminent danger or Hazard. These are further categorised to be dealt with either within 2 hours or 24 hours.
  - Category 2: All other defects, which are dealt with according to urgency, as follows:
    - Made safe or repaired within 5 working days.
    - Made safe or repaired within 28 days.
    - Repaired during next available programme.
    - Schedule a more detailed inspection.
    - Review condition at next inspection.
22. Planned maintenance is carried out under the Council's Highway Maintenance Plan, which is a rolling programme updated on an annual basis. In addition to footpath repairs, the Plan also covers repairs and maintenance to carriageways, verges and street lighting. The Plan has been made available to all Members of the Council.
23. An electronic spreadsheet showing details of the number of footways assessed for maintenance, their rating priority, treatment type and associated costs, was made available to the scrutiny panel. The spreadsheet highlighted that:

- There are currently 1,572 assessed footway maintenance schemes outstanding.
- The cumulative cost of these repairs is £16.5m (based on current funding levels and not including inflation).
- The scheduled completion date for these repairs is 2072.

### Levels of Intervention

24. Intervention Levels depend on the nature of the repair required, with details being submitted to the scrutiny panel as follows:

Category	Description	Intervention Level
Carriageway	Pot Hole	>40mm Depth and >300mm wide in any one direction
Footway - Flexible	Sharp edged depression (pothole) Cracks/Gaps	>25mm >25mm Wide & >25mm Deep
Footway - Rigid	Trip Cracks/Gaps	(Vertical or near vertical) > 25mm >25mm Wide & >25mm Deep
Kerbs/Edging/ Channels	Missing/Gaps/Cracks Rocking	>50mm Horizontally or >35mm Vertically

### Performance Standards/Best Practice

25. In line with Government recommendations and the 2005 Code of Practice for Highway Maintenance Management, Middlesbrough council endorsed its own Transport Asset Management Plan (TAMP) in November 2007.
26. For a highway authority to be able to consider properly and determine its future service standards, it must have detailed knowledge of the highway asset and its rate of decline so that decisions on capital investment and whole life costing can be made. The TAMP, which sits within a hierarchy of policy guidance and management documents headed by the Local Transport Plan, is concerned with ensuring good control over the highway inventory and any changes which take place throughout the year.
27. The scrutiny panel was informed that, in order that local highway standards remain in harmony with user expectations throughout the wider area, the TAMP and other supporting documents have been produced in collaboration with the other Tees Valley authorities. Each authority has bespoke requirements reflected throughout the documents but basic issues regarding safety, intervention etc. can be seen to be consistent by both users and enforcers alike.
28. The authority is also seeking to enhance its approach to transport asset management, thereby becoming more effective and improving the ability to meet national and local objectives and customer needs. The intention is to develop five-

year improvement and maintenance programmes. The first two years of these will be produced in some detail, with the latter three being indicative of future proposals. It is noted that this programme could be subject to change or slippage due to local circumstances, priorities or emergencies.

29. As the programme develops it will:

- Continue to identify improvements in the information and systems necessary to refine this process.
- Include all highway and transportation assets.
- Adopt best practice.
- Monitor the condition and performance of assets.
- Prioritise greatest need.
- Provide value for money by optimising the long-term life cycle costs of assets and through improved system and practices.
- Achieve corporate objectives.
- Enable the Council to meet the government's future requirements for financial planning for transport.
- Demonstrate effective management of assets on behalf of customers and stakeholders.
- Planning for future asset requirements based on projected demand and service levels.
- Seek the views of asset group users on appropriate service levels.
- Increase confidence in future planning and programmes.

30. The adoption of a formalised asset management approach builds on the foundations of existing practice. The plan will set out practice in regard to these elements as far as is possible. Where changes are identified in the information and systems necessary to refine this process they are set out in the improvement plan.

### Scale of Outstanding Repairs and Budget Implications

31. Middlesbrough's highways are the authority's most valuable asset, with a current gross replacement cost of approximately £670 million, as shown in the following table. Footpaths represent almost £146m of this sum.

Asset	Length/km or Quantity/No.	Estimated Value/£m
Carriageways	577.61km.	212.00
<b>Footways</b>	<b>940.05km.</b>	<b>145.70</b>
Cycleways	38.02km.	2.00
Structures	260No.	250.00
Drainage	25929No./64.828km	16.30
Street Lighting	25054No.	25.10
Traffic Signals and Telematics	117No.	7.72
Public Rights of Way	38.0km.	2.74
Trees, Hedges, Verges & Planted Areas	30000No./51.0 km.	5.88
Unlit Signs & Street Furniture	1290No.	0.65
Barriers and Safety Fences	5941m + 8777m	1.40

Road Markings & Studs	21153m/44936m <sup>2</sup>	0.11
<b>TOTAL</b>		<b>£669.60m</b>

32. Through annual condition surveys it has been determined that there is a current maintenance backlog of repairs which equates to £30 million and which - at a normal level of funding - would take 60 years to complete.
33. In October 2010 the service area proposed a Highway Investment Business Case. This resulted in the authority approving additional funding of £2m for highways works from 2010 to 2013. This has allowed the acceleration of maintenance across the footway and carriageway network over the three year period.
34. While this additional funding is to be welcomed, it is noted that the Council's current budget position - with savings and budget reductions likely to impact on all service areas for the foreseeable future - is likely to have implications for future service provision.

**TERM OF REFERENCE: “ To examine the position regarding the installation of vehicular pavement crossings by householders” AND:  
 “To examine the legal position concerning vehicles crossing footpaths, particularly whether enforcement action can be taken by the local authority or police”**

35. In considering this term of reference, information was considered in respect of:
- Background and current procedures
  - Cost recovery options
  - Other options
  - Involvement of Erimus Housing
  - Cleveland police involvement

### **Background and Current Procedures**

36. The issue of illegal vehicular access over footways and verges is a significant problem for Middlesbrough Council and one which is difficult to resolve. Residents have a common law right to access to any road next to their property. Where such access involves the frequent crossing of a footpath, Section 184 of the Highways Act 1980 allows the Highway Authority to insist on a properly constructed crossing (usually involving a drop kerb) which strengthens the pavement to prevent damage to it and to any public utility services below the surface.
37. In a lot of cases, when they are informed of the need for a crossing, the residents do comply and pay for a crossing to be constructed. This is usually done in one of two ways:
- Option 1: The Council can carry out the works after supplying the resident with an estimate and it being accepted.
  - Option 2: The resident can employ their own contractor under licence to the Council. A council officer will inspect the works, which must be undertaken to a prescribed standard. The contractor must have public liability insurance and guarantee the work for 2 years.
38. Unfortunately, there are some cases where residents refuse to comply with the requirement to provide a pavement crossing. The authority's current stance is to write to any properties concerned to explain the situation described above. If no

favourable response is received, a legal notice can be served informing the householder that the Council will undertake the necessary works and recover the costs incurred. Following a 28 day period, the works can then be executed and the householder invoiced.

39. To date, the authority has served notice on 29 properties in Middlesbrough that have refused to comply with requests to install vehicle crossing facilities. The cost to the Council of providing these facilities stands at £27,948 (ie an average of £964 per property) with repayments being made sporadically, if at all. Where payment is not received, this creates a budget pressure in Highways and Transportation Services. The scrutiny panel notes that, due to overheads and oncosts, the Council's cost of providing these facilities can be considerably higher than those of local contractors.

### **Cost Recovery Options**

40. Highways and Transportation Services has examined alternative methods to try to ensure that costs can be recovered. Two possible options were put forward, for the scrutiny panel's consideration, for potential cost recovery:

**Option 1:** For the Council to undertake the necessary works and, if no payment is forthcoming, to place a local land charge against the property. This means that when the property is sold the Council will receive payment. This option, although still generating an initial budget pressure, would guarantee payment for the works at some future point.

**Option 2:** Commence recovery proceedings through the courts. This may be successful in some cases but is not guaranteed to produce satisfactory remuneration - for example if the resident/occupier is financially disadvantaged. It would also incur further costs to the Council in taking the case to court.

### **Involvement of Erimus Housing**

41. Reference was also made to properties owned by Erimus Housing. During its site visits to view various footpath issues (see paragraph 55 onwards) the panel observed the prevalence of illegal footpath crossings on the Erimus estates, although it is recognised that a number of the properties concerned will be owner-occupied. In the case of Erimus properties, Council officers contact Erimus to involve them in addressing and resolving the issue. If the in curtilage parking provision meets Erimus' criteria for the provision of such, the Council will request that Erimus considers providing the funds for the associated footway crossing. Where the in curtilage parking does not meet their criteria, or Erimus will not consider financing a footway crossing, the authority insists that Erimus takes appropriate action to prevent their tenant illegally crossing the footway. This can be either by reinstating boundary fences that have been removed to allow vehicular access, or by informing the tenant that damage to verge or footpath and alteration to the property without permission is considered a breach of their tenancy agreement.
42. A representative of Erimus Housing was invited to attend the scrutiny panel to comment on this issue. The panel was informed that Erimus has allocated £6m to undertake environmental works over a period of five years, which would include the conversion of many grass verges to some form of parking. This has, to some extent, alleviated issues surrounding in-curtilage parking, although Erimus recognises that the issue of illegal pavement crossings is still a significant one. In



this context, the £6m sum could be considered to be a very small amount given the potential extent of necessary works and associated expenditure.

43. Where Erimus becomes aware of a vehicle crossing the footway to access in-curtilage parking, tenants are advised of the legal position and of the need to contact the Council for advice on compliance. Were car crossings to be installed by the Council and tenants to be recharged for the work, the Erimus view is that, in the current stringent financial climate, many tenants would not view the payment as a priority and would not pay for the work. As has been outlined in this report, this would make recovery of these costs difficult. Erimus explained that while this could be regarded as a breach of tenancy agreement, this issue on its own would not be regarded as serious enough for sanctions such as pressing for eviction. The outstanding debt would be regarded as a lower priority than, for example rent arrears. Following a query from the scrutiny panel, the Erimus representative confirmed that it is not possible to recover costs associated with providing vehicle crossings through a tenant's rent.
44. Reference was also made to the arrangements between Erimus Housing and the Council with regard to cars crossing large areas of green space, which can be a serious problem in some areas, with damage requiring expensive remedial works. The authority and Erimus work together to address these issues, through installation of bollards and other measures to prevent vehicle access.

### **Other Options**

45. One option to resolve the problem of damage to the footway without provision of a footway crossing could be to utilise Section 66 of the Highways Act 1980.
46. This provides the Highway Authority with powers to erect and maintain raised paving, fences and barriers etc to safeguard highway users but not to obstruct any private access to premises. As the vehicle crossing is not authorised it may be that it is not classed as private access. However this option might be open to differing legal interpretation and will still require capital expenditure to provide the fences or barriers.
47. A further option to maintain the integrity of the footway would be to absorb the budget pressure allowing the resident to have a free vehicle crossing. However, it is considered that this would place the Council in an untenable position, insofar as those who have paid for vehicle crossings would be disadvantaged. This course of action would also place a financial strain on already limited budgets.

### **Cleveland Police Involvement**

48. Cleveland Police were contacted regarding vehicle trespass, particularly parking on pavements and verges. The scrutiny panel was keen to determine their involvement in enforcement in respect of this issue.
49. The police advised that the Council is now principally responsible for parking enforcement issues. Where the police do become involved, they deal with incidents on a case by case basis, although it is noted that in order to take enforcement action where a vehicle has crossed a verge to access in-curtilage

parking, it is necessary to ascertain who drove the vehicle, or for a police officer to witness the offence. Enforcement action can therefore be difficult. The police do, however work with the Council to resolve persistent problems through a managed approach - such as through engineering design solutions, including barriers to prevent vehicle trespass.

**TERM OF REFERENCE: “To examine the position regarding third party claims against the Council as Highway Authority.”**

50. The scrutiny panel was advised that third party compensation claims against the Council as Highway Authority can relate to:
- Personal injury accidents.
  - Damage to personal property such as cars, clothing and premises, caused by alleged defects in the publicly maintainable highway.
  - Nuisance caused or permitted by the Council.
51. In recent years, there has been an increased trend towards litigation in society in general. In line with this trend, claims against local authorities generally have increased. Section 58 of the highways Act 1980 provides the Council with a statutory defence against claims where it can be established that reasonable care has been taken to ensure that the highway (including footpaths) is not dangerous to traffic/pedestrians. For this reason, it is important that the authority has in place a robust inspection regime and a programme of planned maintenance to demonstrate, for example:
- The defect which caused the claim was less than the prescribed intervention limit.
  - The area was inspected under the Council’s approved programme.
  - Inspectors had no evidence of any defect or problem at the relevant location.
  - The defect was not the authority’s responsibility.
52. In the past three years, there has been an average of 160 claims per year against the Council. Historically, the authority has generally vigorously defended claims and claim repudiation rates have averaged 95% on average. However, in this period there were still 17 successful claims against the Council. These totalled £157,000 in compensation payments, with an average payment of approximately £9,200. Successful claims for the above period were as follows:
- 2008 - 11 successful claims  
2009 - 4 successful claims  
2010 - 2 successful claims
53. This reduction is considered to be due to the Council’s robust inspection regime and programme of planned maintenance.

**ADDITIONAL INFORMATION**

54. This includes information from site visits held on 5 October 2011 and from officers of Stockton Borough Council and Redcar and Cleveland Borough Council.

**Site Visits**

55. Visits were made to a number of locations in Middlesbrough to view the condition of a range of footpaths and examine associated problems such as parking on

footpaths and verges and illegal pavement crossings. The visits also allowed Members to observe current reporting systems and procedures in relation to the highway inspection process.

56. The following locations were visited:

- a) Middlehaven Area - Rear of the Police Station/Boho Quarter - Large areas of open space (formerly housing) are being used for unauthorised vehicle parking. Substantial damage (broken and cracked paving slabs) has been caused by vehicles parking on footpaths. It is intended to address this issue by placing large boulders at road entrances to prevent vehicles accessing the land for parking purposes.
- b) Tree Pit adjacent to Pizza Hut, Junction of Marton Rd/North Ormesby Rd - The panel observed the trial use of a flexible, porous, rubber material used to cover areas around tree roots where they have caused damage to paving by lifting. The material has a similar lifespan to that of tarmac, is more flexible but is more costly.
- c) Overdale Road - This is a main road and bus route with a number of illegal pavement crossings to access in-curtilage parking. Such crossings have damaged verges and pavements in the area.
- d) Carrisbrooke Avenue - Another main road and bus route. Problems here relate to the very narrow road. This results in cars parking on the pavements and grass verges, causing significant damage to both.
- e) Homerton Road (side of Middlebeck Club) - Members observed how officer inspections are undertaken and how damaged paving slabs from vehicle parking are recorded and reported. It was explained that the area has been the subject of a recent claim following an accident on cracked and uneven paving. A 20mm trip hazard has been identified, which (in accordance with the information that has been submitted to the panel) has a 28-day response period for reactive work to be carried out
- f) Ullswater Avenue - Further examples of verge damage and parking on verges/pavements were observed.

### **Information from Stockton Borough Council and Redcar and Cleveland Borough Council**

57. Arrangements were made for representatives of Stockton Borough Council and Redcar and Cleveland Borough Council to speak to the scrutiny panel to ascertain footpath repair arrangements in those boroughs. The following points were highlighted.
58. In **Redcar and Cleveland**, the footpath repairs budget is reviewed on an annual basis. The current allocation for footpath maintenance is £300,000. There are approximately 400 schemes currently outstanding, which equates to around £10 million of work, which - on the basis of current arrangements - will approximately take 35 years to complete.
59. Requests for footpath repairs originate from Council highways inspectors, Council Members and members of the public. Following such requests a condition survey is undertaken at each location and then listed in order of priority on a worst first basis. Some footway surveys are carried out by an external contractor.

60. In terms of enforcement procedures regarding illegal car crossings, in the first instance, a letter is sent to the household concerned. If necessary, a notice will then be served in accordance with Section 184 of the Highways Act 1998 to enable the Council to undertake the necessary works. The Panel was advised, however, of difficulties that are often incurred in recovering costs.
61. The officer from **Stockton Borough Council** confirmed that that authority undertakes similar procedures to those adopted by the other Tees Valley authorities. All of the authorities work in collaboration in order to generate a consistent approach to policies and plans across the area. These are aligned to statute/national codes of good practice. As in the case of the other Tees Valley local authorities the number of outstanding repair schemes in Stockton exceeds the available budget and schemes are prioritised.
62. In relation to enforcement of vehicle crossings, Stockton tries to adopt a tolerant approach, with no 'hard line' policy. The authority has also experienced difficulties in recouping costs for installation of car crossings even after a signature had been obtained from the occupier undertaking to pay for the work. The difficulties in achieving a balance between taking a tolerant approach with that of taking action where considered necessary is acknowledged by Stockton Council.
63. In terms of new build or programmes of maintenance works it was noted that Bitmac is commonly used for surfacing, with the exception of high amenity areas. In cases where kerb lines are being installed or modified in respect of highway maintenance schemes, dropped crossings have been installed to encourage off street in-curtilage parking. Residents of streets affected by programmed repair works are all contacted by letter to advise them of the works and to inform them that pavement crossings can be provided as part of the programme. This is generally much cheaper than undertaking a 'one off' scheme at a particular property.
64. The Panel acknowledges that the Tees Valley local authorities work in collaboration, follow comparable procedures and adopt a similar approach towards enforcement proceedings.

## CONCLUSIONS

65. Having considered the submitted information, the Environment Scrutiny Panel reached the following conclusions:
1. The maintenance and repair of footpaths is an important aspect of maintaining the borough's infrastructure, with residents regarding the visual state of repair of footpaths as one of the indicators of general environmental conditions in the Borough.
  2. The main cause of damage to footpaths is parking or encroachment by motor vehicles. Many affected areas are older housing estates, where their design (of narrow streets and limited parking provision) coupled with a continuous rise in car ownership has led to parking on footpaths and significant damage to footpaths and verges.
  3. Given the scale of the problem, the scrutiny panel welcomes the fact that there is a robust and pro-active inspection and repair regime in place and that repairs are dealt with on a 'worst first' priority basis. Also welcomed is that additional funding has been allocated to footpath (and highway) repairs over a three year period. As a result, current service provision is efficient and effective. It is

recognised, however, that the authority's current difficult budgetary position, together with a perpetual list of outstanding repairs, means that budget pressures are unlikely to be reduced in the foreseeable future.

4. Illegal vehicular footway crossings present a significant, and potentially costly problem to the Council. A clear policy is required to attempt to resolve this ongoing issue in a satisfactory manner. Legal action should continue to be taken where appropriate, with householders being made aware - through the resulting publicity - that cases of non-payment will continue to be pursued.
5. Police powers to take enforcement action regarding the above issue are limited.
6. There is a proactive approach to defending footpath-related compensation claims against the Council. This has resulted in an decrease in recent years in the number of successful claims made against the authority. This is commended by the scrutiny panel.
7. The Council's existing Tree Policy provides for regular inspection of all trees on the adopted highway. Amongst other things, this ensures that the issue of tree root growth is effectively managed to avoid damage to footpaths and minimise potential obstruction and tripping hazards.
8. The major difficulties experienced by Middlesbrough Council, including dealing with illegal vehicular footway crossings, are common to all Tees Valley authorities. A fairly standardised approach is adopted across the local area in terms of inspections, repairs and maintenance.

## **RECOMMENDATIONS**

66. Following the submitted evidence, and based on the conclusions above, the scrutiny panel's recommendations for consideration by the Overview and Scrutiny board and the Executive are as follows:
  1. That the Executive notes the scrutiny panel's findings that footpath repair and maintenance provision is both efficient and effective.
  2. That, in order to maintain existing standards and ensure that liability claims against the authority continue to be reduced, it should be ensured that, as far as is practicable in the current financial climate, the Council's existing footpath inspection regime, and application of its agreed Tree Policy, is maintained.
  3. That, where it becomes necessary, on highway safety grounds, for the Council to construct a vehicular pavement crossing, the householder concerned continues to be charged for the works.
  4. That in the above cases, if no payment is forthcoming, a local land charge is placed against the property as this will ensure that the authority will eventually receive payment for the works.
  5. That the above approach should not preclude recourse to legal action to recover costs, where this is considered appropriate.

## **ACKNOWLEDGEMENTS**

67. The Panel is grateful to the following officers, who presented evidence during the course of this investigation:
  - C Bates - Middlesbrough Council

- B Buckley, Stockton-on-Tees Borough Council
- I McConville - Middlesbrough Council
- A Mollon, Redcar & Cleveland Borough Council
- B Trodden, Erimus Housing

## **BACKGROUND AND REFERENCE MATERIAL**

68. The following sources were consulted or referred to in preparing this report:

- Reports to and minutes of the Environment Scrutiny Panel meetings held on 15 August, 8 September and 3 and 27 October 2011.
- Notes of site visits - 5 October 2011.

**COUNCILLOR BOB KERR**

**CHAIR OF ENVIRONMENT SCRUTINY PANEL**

**November 2011**

**Contact Officer:**

Alan Crawford, Scrutiny Support Officer

Legal & Democratic Services

Tel 01642 729707

e-mail: [alan\\_crawford@middlesbrough.gov.uk](mailto:alan_crawford@middlesbrough.gov.uk)