

ENVIRONMENT SCRUTINY PANEL

6 MARCH 2012

**FINAL REPORT -
PAVEMENT AND CARRIAGEWAY WORKS BY
UTILITIES COMPANIES**

PURPOSE OF THE REPORT

1. To present the Environment Scrutiny Panel's findings, conclusions and recommendations following its investigation of the topic of pavement and carriageway works by the utilities companies.

BACKGROUND

2. The panel investigated this issue as a short topic over the course of one meeting held on 19 December 2011. A second meeting was held on 9 February 2012 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 review. Meetings administration, including preparation of agenda and minutes, was undertaken by a Governance Officer from Legal and Democratic Services.
3. A record of discussions at the 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.
4. This report has been compiled on the basis of information submitted to the scrutiny panel by officers from the Council's Environment Department.
5. 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.

THE SCRUTINY PANEL'S FINDINGS

6. In the United Kingdom, 'statutory undertakers' are the numerous companies and agencies with legal rights to carry out certain development and highways works. Generally speaking they are utilities and telecoms companies, or other organisations such as Network Rail. These companies dig up the pavements and roads in order to install, renew or repair their equipment such as drains, cables, ducts or sewer, water and gas pipes. Companies like gas and water suppliers need to dig up the highway to look after and maintain their pipes and to lay new supplies for houses, shops, factories and offices. This can impact on pedestrians and traffic and also the local environment.
7. In the past there were four main organisations undertaking street works (ie water, gas, electricity and telecommunications). However, following deregulation, there are now around 270 companies authorised to do these works.
8. The following were agreed as the areas that the scrutiny panel wished to consider in further detail:
 - a) The legal powers, duties and responsibilities of the statutory undertakers.
 - b) The scale of annual works.
 - c) Categorisation of works.
 - d) Notification and liaison arrangements with the local authority.
 - e) Co-ordination and minimising disruption
 - f) Penalties or sanctions for works that over-run.

Legal Powers, Duties and Responsibilities

9. The scrutiny panel considered information relating to the above insofar as they relate to both the highway authority and to the statutory undertakers.
10. The primary legislation governing the work of the public utilities is The New Roads and Street Works Act 1991, as amended, together with the associated codes of practice. The panel heard that street works carried out by public utilities and cable companies are undertaken by virtue of a statutory right or a licence granted under the 1991 Act. These do not need the prior consent of the highway authority.
11. As recognition of their special status, statutory undertakers are granted several privileges regarding development and highways access. They are often exempt from planning permission for small works through the General Permitted Development Order, 1995 and may also undertake works on public highways under the New Roads and Street Works Act 1991. Undertakers are only obliged to inform the Council of planned road works carried out by them or on their behalf, giving very little notice, often less than 7 days.
12. In addition to the above act, three codes of practice have been prepared by the national Highway Authorities and Utilities Committee (HAUC UK) and approved by the relevant Secretaries of State. These cover Reinstatement, Diversionary Works, and Co-ordination and Co-operation. In April 2001 the Government and HAUC UK published Best Practice in Street Works and Highway Works, which complements the codes of practice. In addition to these Codes of Practice the utilities companies and the highway authority also need to comply with the relevant Traffic Signs Manual - namely traffic safety measures and signs for road works and temporary situations.

13. The Traffic Management 2004 Act was introduced with the aim of tackling congestion and reducing disruption by:
 - Pro-active management of national and local roads and traffic
 - Better co-ordination and management of works and other activities on the road network.
 - More effective powers and sanctions over utilities street works.
 - Wider civil enforcement powers for traffic contraventions.

14. The Act introduced a Network Management Duty and a requirement for every Local Traffic Authority to appoint a Traffic Manager. The Act essentially consists of seven parts:
 - 1 - Highways Agency Traffic Officers
 - 2 - Network Management Duty
 - 3 - Permit schemes
 - 4 - Street works
 - 5 - London and highway matters
 - 6 - Civil enforcement of contraventions
 - 7 - Parking surpluses & Blue Badge

15. Part 2 of the Act deals specifically with the Network Management Duty. This is the only area of highways activity and regulation where the Secretary of State has powers to intervene if a Local Traffic Authority fails, or is failing to, adequately perform the duty. To supplement this part of the Act the Government's Department for Transport (DfT) published Network Management Duty Guidance, which outlines exactly what is required in performing duty.

16. The Traffic Management Act (Guidance on Intervention Criteria) Order 2007 is the tool by which the Secretary of State can issue an Intervention Order against an Authority which is not performing the Network Management Duty. Intervention is a rule-based performance indicator which, if met, would result in the Environment block Comprehensive Performance Assessment rating being restricted to a maximum of 2 stars.

17. The Order makes specific reference to the need for an Authority to show parity with other organisations when dealing with works on the highway. This is both in terms of inspections and the need to record all highway works on the streetworks management system.

18. The most relevant sections from the 1991 Act or the 1991 Act, as amended by the Traffic Management Act 2004, cover the following:
 - a) Directions - The Highways Authority can issue directions in respect of utility works. Directions can only be set within a strict time period following the issuing of utility notices but in certain circumstances can be given to ongoing works
 - b) Co-ordination (s59 and 60 of the New Roads and Streetworks Act) - This makes provision for the control and co-ordination of street works. The street authority (usually the local highway authority) is responsible for the co-ordination of its own works, as well any work carried out by public utilities and cable companies in its area. Section 59 requires the street authority to use its 'best endeavours' to co-ordinate street works and section 60 requires that the undertakers should use their best endeavours to co-operate with the street authority and with other undertakers. The co-ordination machinery is set out in the August 2009 revised Code of Practice.

- c) Restrictions (s58 NRSWA) - Embargoes can be placed following either highway authority works (resurfacing etc) but also if another undertaker has recently completed substantial works at that location. The period of restriction varies between 6 months and 5 years.
 - d) Avoidance of Unnecessary Delay (s66 NRSWA) - This section requires undertakers to carry out and complete street works "with all such dispatch as is reasonably practicable". It backs this duty up in two ways. Firstly an undertaker who fails to comply with the duty is guilty of an offence. Secondly, a street authority which considers that an undertaker has created an obstruction "to a greater extent or longer period than is reasonably necessary" may require the undertaker to take reasonable steps to mitigate or discontinue the obstruction. If an undertaker fails to comply with such a notice the street authority may act and recover the costs of doing so.
 - e) Charge for Occupation of Highway Where Works are Unreasonably Prolonged (s74 NRSWA) - This has been in operation since April 2001 and allows a Highway Authority to levy a daily charge where Utility works are unreasonably prolonged and no extension to the works notice has been approved.
 - f) Duty to Inform Undertakers of Location of Apparatus (s80 NRSWA) - This section requires undertakers and anyone else carrying out street works who find apparatus in the street which is not marked on records, or is incorrectly marked to inform the undertaker to whom the apparatus belongs of its location and nature together with an indication of whether or not it appears to be in use. The section also provides for steps to be taken where it is unclear to whom the apparatus belongs.
19. Reference was also made to the Traffic Management Permit Scheme (England) Regulations 2007, which are currently being considered but are not yet in force in Middlesbrough. The scheme requires a permit to be granted before works can be undertaken on the public highway. This could enable greater control of co-ordination and forward planning of all street works carried out by utilities, and also a local authority's own highways works, resulting in better co-ordination of works to reduce the disturbance and congestion which is caused by repeatedly digging up the road.
20. Permits would be approved and managed and enforced by the highway authority. Contravention of a permit would constitute an offence and attract fines and/or fixed penalty notices.
21. Application must be made to the Secretary of State before a permit scheme can be introduced.

Scale of Annual Works

22. The number of works carried out by statutory undertakers varies from year to year. However, an average of 6,000 works per year has been carried out over the past three years. Each of these works averages three notices - ie 18,000 per year.
23. In respect of highway authority minor works, 8,000 notices were issued over the past year and 1,500 were issued for Registerable Works. This equates to a minimum of 7,500 notices issued in each year.

Categorisation of Works

24. Works are categorised as follows:
- Major works
 - Standard works
 - Minor works
 - Immediate works
25. Major works - Are defined as works that have been identified in an undertaker's annual operating programme or, are normally planned or known about at least six months in advance of the proposed start date. They require a temporary traffic order (not a temporary traffic notice) under the Road Traffic Regulation Act 1984 for any works other than immediate works. Alternatively, major works may also be those that have a planned duration of 11 days or more, other than immediate works.
26. Standard works are those, other than immediate or major works, with a planned duration of four to ten days inclusive.
27. Minor works are works, other than immediate or major works, with a planned duration of three days or less.
28. Immediate works are either emergency works, required to end, or prevent, circumstances, either existing or imminent, that might cause damage to people or property. Alternatively they may be non-emergency works that are required:
- To prevent, or rectify, an unplanned interruption of any supply or service provided by the undertaker.
 - To avoid substantial loss to the undertaker in relation to an existing service; or
 - To reconnect supplies or services where the undertaker would be under a civil or criminal liability if the reconnection is delayed until after the appropriate notice period.
29. In terms of notice periods required under the relevant regulations, statutory undertakers are required to give three months' notice of major works. Standard works require a 10 day notice of start date, with minor works requiring a three day notice.
30. In the case of immediate works, notices must be given as soon as reasonably practicable and, in any event, within two hours of the works starting. Where immediate works are identified and undertaken outside the normal working day, the notice should be given within two hours of the start of the next working day - that is by 10:00. Notices of immediate works must specify why they fall within the definition.
31. In compliance with the relevant Inspections Code of Practice the Council is allowed to carry out sample inspections of works carried out by the utilities companies. Accordingly, 30% of utility works are inspected, split into three categories:
- Category A - While works are in progress.
 - Category B - Within 6 months of permanent reinstatement.
 - Category C - Prior to the end of the two year guarantee period.

32. In addition, the authority can also carry out:
- Third party-reported inspections.
 - Routine inspections.
 - Occupancy inspections.
 - Defect inspections should reinstatement works not be compliant.

Notification and Liaison Arrangements

33. Notification of utility works on the highway, and also works promoted by the Highway Authority, are sent via a national electronic system of street works management (Electronic Transfer of Notifications) to Symology Insight, which is the Council's streetworks management and co-ordination database system. Notices need to comply with requirements of the Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007.
34. The EtoN specification is read in conjunction with the following guidance and regulations before a decision is made on whether the works can proceed:
- The Street Works (Fixed Penalty) (England) Regulations 2007.
 - The Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) Regulations 2008.
 - Code of Practice for the Co-ordination of Street Works and Works for Road Purposes and Related Matters 2007.
 - Traffic Management Permit Scheme (England) Regulations 2007 Statutory Guidance for Permits.

Works Co-ordination and Minimising Disruption

35. The street/road authority has responsibility for co-ordinating works on the highway. Both the authority and statutory undertakers are required to give notice to each other of their intended works. This process is aimed at assessing the impact on any works to minimise disruption to traffic networks and any foreseeable inconvenience which could be caused to street/road users. Although there may be a public perception that roads and footpaths are continually being dug up, work is co-ordinated and five year work programmes are exchanged between the local authority and the utilities companies. The authority does not generally receive a large number of complaints regarding utilities' works, although some were received in respect of the gas pipe works that took place in the town centre.
36. The authority is required to maintain a register of works and communicate with any other adjoining authority who may be affected, together with emergency services and organisations catering for disabled groups.
37. Co-ordination is maintained by regular meetings of affected parties. These groups are set up by regional Highway Authority and Utility Committees (HAUCs). The following items are considered at these meetings:
- Highway authority and undertakers projects.
 - Capital and maintenance programmes.
 - Police and traffic management issues.

38. In terms of minimising disruption, The Traffic Management Act 2004 was introduced as “The Government’s contribution to making street works more efficient, safer and less disruptive.” The Act introduced measures to improve the flow of information between utilities companies and highway authorities. These included comprehensive notification, where all parties are required to provide notice of all works on the highway electronically. This happens in Middlesbrough via the EToN format outlined earlier.
39. In addition, classification systems for works were simplified and measures were introduced to improve co-ordination, provide longer advance notice periods and a clearer code of practice. Measures were also introduced to reduce disruption; introduce longer bans on further digs following major works; to strengthen powers for directing where related apparatus cannot be placed; and to clarify issues such as times and dates.
40. The Traffic Management Act also clarified the law to make it clear that local authorities may give directions as to both timing and days for works. Furthermore the street authority can, in certain circumstances, direct undertakers to follow a different route that would involve less disruption.
41. All of the above have strengthened the role of the Council in achieving minimal disruption in the case of street works.
42. The authority is also required to maintain a register for each street it is responsible for. This contains information about the street and any prescribed works. The register holds information in respect of the following:
 - Streetworks notices
 - Scale of Annual Works
 - Works in areas of special engineering difficulty or controls
 - Streetworks licences
 - Authority works
 - Completed reinstatements
 - Unmarked apparatus
 - Undertakers reinstatement obligations
 - Notices disallowing undertakers cost
43. The scrutiny panel heard that a central register, which is open for public inspection via the Council website, has been developed to ensure that the requirements of the NRASWA are met.

Penalties and Sanctions

44. Since 2001, the New Roads and Street Works Act 1991 permits highway authorities to levy a daily charge for overrunning activities - ie where utility works are unreasonably prolonged. Charges are dependent on works type and road category as follows:

| | Road Cat 0-1 | Road Cat 2 | Road Cat 3-4 (TS) | Road Cat 3-4 (Not TS) | Off C'way Works (TS) | Off C'way Works (Not TS) |
|---------------------------------|-----------------|---------------|----------------------|-----------------------------|-------------------------|-----------------------------|
| Major and Standard Works | £2500 | £2000 | £750 | £250 | £250 | £250 |
| Minor and Immediate Works | £500 | £500 | £250 | £100 | £100 | £100 |

45. The Street Works (Fixed Penalty) (England) Regulations 2007) introduced fixed penalty notices. This is a notice which offers the utility company the opportunity of discharging any liability to conviction for a fixed penalty offence by payment of a penalty. The objectives of the FPN system are to:
- Encourage accurate and timely notice data
 - Improve the co-ordination of works
 - Improve data quality for all works promoters
 - Contribute to minimising disruption arising from street and road works
46. Fixed Penalty Notices can be issued for the following notice offences:
- Failure to provide advance warning of works
 - Inaccurate / inadequate location details on notice
 - Failure to issue notice and to confirm changed location of works
 - Failure-to-abandon notice
 - Unwarranted / late issue of immediate notices
 - Failure to issue R1 reinstatement notice within 7 day
 - Late issue of S74 notice (Charge for occupation of the highway where works are unreasonably delayed)
 - Failure to give a notice required by regulations under S74(A) - charge determined by reference to duration of works
47. The scrutiny panel was advised that the Council does pursue the utilities companies to ensure that satisfactory re-instatement works are undertaken and that works are not overly delayed. Approximately £90,000 was received in the last year from the utilities as a result of the issue of Section 74 Overstay Notices.

CONCLUSIONS

48. Having considered the submitted information, the Environment Scrutiny Panel reached the following conclusions:
1. Utilities companies (numbering over 270 nationally) have a legal right and duty to carry out emergency, urgent and routine works in respect of the services that they provide. The Council cannot prevent them from carrying out these works but can direct when the works are carried out. Around 6,000 works are carried out in Middlesbrough by utilities companies each year, with the Council needing to manage the road network to maintain/ensure efficient movement of traffic.

2. Some disruption is inevitable when the companies carry out road works but this is minimised through the notification and co-ordination arrangements that are in place. The scrutiny panel notes that, given the scale of works undertaken annually, these measures generally work well in minimising disruption and ensuring that the utilities companies comply with their legal obligations. A system of financial penalties is also in place to encourage compliance by utilities companies. This has generated approximately £90,000 over the past 12 months.
3. Once works are complete, the utilities must carry out a permanent reinstatement within six months and guarantee the work for two/three years. The authority's inspections system ensures that re-instatement is undertaken to the required standard, with companies being pursued to achieve this where necessary.
4. There is an option to introduce a scheme where occupations/openings of the road would be by permit only. Permits can also be used to limit occupation of the road, thereby strengthening the Council's powers of control. Charges may also be levied to cover the administration costs of a permit scheme.

49. 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:

RECOMMENDATIONS

1. That the Executive notes that the Environment Scrutiny Panel is pleased to find that the Council's system for the notification, undertaking, co-ordination and inspection of road works by the utilities companies is comprehensive and ensures that disruption is kept to a minimum.
2. That, subject to an analysis of potential benefits, consideration is given to the introduction of a permit scheme to undertake such works. If introduced, this should include an appropriate charging system to cover administration costs.

ACKNOWLEDGEMENTS

50. The Panel is grateful to the following officers, who presented evidence during the course of this investigation:
- C Bates - Environment Department, Middlesbrough Council.
 - G Nevitt - Environment Department, Middlesbrough Council.
 - T Punton - Environment Department, Middlesbrough Council.

BACKGROUND AND REFERENCE MATERIAL

51. The following sources were consulted or referred to in preparing this report:
- Report to and minutes of the Environment Scrutiny Panel Meeting held on 19 December 2011.

**COUNCILLOR BOB KERR
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