

SCRUTINY COMMITTEE

Friday, 6th July, 2018

10.00 am

Darent Room - Sessions House





AGENDA

SCRUTINY COMMITTEE

Friday, 6th July, 2018, at 10.00 am

Ask for: Joel Cook/Anna Taylor

Darent Room - Sessions House

Telephone: 03000 416892/416478

Membership

Conservative (9): Mr P W A Lake (Chairman), Mr A M Ridgers (Vice-Chairman),
Mr M A C Balfour, Mrs C Bell, Mr A Booth, Mr G Cooke,
Mr R C Love, Mr J P McInroy and Mr J Wright

Liberal Democrat (2): Mr R H Bird and Mrs T Dean, MBE

Labour (2) Mr D Farrell and Dr L Sullivan

Church Mr D Brunning, Mr J Constanti and Mr Q Roper

Representatives (3):

Parent Governor (2): Mr K Garsed and Mr A Roy

Tea/coffee will be available 15 minutes before the start of the meeting

County Councillors who are not Members of the Committee but who wish to ask questions at the meeting are asked to notify the Chairman of their questions in advance.

Webcasting Notice

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UNRESTRICTED ITEMS

(During these items the meeting is likely to be open to the public)

A - Committee Business

- A1 Introduction/Webcast Announcement
- A2 Substitutes
- A3 Declarations of Interests by Members in items on the Agenda for this Meeting
- A4 Minutes of the meeting held on 17 April 2018 (Pages 5 - 8)
- A5 Minutes of the meeting held on 10 May 2018 (Pages 9 - 12)
- A6 Proposed re-convening of the Kent Utilities Engagement Sub-Committee (Pages 13 - 20)

B - Any items called-in

C - Any items placed on the agenda by any Member of the Council for discussion

- C1 Managing Highway Infrastructure in Kent (Pages 21 - 26)
- C2 Highway Claims (Pages 27 - 30)
- C3 Update on EHPS - Commissioned Youth Services Deep Dive
- C4 MOTION TO EXCLUDE THE PRESS AND PUBLIC FOR EXEMPT BUSINESS
That, under Section 100A of the Local Government Act 1972, the press and public be excluded from the meeting for the following business on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 3 of Part 1 of Schedule 12A of the Act.

EXEMPT ITEM

(During this item the meeting is likely NOT to be open to the public)

- C5 Exempt minute of the meeting held on 17 April 2018 (Pages 31 - 36)

Benjamin Watts
General Counsel
03000 416814

Thursday, 28 June 2018

KENT COUNTY COUNCIL

SCRUTINY COMMITTEE

MINUTES of a meeting of the Scrutiny Committee held in the Darent Room - Sessions House on Tuesday, 17 April 2018.

PRESENT: Mr P W A Lake (Chairman), Mr A M Ridgers (Vice-Chairman), Mr M A C Balfour (Substitute for Mr B J Sweetland), Mr R H Bird, Mr A Booth, Mr G Cooke, Mrs T Dean, MBE, Mr D Farrell, Mr R C Love and Mr J Wright

ALSO PRESENT: Mr E E C Hotson and Mr P M Hill, OBE

IN ATTENDANCE: Ms R Adby (Head of Business Partnerships and Relationships), Ms J Mookherjee (Consultant in Public Health), Mr S Peerbux (Head of Community Safety), Ms K Ripley (Head of Property Strategy and Commissioning), Mr G Singh (Barrister), Mrs A Taylor (Scrutiny Research Officer) and Mr B Watts (General Counsel)

UNRESTRICTED ITEMS

13. Minutes of the meeting held on 30 January 2018

(Item A4)

RESOLVED that the minutes of the meeting held on 30 January 2018 were an accurate record and that they be signed by the Chairman.

14. Select Committee Update

(Item A5)

1. In response to a question Mr Watts explained that inevitably extending the timetable of the Pupil Premium Select Committee had delayed the start of Social Isolation but everything possible was being done with the available resources to progress the Social Isolation Select Committee topic.

RESOLVED that:

- the progress of the Select Committee on Pupil Premium be noted;
- work begins to establish the Select Committee on Social Isolation in May 2018 and;
- a timetable for the review be presented to the Scrutiny Committee at its next meeting for consideration and approval.

15. Kent Community Safety Agreement

(Item B1)

1. Mr Hill introduced this item, he had been the Chairman of the Kent Community Safety Partnership since its inception in 2007. Mr Hill explained that he had been very pleased with the progress of the Community Safety Partnership, it had run some excellent conferences, there had been some key achievements in Domestic Abuse and DHRs and the Community Safety Team had been integrated with Kent Police and Kent Fire and Rescue and was working out of one building.

2. Mr Peerbux, Head of Community Safety, KCC gave Members a presentation which is [available online here](#). Members also heard from:
 - Chief Superintendent Tom Richards, Kent Police,
 - Chief Inspector Tim Cook, Kent Police,
 - Ian Thomson, Assistant Director, Kent Fire and Rescue Service
 - Jess Mookherjee, Consultant in Public Health, Kent Public Health.
3. The Chairman then invited questions from Committee Members.
4. In response to a question Mr Richards explained that specialist tactical advice was available should a chemical incident occur.
5. Members discussed domestic abuse and the correlation between deprivation and domestic violence. There was no doubt that there was a link between the two, however it was not as simple as a direct correlation. Kent Police were working in partnership and there was a multi-agency team assisting people with drug dependence, housing issues and financial and benefit requirements.
6. A Member asked about Serious Organised Crime (SOC) and Gangs, Mr Richards explained that gangs were a significant priority for Kent Police and work was being done with families and schools. In response to a question about the use of housing association properties by criminal families Kent Police explained that they worked closely with housing associations and that the Community Safety Partnerships worked hard with housing providers and had effective relationships. Legislation provided local authorities with responsibilities to house people, particularly those with children. It was considered that CCTV was an effective tool, it was used a lot in the UK but it needed to be a balance. A Member explained that there would be a future briefing on Kent's Gang Strategy to which all Members would be invited.
7. In relation to road safety and lorries on Kent Roads, Mr Thomson explained that there was no evidence to show that the large numbers of lorries translated into accidents resulting in people being killed or seriously injured. However, Kent was disproportionately affected by freight lorries and work was underway to influence driver behaviour.
8. In response to a question Mrs Mookherjee explained that once drug users were identified they did have to give permission to be treated although if an individual was convicted they would have to have drug treatment. Agencies worked together to ensure that individuals had the best chance of recovery.
9. In response to a question about Automatic Number Plate Recognition (ANPR) there was good coverage across Kent with a robust strategy. This did not link to speeding enforcement, the technologies used were different and it was currently cost prohibitive to link the two issues. There was currently a huge recruitment drive within Kent Police with an uplift of 200 officers and 80 civilian staff.
10. A Member asked whether a risk map existed, showing the likelihood and impact of various forms of issues. The briefing on the gangs strategy was welcomed, particularly in members' role as a corporate parent. It was considered that

children in care and care leavers were particularly vulnerable to gangs and child sexual exploitation. Members also raised concerns around the effectiveness of youth services, it was important to understand how youth services and KCC preventative services were trying to prevent home grown gangs.

11. A Member asked where KCC was failing and where opportunities were being missed, and what Members could do to support the Community Safety Team. Ms Mookherjee suggested that, from the Public Health side, Members could continue to raise cross cutting issues and task partners to work together along with a focus on prevention which is helpful. From Kent Fire and Rescue ensuring that local authorities and partners worked together effectively was helpful. A frustrating area was staff turnover, which affected all partners.
12. In response to a question Mrs Mookherjee explained that with regards to alcohol and opiate withdrawal, alcohol was more poisonous, there were higher risks with alcohol withdrawal. With opiates the risk relates to overdosing.
13. Mr Thomson explained that the increase in killed and seriously injured figures from road traffic collisions was in part due to changes in the new national Police CRASH data recording system. It was anticipated that data analysis would improve once data recording settled down.
14. Mr Richards explained that there had been a reduction in anti-social behaviour, his judgement was that this was underreported and work had been done to encourage reporting. Regarding ANPR there were a wide range of civil liberty concerns, it was essential that data was managed appropriately.
15. The Chairman asked about statistical information and Mr Richards confirmed that there was a huge amount of data available. Mr Peerbux explained that had all the data been incorporated into the presentation, it would not have given the Committee any time to hear colleagues about what action had been taken. Mr Peerbux explained that the Community Safety Agreement had a performance monitoring framework underlying it and this was monitored by the working group and reported up to the Kent Community Safety Partnership on an exceptions basis. Mr Peerbux also stated that some information could be provided to Members at their next Crime and Disorder meeting.
16. Mr Hill concluded by thanking the Committee for their questions and their interest, he wondered whether when the Scrutiny met as the Crime and Disorder Committee next year (as this was an annual requirement) it might be worth setting aside a longer period for more in-depth discussion. The Chairman considered this to be a sensible suggestion.

RESOLVED that Committee thank speakers for their insightful and helpful presentation and note the Community Safety Agreement.

16. MOTION TO EXCLUDE THE PRESS AND PUBLIC FOR EXEMPT BUSINESS (Item C1)

RESOLVED that under Section 100A of the Local Government Act 1972 the press and public be excluded from the meeting for the following item of business on the

grounds that it involves the likely disclosure of exempt information as defined in paragraph 3 of part 1 of Schedule 12A of the Act.

EXEMPT ITEM
(Open minute of exempt item)

17. Property Management Update
(Item C2)

RESOLVED that Members note the update provided by the Cabinet Member and Senior Officers on Property Income Management following the Governance and Audit Internal Audit Report.

KENT COUNTY COUNCIL

SCRUTINY COMMITTEE

MINUTES of a meeting of the Scrutiny Committee held in the Darent Room - Sessions House on Thursday, 10 May 2018.

PRESENT: Mr P W A Lake (Chairman), Mr A M Ridgers (Vice-Chairman), Mr M A C Balfour, Mrs C Bell, Mr R H Bird, Mr A Booth, Mr I S Chittenden (Substitute for Mrs T Dean, MBE), Mr G Cooke, Mr D Farrell, Mr R C Love, Mr J P McInroy, Dr L Sullivan and Mr J Wright

ALSO PRESENT: Mr M Whiting

IN ATTENDANCE: Mr P Lightowler (Head of Public Transport) and Mr J Cook (Scrutiny Research Officer)

UNRESTRICTED ITEMS

18. Membership (Item A3)

RESOLVED that the change in membership; Mr Balfour replacing Mr Sweetland, be noted.

19. Declarations of Interests by Members in items on the Agenda for this Meeting (Item A4)

Mr Balfour declared an interest in the Bus Transport and Public Subsidy Select Committee as he had been the relevant Cabinet Member during the Topic Review.

20. Bus Transport and Public Subsidy Select Committee - One Year On (Item A5)

1. Mr Whiting, as Cabinet Member for Planning, Highways, Transport and Waste, introduced the Select Committee year on update. He expressed his thanks for the hard work of the Select Committee members and commended the positive response of the Officers in the Transport team.
2. Phil Lightowler, Head of Public Transport at KCC, provided an overview of the work undertaken to further respond to the recommendation of the Select Committee report which was endorsed by County Council in March 2017. He advised that some significant developments had taken place since the Directorate had last updated the Scrutiny Committee as part of the initial implementation plan agenda item in October 2017.
3. The key update of note was the development of the Big Conversation which sought to achieve significant public involvement and consultation on alternative models for delivering rural transport. He advised the committee that work on this

project would have implications for ongoing activity around implementing the recommendations.

4. Mr Lightowler provided an update on the individual recommendations, referring to the detailed progress report contained within the papers.
5. Mr Lightowler responded to Member questions regarding some of the recommendations:
 - U-Travel Pass (low update in Thanet and East Kent) – Mr Lightowler explained that lower commercial fares for children had reduced demand for the Young Persons Travel Pass and other season ticket options. He advised the committee that Stage Coach had taken a commercial risk on this process but it was hoped that it would balance out and may lead to other positive options around the county.
 - Bus and Rail connectivity – Mr Lightowler confirmed that this was not within the scope of KCC's remit but advised that the necessary engagement between the operators and their customers was encouraged by KCC.
 - Community Infrastructure Levy – Mr Lightowler explained that KCC was working with all District Borough Councils to examine how best to access funding and prioritise schemes.
 - Member Bus Panel – Mr Lightowler and Mr Whiting explained that progress with developing the Member Bus Panel had been deferred until after the Big Conversation so that it could be set up with a clear direction around responding to the key concerns raised by Kent residents and transport users.
 - Use of smaller buses – Mr Lightowler confirmed that there had been significant cost implications for the operators around using smaller buses, with the miles per gallon savings not high enough to offset the other costs.
 - School transport issues – Mr Lightowler confirmed that the operators did consider their routes and seek to take school transport needs into account. Where problems have occurred and families have lost access, KCC Public Transport would look into this.
 - Timetable changes / poor communication – Mr Lightowler and Mr Whiting advised the Committee that KCC had been working with operators to highlight the need to keep their customers informed and also that KCC was working to educate the public in advance of the Big Conversation about Public Transport responsibilities and processes.
 - Community Transport Licensing issues – Mr Lightowler explained that these licenses were covered by EU law but that a derogation exists in the UK allowing operators to work without licenses. Non-commercial operators became able to compete with the large companies. This guidance had recently changed because of an EU court decision brought about by a challenge from the large companies. He explained that this was expected to only affect one Kent based small operator.
6. Members commended the positive work of the Select Committee for developing the report and recommendations. The Committee commented that in some areas, more progress would have been welcomed and that the delayed implementation of some of the recommendations was disappointing. Although it was noted that progress had been made that consideration should be given to receiving a future update on progress at another Scrutiny Committee meeting.

RESOLVED that the Select Committee one year on update be noted, that the Public Transport team be thanked for their work on the issues and that Mr Lightowler and Mr Whiting be thanked for attending to provide the update.

21. Social Isolation Select Committee - Timetable

(Item A6)

1. The committee considered the draft timetable for the Social Isolation Select Committee, the establishment of which was agreed by the Scrutiny Committee at its meeting on 17 April 2018.
2. Members discussed the importance of aiming to complete the topic review within the agreed timetable. While some Members commented that it was important to allow sufficient time for a detailed and thorough piece of work, the committee recognised that any extensions to the timetable would result in delays to the start of the next Select Committee's topic review.

RESOLVED that the timetable for the Social Isolation Select Committee (reporting to County Council in March 2019) be agreed.

22. KCC Policy and Practice on Highway Related Insurance Claims

(Item C1)

Noted that the item had been deferred to a future Scrutiny meeting.

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By: Peter Lake – Chairman of the Scrutiny Committee
Benjamin Watts – General Counsel

To: Scrutiny Committee – 6 July 2018

Subject: Proposed re-convening of the Kent Utilities Engagement Sub-Committee

Status: Unrestricted

Summary: The Scrutiny Committee is asked to consider the recommendation to reconvene the Kent Utilities Engagement Sub-Committee to focus on better working across utilities and ensuring that utility provision is properly aligned with planned growth.

The Kent Utilities Engagement Sub-Committee was established in 2016 but has not re-convened following the Kent County Council elections in 2017. As previously, it would operate in a similar manner to the Flood Risk Management Committee, but with voluntary involvement of partner agencies.

1. Background

1.1 The Kent Utilities Engagement Sub-Committee (Sub-Committee) was established by the Scrutiny Committee on 9 June 2016 and it first met on 27 July 2016. At the time, the Sub-Committee agreed the following scope:

- (a) Gathering and scrutinising evidence as to the performance of utilities and other relevant bodies to support current and future growth, gathering information and data from all stakeholders – utility companies, developers, and districts;
- (b) Identifying the key barriers involved with utilities and other relevant bodies to growth;
- (c) Identifying and testing recommendations for overcoming these barriers;
- (d) Engaging with national regulators as appropriate to promote these recommendations; and
- (e) Promoting the maintenance and improvement of current infrastructure set out in the Kent and Medway Growth and Infrastructure Framework (GIF).

1.2 The Sub-Committee engaged with a range of key partners, including Ofwat (Water sector regulator), three major water supply and waste water companies in Kent (South East Water, Southern Water and Affinity

Water), as well as representatives from development companies and local planning authorities.

- 1.3 Its formal sessions were supported through a series of informal briefings with the Chairman, Members of the Sub Committee, key officers, the Cabinet Member and representatives of the external partners. These informal sessions provided useful insight into the key issues affecting the relevant stakeholders and have improved the efficacy of the formal meetings which have ensured wider member involvement in identifying opportunities for improvement.
- 1.4 Despite the potential for stakeholder resistance and potential impact on established relationships with the water companies, the activities of the Sub-Committee have brought the partners together in developing a positive and collaborative approach to consider ways to improve the alignment between development and the provision of utility infrastructure.
- 1.5 A key benefit of the Sub-Committee's activities has been the facilitation of frank and open communication between the development and utility sectors, with both being able to gain an improved understanding of the pressures and priorities affecting each other. It should be noted that the Sub-Committee drew the conclusion that all parties were in some part at fault for historic breakdowns in communication or business issues and that the tendency to blame others had prevented meaningful dialogue in the past.
- 1.6 The Sub-Committee therefore has provided a cross-party, apolitical forum, which facilitates effective communication and information gathering in relation to water utility activity and associated development issues. The facilitative role of KCC was welcomed by the partners and has been recognised as a positive contribution to improving the ways of working in Kent.

2. Next Steps

- 2.1 The recently published GIF 2018 Update continues to identify the utilities sector as an area that needs attention. It sets out a commitment to continue to collaborate with the utilities sector to align with the County's growth plans and to evidence the need for, and encourage, through the Sub Committee, the necessary capital investment. We would like to continue the work of the Sub Committee in a similar format, but to now redirect the focus to the energy sector. Additionally, we will continue as appropriate to monitor progress updates as to the previous water sector workstream.

Current and Future Energy Systems

- 2.2 The energy system in the UK and Kent is changing. Two-thirds of the UK's existing coal, gas and nuclear power stations are set to close by 2030 and any future power stations must be largely decarbonised if the UK is to achieve its legally binding targets of cutting CO2 emissions by 80% by 2050.

- 2.3 At the same time, by 2031 energy demand in Kent is predicted to grow significantly e.g. gas by 25% (from 8,556 GWh per year to 10,550 GWh per year) and electricity by approximately 19% (from 3,101 GWh per year to 3,699 GWh per year).
- 2.4 Energy security -namely energy that is affordable, secure and low carbon -is vital to the future development and growth of Kent and Medway. However, much of the County is already subject to electricity grid network constraints, which can inhibit supply and demand, stall development and increase uncertainty on the network.
- 2.5 The national drive towards more local, low carbon energy generation - in particular renewables - will further increase pressure on the grid and with it, the potential to cause disruption to supply.
- 2.6 As growth accelerates, it will be essential to map existing electricity and gas grid constraints against future developments to identify potential issues early, as well as solutions, including potential local generation options, such as district heating systems and smart grids.
- 2.7 Looking forward, the County must move towards a smarter, more efficient and integrated circular energy 'system', which encourages more local generation and is more evenly balanced with a decreased reliance on energy imports. A smart and flexible system is required that provides and uses energy only when it is needed and as close to the customer as possible to minimise transmission waste and maximise use of waste heat.

3. Objectives and outcomes of the Sub-Committee

- 3.1 The Sub-Committee would work to achieve the following objectives and outcomes:
- Work with utilities companies to establish and map existing grid constraints against current and planned development to give a more informed strategic view of where issues exist;
 - Identify a better approach to future planning that identifies constraints and opportunities earlier and allows for development of smarter, more local solutions to energy generation and supply;
 - Establish a process for identifying and developing solutions and funding opportunities to current, near future grid connection issues with development coming forward; and
 - Work with the KCC Sustainable Business and Communities Service to maximise future opportunities and develop a forward-looking approach to energy planning and infrastructure as part of the Kent and Medway Energy and Low Emissions Strategy, the

Tri-Local Enterprise Partnerships Energy Strategy and the Business, Energy and Industrial Strategy Energy Hubs.

4. Stakeholders to involve

4.1 The Sub-Committee would look to engage the following stakeholders:

- Utilities – United Kingdom Power Network and Scotia Gas Networks;
- Regulator – Ofgem;
- Districts - Local Planning Authorities;
- Public sector energy users and landowners;
- Department for Business, Energy and Industrial Strategy and Ministry of Housing, Communities and Local Government;
- Kent and Medway Economic Partnership / South East Local Enterprise Partnership representatives;
- Developers; and
- Business, Energy and Industrial Strategy Energy Hubs.

5. The format of the Sub-Committee

5.1 The Sub-Committee would have three meetings a year, supported again through a series of informal meetings with the relevant officers and stakeholders as appropriate

5.2 In accordance with the Local Government and Housing Act 1989, the places on this Sub-Committee should be proportional to the number of seats each group holds on the council.

Political Group	Number of Seats	Proportion of Seats	Sub-Committee
Conservative	67	83% (82.71)	7 (7.47)
Liberal Democrat	7	8% (8.64)	1 (0.72)
Labour	5	6% (6.17)	1 (0.54)
Independents	2	3% (2.46)	0 (0.27)
Total	81	100%	9

5.3 Therefore, it is suggested that the Sub-Committee has nine Members: seven Conservatives, one Liberal Democrat and one Labour. It is also suggested that an Independent Member be invited to attend.

6. Recommendation

6.1 That the Sub-Committee be re-convened with nine Members on the basis of seven Conservatives, one Labour and one Liberal Democrat, with membership to be confirmed by the relevant group leaders. It is also suggested that an Independent Member be invited to attend the Sub-Committee.

- 6.2 The Sub-Committee's Terms of Reference, as set out in the attached Appendix, be approved.

7. Appendices

Kent Utilities Engagement Sub-Committee – Terms of Reference

8. Background Papers

[Kent and Medway Growth and Infrastructure Framework \(GIF\) – 2018 Update](#)

9. Contact details

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KENT UTILITIES ENGAGEMENT SUB-COMMITTEE

TERMS OF REFERENCE

9 Members

Conservative – 7; Liberal Democrat – 1; Labour – 1

(Invitee: Independent – 1)

Responsibility and outcomes:

1. This Sub-Committee is responsible for engaging with utility providers and regulators operating in the Kent area.
2. The goal of the Sub-Committee is to achieve better alignment of utilities planning and connections to planned growth across Kent and to improve the quality of life of Kent citizens.
3. The Sub-Committee will highlight examples of good and bad practice and work with utility providers to devise and promote effective utility strategies that align with the development plan process, making suggestions for improvement and engaging with national regulators where appropriate.
4. The Sub-Committee will use regular engagement with key partners in the utility and development sectors to improve communication, avoid unnecessary duplication and increase transparency.
5. The Sub-Committee will take the approach of focussing on one utility sector at a time, using best practice from the previous Sub-Committee sessions that focussed on the water companies.

Governance:

6. The Sub-Committee is a sub-committee of the Scrutiny Committee.
7. The Sub-Committee provides a report to the Scrutiny Committee on an annual basis, or more regularly if required.
8. The Sub-Committee will meet three times a year, with additional meetings arranged as required.
9. As a partnership meeting, attendance of relevant external parties is encouraged in the spirit of joint-working but will be on a voluntary basis.

Agenda setting:

A work programme will be maintained by the Growth, Environment & Transport directorate, developed in consultation with Members, partner agencies, utility providers and regulators.

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By: David Latham - Highway Policy and Inspections Manager,
GET

To: KCC Scrutiny Committee – 6 July 2018

Subject: **Managing Highway Infrastructure in Kent**

Classification: Unrestricted

Summary

This report provides the Scrutiny Committee with a brief overview of the approach to managing Kent's highway infrastructure.

1. Introduction

1.1 The law relating to the highway authorities duty –

The statutory duty to maintain the highway is contained at Section 41 (1) of the Highways Act 1980. This states:

'The authority who are for the time being the Highway Authority for a highway maintainable at the public expense are under a duty to maintain the highway.'

For there to be a breach of Section 41, there must have been a failure to maintain or a failure to repair.

Section 58 of the Highways Act 1980 sets out to clarify the reasonability of the duty set out in Section 41

Section 58.1 of the Highways Act 1980 states that;

'In an action against a highway authority in respect of damage resulting from their failure to maintain a highway maintainable at public expense it is a defence to prove that the authority had taken such care as in all circumstances was reasonably required to secure that the part of the highway to which the action relates was not dangerous for traffic.'

In order to prove a Section 58 defence, a Highway Authority is required to establish two things:

1. That it has a reasonable maintenance policy; and
2. That the policy has been properly carried out.

The main elements of a reasonable maintenance policy are a reasonable inspection policy and reasonable timescales for repair. Kent County Council's Highway Safety Inspection regime forms a key aspect of its strategy for managing risks and liabilities. This strategy is outlined in its Safety Inspection

& Condition Survey Manual and follows national guidance provided by the Well-Maintained Highways – Code of Practice for Highway Maintenance.

1.2 How the Network is maintained

The Highways Asset Management team is responsible for maintaining the highway and does so in three ways;

- Planned works to carry out significant maintenance on and asset management basis as set out in [Developing Our Approach to Asset Management in Highways – 2018/19 to 2020/21](#).
- Planned and regular safety inspections of the whole highway network identifying and arranging repair of all safety critical defects found.
- Reactive work carried out by the District teams comprising stewards and engineers who respond to customer enquiries and act on issues encountered in between inspections.

These component parts make up the comprehensive approach that Kent takes in Maintaining the Highway network.

2.0 Asset Management

- 2.1 On 13 January 2016, the Environment and Transport Cabinet Committee (ETCC) resolved to support the further embedding of asset management principles. A Members' Task and Finish Group (T&FG), involving Members from each political group, was established and met six times during 2016 to develop a new asset management approach and maximise DfT Incentive Fund capital resource. As a result, the ETCC approved *Our Approach to Asset Management in Highways* on 8 July 2016. This two-page document describes the key principles adopted in applying asset management to achieve the authority's strategic outcomes.

T&FG Members and officers also developed a detailed complementary strategy document *Implementing our Approach to Asset Management in Highways* which was considered and approved by ETCC on 12 January 2017. This outlines a number of further workstreams to fully embed asset management principles into highway maintenance decision making. This evidenced a Band 2 rating for Incentive Fund purposes.

ETCC considered the matter again on 31 January 2018 and agreed an updated strategy document *Developing Our Approach to Asset Management in Highways – 2018/19 to 2020/21*, which includes a summary of current highway asset condition, a forecast of future asset performance based on current investment and an assessment of resource needed to maintain assets and service levels at current levels. This document enabled Kent to submit a Band 3 Incentive rating and maximise DfT capital funding. All three documents are published on www.kent.gov.uk.

- 2.2 Whilst the shortfall in capital investment and increasing backlogs is relevant to the majority of asset groups, by far the largest shortfall and backlog relates to our largest (5,400 miles) and most valuable (£6bn) asset group, roads. It is also the asset group for which we have very robust inventory and asset condition data. The current and forecasted position for road asset management is grave; we are undoubtedly in a prolonged period of asset decline.
- 2.3 The current annual allocation for planned road maintenance is around £13m (not including reactive capital pothole and patching spend) and if that remains unchanged we will see significant deterioration in road condition over the next ten years. The percentage of the network in very poor condition and needing maintenance will significantly increase in all road classes and this is a particular concern in respect of classified roads given the volume and speed of traffic.
- 2.4 The approach to maintaining the highway asset is holistic. Untrained eyes naturally focus on potholes as these are very visible, but there are numerous defect types such as cracking, stone-loss, rutting, depressions, loss of texture/grip etc that are indicative of failure or end-of-life, and it is these defects that essentially make up the estimate of maintenance backlog. The majority of defects mentioned above are early indicators that a road's end-of-life is approaching, and the mechanical and visual surveys carried out are designed to identify that so that the Kent can intervene before failure and potholes occur. Our annual modelling exercise identifies around 7,000 such schemes annually.
- 2.5 It is a common misconception that potholes are caused by poor weather. Whilst it is true that freeze-thaw conditions in winter will cause the road surface to fail, these sections had already reached the end of their serviceable life. They have failed because we have not renewed or preserved the road surface in time.
- 2.6 Planned highways asset management (as opposed to the majority of reactive maintenance) is funded entirely by Department for Transport funding streams. Embedding asset management principles into our management of highway assets alone will not be sufficient to avoid the grave outcomes described above. A significant and sustained increase in funding is needed, but the scope for resourcing that locally is very limited given other local pressures linked to social care and an ageing population.

3.0 Highway Safety Inspections

- 3.1 Kent County Council's Highway Inspections are carried out in accordance with its Safety Inspection & Condition Survey Manual and follows national guidance provided by the-outgoing Code of Practice for Highway Maintenance - Well-Maintained Highways.

- 3.2 Kent County Council's Highway Inspectors undertake a comprehensive system of inspections. These inspections are carried out at the following regular intervals depending on the classification of the road:
- Monthly
 - Three monthly
 - Six monthly
 - yearly
- 3.3 Defects identified on an inspection are investigated when the following levels are met: 20mm for footways and 50mm for carriageways. Repairs are considered for those exceeding these measurements but ultimately each defect must be assessed on its own merits and the assessment of dangerousness will take into consideration, factors such as the position on the highway and the speed, volume, and type of traffic that uses it.
- 3.4 When defects are identified and deemed to require repair, these will be programmed in line with priorities that have been adopted. These priorities are categorised as follows:
- P1 – Repair or make safe in 2 hours
- P2 – Repair or make safe by end of next working day
- P3 – Repair within 7 days
- P4 - Repair in 28 days
- P5 - Programmed works – repair within timescale of up to one year

The priority assigned to a defect will depend on several factors but ultimately is determined by a risk assessment that considers the severity of the defect against the likelihood of an accident.

4. District Teams

- 4.1 The District teams handle the majority of customer enquiries regarding highway maintenance issues and respond according to the nature of the enquiry be it a request for information, report of a highway defect, or other issues affecting highway usage.
- 4.2 The district teams investigate and act on reports of defects ordering repairs where required according to the standards set out in the Safety Inspection & Condition Survey Manual.
- 4.3 The district teams also liaise with County Members, District Members, and Parish and Town Councils.

5. Conclusion

Kent's Highways Asset Management team implements a holistic approach to maintaining the highway in a safe condition using planned work, regular inspections, and reactive work arising from enquiries and items encountered between inspections.

Current levels of resource are insufficient to carry out planned road maintenance at the right time and prevent potholes, consequently potholes will continue to occur, but Kent has a robust Safety Inspection regime in place to identify any that are considered safety critical for repair. Kent is currently fulfilling its legal duty under the Highways Act 1980 to maintain the adopted highway network in a safe condition and an appropriately safe and functioning state.

If funding remains unchanged for future years our ability to fulfil our Highways Act duties will become increasingly difficult.

It is important to understand that despite the shortfall in funding for planned road maintenance and as a consequence, the increasingly fragile highway network, Kent's patch and mend approach and robust safety inspection regime identifies and repairs any safety critical defects ensuring the highway network is currently in a safe condition and appropriately functioning state.

6. Recommendations

- 6.1 Members are asked to note the content of this report.

David Latham
Highway Policy and Inspections Manager

26 June 2018

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By: Lee Manser, Insurance Manager, ST F
To: KCC Scrutiny Committee – 6 July 2018
Subject: **Highway Claims**
Classification: Unrestricted

Summary

This report provides the Scrutiny Committee with a brief overview of the approach to assessing highway liability claims – particularly those involving vehicle damage caused by carriageway defects.

1. Introduction

1.1 The Statutory Duty – Section 41 of the Highways Act 1980

The statutory duty to maintain the highway is contained at Section 41 (1) of the Highways Act 1980. This states:

‘The authority who are for the time being the Highway Authority for a highway maintainable at the public expense are under a duty to maintain the highway.’

For there to be a breach of Section 41, there must have been a failure to maintain or a failure to repair.

In order to establish a breach of Section 41, a claimant must prove that:

- a) the highway was in such a condition that it was dangerous,
- b) the dangerous condition was caused by the failure to maintain,
- c) the injury or damage resulted from failure.

When considering the impact of defects, KCC operates an investigatory level of 20mm for footways and 50mm for carriageways. Repairs will be considered for those exceeding these measurements but ultimately each defect must be assessed on its own merits and the assessment of dangerousness will take into consideration, factors such as the position on the highway and the speed and volume of traffic that uses it.

1.2 Section 58 of the Highways Act 1980

If a breach of Section 41 can be proven, it does not automatically follow that a claim for compensation will be settled.

Section 58.1 of the Highways Act 1980 states that;

'In an action against a highway authority in respect of damage resulting from their failure to maintain a highway maintainable at public expense it is a defence to prove that the authority had taken such care as in all circumstances was reasonably required to secure that the part of the highway to which the action relates was not dangerous for traffic.'

In order to prove a Section 58 defence, a Highway Authority is required to establish two things:

1. That it has a reasonable maintenance policy; and
2. That the policy has been properly carried out.

The main elements of a reasonable maintenance policy are a reasonable inspection policy and reasonable timescales for repair. Kent County Council's Highway Safety Inspection regime forms a key aspect of its strategy for managing risks and liabilities. This strategy is outlined in its Safety Inspection & Condition Survey Manual and follows national guidance provided by the Well-Maintained Highways – Code of Practice for Highway Maintenance.

1.3 Inspection & Repair Criteria

In line with this guidance KCC undertakes a comprehensive system of inspections. These inspections are carried out at the following intervals depending on the classification of the road:

- Monthly
- Three-monthly
- Six-monthly
- Yearly

In addition to these inspections, KCC will respond to reports of defects that it receives from members of the public. When defects are identified and deemed to require repair, these will be programmed in line with priorities that have been adopted. These priorities are categorised as follows:

- P1 – Repair or make safe in 2 hours
- P2 – Repair or make safe by end of next working day
- P3 – Repair within 7 days
- P4 - Repair in 28 days
- P5 - Programmed works – repair within timescale of up to one year

The priority assigned to a defect will depend on several factors but ultimately is determined by a risk assessment that considers the severity of the defect against the likelihood of an accident.

2.0 Claims Assessment

- 2.1 When undertaking an assessment of a claim for personal injury or property damage, the Insurance Team will consider the inspection and repair priorities with a view to establishing whether KCC should be held legally liable.
- 2.2 It is of course regrettable when anyone using the highway network sustains personal injury or damage to their property, however the fact that a defect exists on the highway does not automatically constitute negligence.
- 2.3 The fact that the Highways Act requires maintenance to a reasonable standard, means that the Law recognises the network cannot always be kept in a perfect condition and acknowledges that defects will arise. When they do, the duty upon the Highway Authority is to respond to them within a reasonable time once reported or identified and the Council makes every effort to achieve this.
- 2.4 In view of this, if it can be established that inspections have been undertaken at appropriate intervals and that defects have been repaired in line with the priorities assigned to them, liability will be denied in accordance with Section 58 of the Highways Act.

3.0 Vehicle Claims Summary - 2018

- 3.1 The weather experienced at the beginning of the year and particularly the heavy snowfall on 27 February, caused significant deterioration to the network over a short period of time. As a result, the number of highway claims received has markedly increased on those seen in 2017.
- 3.2 Figures to date indicate that 1,286 highway related claims have been received of which 1,161 have reported damage to vehicles due a to defective carriageway surface. This is in comparison to 1,096 highway related claims for the entirety of 2017 of which 649 reported damage to vehicles.
- 3.3 The figures for 2017 were the lowest reported for 5 years and hence this indicates that the weather at the beginning of 2018 has been the significant cause of the deterioration to the network. Furthermore, KCC is not alone in seeing a sharp increase in claims – this has been experienced by all neighbouring authorities across the South East with many reporting higher numbers than Kent despite their smaller network.
- 3.4 In response to this deterioration, KCC has directed considerable resource to maintenance work and, at 15 June, nearly 25,995 potholes have been repaired and 69,510 sqm of resurfacing has been carried out.
- 3.5 Claims for compensation have continued to be assessed in accordance with the Highways Act. To date, liability has been denied for 663 claims and accepted for 164. £8,666 has currently been paid but a number of those that have been accepted have not yet been finalised. 416 claims are currently still waiting assessment.

- 3.6 Where liability has been denied, a primary reason is that the defect has been identified and repaired in accordance with KCC's repair priorities. Reports of defects have increased considerably in 2018 and it is not possible to immediately respond to all. As a result, a system of prioritisation must exist which ensures that the most serious defects on the most heavily used roads are attended to soonest.
- 3.7 In the main it is considered that KCC has achieved this – particularly in view of the demands imposed by the weather and taking into consideration the size of the Kent network which comprises of nearly 5,500 miles of road and 4,000 miles of footway.
- 3.8 On the occasions that requirements have not been met, liability has been admitted. This accounts for 20% of the 827 claims assessed to date – an increase on figures for 2017 of approximately 10%. This current increase is to be expected given the demand that has been placed upon the Council since the beginning of the year – something that has continued only recently with the flash flooding on 29 May.

4. Recommendation

- 4.1 Members are asked to note the content of this report.

Lee Manser
Insurance Manager

8 June 2018

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