

Report to	Performance Scrutiny Committee
Date of meeting	28th November 2019
Lead Member / Officer	Brian Jones, Lead Member for Waste, Transport and Environment
Report author	Tim Towers, Highways Asset and Risk Manager
Title	Highways Code of Practice

1. What is the report about?

The Highway Authority have a Statutory Duty to maintain the adopted highway network but, to a degree, the standard to which it should be maintained is at its discretion. This report gives Members some background as to how the statutory basis can be applied and how this is linked to the new Code of Practice.

2. What is the reason for making this report?

To give Members an understanding of the criteria we intend to use to maintain the highway network safely. It will also give Members the opportunity to examine the new Highways Code of Practice which sets out the standards by which the Council will meet its statutory duty in order to minimise risk to road users and its impact on budgetary resources

3. What are the Recommendations?

3.1. That the Committee confirms that it is happy to recommend the new Code of Practice to Cabinet for formal adoption so that the standards of maintenance can be applied in Denbighshire and the council can use the Code of Practice in defence of claims against the authority.

3.2 That the Committee confirms that it has read, understood and taken account of the Well-being Impact Assessment (Appendix A) as part of its consideration.

4. Report details

4.1 Section 41 (1) of the Highways Act 1980 places an Absolute duty on the Highway Authority (in this case Denbighshire County Council) to maintain the adopted highway in a 'safe' condition but the definition of 'safe' is left open to judgement. Over the years Case Law has helped to refine what this definition might be but even then there are no clear parameters and this can lead authorities open to regular litigation from third party claimants who have injured themselves or suffered loss as a result of perceived failure to fulfil the duty outlined above.

4.2 To defend itself against such claims there is provision within Section 58 of The Highways Act 1980 which states that we cannot be held liable if we took all reasonable steps to ensure that the highway was safe. In reality this manifests itself in carrying out regular inspections of the roads and footways and repairing any defects such as potholes, slips, loose kerbs etc. that are spotted by the inspector. But what is a pothole and how quickly should it be repaired; indeed, how often should the inspector have to visit the location in the first place?

4.3 To answer these questions there was an industry wide Code of Practice (CoP) put in place in 2005 called 'Well Maintained Highways' and in any claim taken to court we would say that our practices aligned to the recommendations contained within it. Unlike other Authorities there was no evidence that the decision to use this CoP was ever ratified by Members since Denbighshire came into existence in 1996 and this had the potential to create difficulties if it was ever challenged in a court hearing.

4.4 In 2016 a new CoP was produced by the United Kingdom Roads Liaison Committee with a recommendation that Highway Authorities adopt its use by October 2018. This new CoP altered the principles of the previous one by changing it to a risk assessment type approach i.e. a well-used unclassified road attracts a higher level of maintenance than a little used B Class Road. Another reason for its introduction was to allow those who are responsible to maintain roads to focus what was recognised as diminishing budgets at areas of greatest

need without there being a one size fits all straight jacket approach as there had been in the previous CoP.

4.5 While the new CoP was designed to 'free up' authorities (in order to give more budgetary flexibility) the Welsh Authorities' highways officers took the view that there is probably safety in numbers when it came to potential litigation and have therefore worked to get a joint document together. This they have now done and it sets out the minimum standards that all the authorities would work to. This does give scope for some councils to have better standards but all have agreed not to dip below the agreed level. One example where we will exceed the minimum is on little used roads where the standard has been set at an inspection every two years whereas we will stick with six monthly intervals. The final draft of the CoP is attached as Appendix B

4.6 As stated in paragraph 3.1 Officers now seek guidance as to how this document can be formally ratified so that it can be used as a defence in case of litigation. On the face of it the CoP is an operational document but it also carries financial obligations with it and it also acts as a risk assessment tool so that proper guidance can be given as to what should and shouldn't be repaired. Council's take differing views as to how to manage this process with some delegating it to the appropriate Lead Member, others giving it Cabinet approval whilst some take it to full council. The purpose of producing this report is to discuss the options so that further development work can then take place.

5. How does the decision contribute to the Corporate Priorities?

5.1 Improving road condition is a corporate priority under the Connected Communities initiative but carrying out work on the highway links into many other parts of the council's vision to enhance the environment.

6. What will it cost and how will it affect other services?

6.1 This will be a cost neutral proposal but will allow us to focus the finance where it can be better utilised to minimise risk to road users.

7. What are the main conclusions of the Well-being Impact Assessment?

7.1 On the whole this proposal is either positive or neutral with only the fairly unavoidable issues around biodiversity being negative.

8. What consultations have been carried out with Scrutiny and others?

8.1 None at this time.

9. Chief Finance Officer Statement

9.1 The report is supported as it will help the service in delivering an efficient service within the current budgets available.

10. What risks are there and is there anything we can do to reduce them?

10.1 This proposal is all about managing risk in a cost efficient manner.

11. Power to make the decision

11.1 The Highways Act 1980

11.2 Section 7.4.2(d) of the Council's Constitution states that Scrutiny Committees may make recommendations to the Cabinet and/or appropriate Committee and/or Council arising from the outcome of the scrutiny process.