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| 6 March 2012 | | ITEM 7 |
| Planning Transport and Regeneration Overview and Scrutiny Committee | | |
| Amendments to Thurrock Highway Maintenance and Network Management Policy Guidance and Standards – Part 1: Highway Maintenance | | |
| Report of: Councillor A. J. Smith, Portfolio Holder for Housing and Regeneration | | |
| Wards and communities affected: All | Key Decision: Key | |
| Accountable Head of Service: Andy Millard, Head of Planning and Transportation | | |
| Accountable Director: Bill Newman, Director of Sustainable Communities | | |
| This report is Public | | |
| Purpose of Report: To approve amendments to the Thurrock Highway Maintenance and Network Management Policy Guidance and Standards - Part 1: Highway Maintenance. | | |

EXECUTIVE SUMMARY

In December 2010, Cabinet approved the Thurrock Highway Maintenance and Network Management Policy Guidance and Standards - Part 1: Highway Maintenance (“the Policy Guidance”). Since then, a number of efficiency savings have been introduced, which have affected the highway maintenance budget. As a consequence, there have been occasions where it has not been possible to deliver some of the intervention levels and inspection frequencies in the Policy Guidance within current budgets. This places the Council at risk of insurance claims based on an inability to maintain roads to specified standards. It is therefore necessary to revise the Policy Guidance in order to reflect the reduction in budget, to provide a defence against third party highway liability claims, whilst providing a robust basis for maintenance operations.

1. RECOMMENDATIONS:

- 1.1 That the amendments the Thurrock Highway Maintenance and Network Management Policy Guidance and Standards - Part 1: Highway Maintenance (“the Policy Guidance”), which are shown in Appendix 1 to this report, are approved.**

2. INTRODUCTION

- 2.1 On 8 December 2010, Cabinet approved the Thurrock Highway Maintenance and Network Management Policy Guidance and Standards - Part 1: Highway Maintenance (“the Policy Guidance”).
- 2.2 Since then, efficiency savings have been introduced, most notably a £0.25M reduction in the 2011/12 highway revenue budget, which have affected the highway maintenance budget. As a consequence, there have been occasions where it has not been possible to deliver some of the maintenance levels and inspection frequencies set out in the Policy Guidance within current budgets.

3. BACKGROUND:

- 3.1 The main maintenance activities currently affected are responsive carriageway and footway maintenance, street lighting, drainage and bridge inspections/maintenance.
- 3.2 In recent years, the intervention levels and inspection frequencies for responsive carriageway and footway maintenance have been delivered, but this has resulted in a budget shortfall. Fortunately, it has been possible to meet this shortfall from under-spends elsewhere, but this practice is proving unsustainable.
- 3.3 In the case of the intervention levels and inspection frequencies for street lighting, drainage and bridge inspections/maintenance, it has been necessary to reduce these, particularly towards the end of the financial year when funding is depleted, to ensure that the budgets are not overspent. This could place the Council at risk of third-party highway liability claims based on an inability to maintain roads to the adopted standards.
- 3.4 Section 41 of the Highways Act 1980 (“the Act”) imposes a duty on Highway Authorities to maintain highways maintainable at the public expense and to ensure, so far as is reasonably practicable, that safe passage along a highway is not endangered by snow or ice. Section 56 states that any person may apply to the Courts for an order requiring the Highway Authority to take remedial action within a reasonable period, specified by the Court. Section 58 of the Act provides for a defence against action relating to alleged failure to maintain on grounds that the authority has taken such care as in all the circumstances was reasonably required to secure that the part of the highway in question was not dangerous for traffic.
- 3.5 In this context, it is therefore necessary to revise the Policy Guidance in order to reflect the reduction in service and to provide a defence under Section 58 against third party highway liability claims, whilst providing a robust basis for maintenance operations.
- 3.6 The proposed revisions to the Policy Guidance are shown in Appendix 1 to this report. The main changes relate to the highway safety inspections - defect classifications and response times and to the inspection/maintenance frequencies for street lighting, drainage and bridges.
- 3.7 A comparison of the existing and proposed defect classifications and response times for highway safety inspections, and the existing and proposed

frequencies for the inspection/maintenance of highways, street lighting, bridges and drainage are shown in the tables in Appendix 2.

Highway Safety Inspections – Defect Classification and Response Times

Safety inspections are undertaken to identify all defects likely to create danger or serious inconvenience to users of the highway network and depending on their severity, the defects are classified as either Category 1 or 2.

Category 1

Category 1 defects are those that represent an immediate or imminent hazard, or a risk of short-term structural deterioration and which require prompt attention.

The current policy guidance requires that Category 1 defects are made safe or repaired within 24 hours. The decision whether to sign and make safe, or provide a temporary permanent repair is based on operational practicalities or whether the location is included in a programme of treatment, in which case a temporary repair may be a more appropriate course of action.

The proposal for Category 1 is to correct or make safe at the time of notification, if reasonably practicable, and if this is not possible, repairs would be carried out within a period of 2 working days, but not more than 72 hours.

The proposed change is intended to reduce the amount of reactive work undertaken at weekends, when costs are higher.

Category 2

Category 2 defects are those that require attention, but do not represent an immediate or imminent hazard.

At present, Category 2 defects are split into 3 sub-categories; High (H), Medium (M) and Low (L) priority. The current Policy Guidance requires that Category 2(H) defects are made safe or repaired within 7 days, Category 2(M) defects are repaired within 28 days, and category 2(L) are repaired during the next available programme.

The proposal for Category 2 is to change the 3 sub-categories to Pothole, High and Low Priority. For Category 2(Pothole) and 2(High Priority), the proposal is to complete a permanent repair within 90 days. Category 2(Low Priority) will remain largely unchanged.

The proposed changes are intended to reduce the amount of reactive work undertaken, and will enable this work to be moved into longer-term co-ordinated and planned works programmes. This approach will reduce the cost of the reactive maintenance operation and the number of temporary repairs on the network. It will also allow a higher proportion of first-time permanent repairs to be completed, thereby reducing disruption to the highway network.

Inspection/Maintenance Frequencies for Highways, Street Lighting Drainage and Bridges

Highway Safety Inspections on Carriageways

The current Policy Guidance stipulates that safety inspections of the carriageway on Level 1 routes, which encompasses strategic non-trunk roads, economically important routes, inter-urban bus routes and main and secondary distributor roads are undertaken 6 to 12 times per annum. It also states that these are undertaken on level 2 routes (link roads) 2 to 4 times per annum, and on Level 3 routes (local access roads) once per annum.

It is proposed to reduce these inspections on Level 1 and 2 routes to 6 and 2 times per annum respectively.

Highway Safety Inspections on Cycleways

The current Policy Guidance also stipulates that safety inspections of on-carriageway cycleways are undertaken at the same frequency as for safety inspections for carriageways on Level 1 and Level 2 routes respectively (see above), with the exception that those that are on implemented core cycle routes in the Thurrock Urban Area are inspected at least 2 to 4 times per annum.

It is proposed to reduce these inspections on Level 1 and 2 routes to 6 and 2 times per annum respectively, and to reduce those on implemented core cycle routes in the Thurrock Urban Area to 2 times per annum.

Highway Safety Inspections on Footways

The current Policy guidance states that safety inspections on primary walking routes (including implemented core walking routes and core cycling routes that use footways) and secondary walking routes are currently undertaken 6 to 12 times per annum and 2 to 4 times per annum respectively.

It is proposed to reduce these inspections to 6 and 2 times per annum respectively.

Safety inspections of link and local access footways are currently undertaken once per annum, unless in the vicinity of GPs, hospitals or nursing/residential care homes, in which case 2 to 4 times per annum. These footway exceptions do not always experience a high footfall, and are often some distance from primary and secondary walking routes, thereby making it difficult, time-consuming and hence costly to tie into their safety inspection regimes. It is therefore proposed to remove the exceptional footway safety inspections in the vicinity of GPs, hospitals or nursing/residential care homes.

The proposed changes to highway safety inspections on carriageways, cycleways and footways will result in a saving on the cost of inspections, which will increase the amount of funding available for implementation.

Street Lighting

The frequency for the painting of galvanised and older street lighting columns stipulated in the existing Policy Guidance is 15 years after installation and every 5 years respectively.

Columns do not always require painting after these periods, and hence the proposed change to the Policy Guidance is to stipulate painting them when this is needed to maintain the structural integrity of the column, as identified from the structural visual inspections, which are currently undertaken every 3 years.

Drainage

The frequency stipulated in the existing Policy Guidance for drainage activities, such as for inspecting/emptying gullies, catchpits, interceptors, soakaways and manholes, for checking and flushing kerb offlets and piped drainage, and for inspecting/clearing culverts, grips, ditches and outfalls varies between twice per annum and at least every 12 years, depending on the drainage item and its location. For example, the Policy Guidance currently gives locations on economically important routes, roads over 40 mph, and inter-urban bus routes, or in Flood Risk Zone 3 a higher priority for drainage inspection and maintenance activities.

However, in the main the revenue budget for drainage maintenance only allows for these activities to be undertaken reactively, such as in response to reports of flooding. Furthermore, the locations within the borough that are susceptible to flood risk are not just on economically important routes, roads over 40 mph, and inter-urban bus routes, or in Flood Risk Zone 3.

Therefore, instead of undertaking all maintenance activities to a prescribed frequency subject to the location, the proposed change to the Policy Guidance will stipulate that, depending on the susceptibility of a location to flooding risk, certain of the drainage maintenance activities would be undertaken at variable frequencies, to minimise highway drainage problems.

Drainage inspections will be combined with safety inspections, where practicable, to further reduce costs.

Bridges

The Policy Guidance stipulates that general bridge inspections are carried out every 2 years and that principal bridge inspections for bridges on primary and principal routes, especially economically important routes, and other identified major bridges (such as where HGV flows are high), are carried out every 6 years.

The budget for these activities allows for general inspections to be undertaken every 3 years, and for principal bridge inspections to be carried out reactively, in response to the findings of the general inspections. It is therefore proposed that the Policy Guidance is change accordingly, with bridges on primary and principal routes, especially economically important routes, and other identified major bridges (such as where HGV flows are high), receiving a higher priority for principal bridge inspections.

4. ISSUES AND/OR OPTIONS:

- 4.1 In recent years, there have been occasions where it has not been possible to deliver some of the intervention levels and inspection frequencies in the current Policy Guidance within available budgets. There have also been

instances where these have been delivered, but this has resulted in a budget shortfall, which has been met from under-spends elsewhere.

- 4.2 In the current economic climate, it is unlikely that budgets will increase in the foreseeable future to enable these levels and frequencies to be delivered, and that opportunities for meeting budget shortfalls from under-spends elsewhere will exist.
- 4.3 It is therefore necessary to revise the Policy Guidance in order to reflect the reduction in service and to provide a defence under Section 58 of the Highways Act 1980 against third-party highway liability claims, whilst still providing a robust basis for maintenance operations.
- 4.4 A number of other authorities have already found it necessary to revise their maintenance policies and strategies for similar reasons.
- 4.5 The proposed procedures and standards in the revised Policy Guidance differ to those recommended in the national Code of Practice for Maintenance Management entitled “Well Maintained Highways”, for reasons of affordability. However, the suggested recommendations of this code are explicitly not mandatory on authorities. Indeed, the Code is based on the assumption that available funding for highway maintenance will provide some flexibility for authorities to pursue a regime of assessment and rational planning of programmes and priorities, which is not always the case, and under these circumstances, statutory obligations for network safety need to take precedence.
- 4.6 An immediate decision will ensure that preparations for the proposed highway defect definitions, response times and frequencies can be completed prior to implementation in April 2012.

5. CONSULTATION (including Overview and Scrutiny, if applicable)

- 5.1 Members of the Planning, Transport and Regeneration Overview and Scrutiny Committee have requested a draft of the amended Policy Guidance for their consideration and comment, which was considered at the meeting of the Committee, held on 6 March 2012.

6. IMPACT ON CORPORATE POLICIES, PRIORITIES, PERFORMANCE AND COMMUNITY IMPACT

- 6.1 The Policy Guidance aligns with Thurrock Council's priorities to encourage and promote job creation and economic prosperity, to provide and commission high quality and accessible services that meet, wherever possible, individual needs, and to ensure a safe, clean and green environment.

7. IMPLICATIONS

7.1 Financial

Implications verified by: **Mike Jones**
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The proposed intervention levels and inspection frequencies in the amended Policy Guidance will reduce the cost of certain revenue funded highway inspection/maintenance activities, and help to ensure that these are delivered within available budgets.

7.2 **Legal**

Implications verified by: **Remi Aremu**
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Section 58 of the Highways Act 1980 provides a special defence in action against a highway authority for damages for non-repair of highway.

(1) In an action against a highway authority in respect of damage resulting from their failure to maintain a highway maintainable at the public expense it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the authority had taken such care as in all the circumstances was reasonably required to secure that the part of the highway to which the action relates was not dangerous for traffic.

(2) For the purposes of a defence under subsection (1) above, the court shall in particular have regard to the following matters:

- (a) the character of the highway, and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a highway of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the highway;
- (d) whether the highway authority knew, or could reasonably have been expected to know, that the condition of the part of the highway to which the action relates was likely to cause danger to users of the highway;
- (e) where the highway authority could not reasonably have been expected to repair that part of the highway before the cause of action arose, what warning notices of its condition had been displayed;

but for the purposes of such a defence it is not relevant to prove that the highway authority had arranged for a competent person to carry out or supervise the maintenance of the part of the highway to which the action relates unless it is also proved that the authority had given him proper instructions with regard to the maintenance of the highway and that he had carried out the instructions.

In this case, this would be demonstrated through adherence to the Policy Guidance. Therefore, if some of the intervention levels and inspection frequencies within this document are not delivered, then the Council may not have a special defence under Section 58 of the aforementioned Act.

The proposed changes to the Policy Guidance will therefore assist the Council in defending third party highway liability claims.

7.3 Diversity and Equality

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There are no diversity or equality issues related to the proposed changes to the Policy Guidance.

7.4 Other implications (where significant) – i.e. Section 17, Risk Assessment, Health Impact Assessment, Sustainability, IT, Environmental

Updating the Policy Guidance will assist in reducing the risk of third party highway liability claims.

8. CONCLUSION

8.1 The proposed changes to the Policy Guidance are considered necessary to balance the cost of providing the highway maintenance service to existing budgetary provision, and to assist the Council in defending third party highway liability claims, whilst still providing a robust basis for maintenance operations.

9. BACKGROUND PAPERS USED IN PREPARING THIS REPORT:

- The Thurrock Highway Maintenance and Network Management Policy Guidance and Standards - Part 1: Highway Maintenance, approved by Cabinet on 8th December 2010.
- National Code of Practice for Maintenance Management entitled “Well Maintained Highways” available on the following website:
www.ukroadsliaisongroup.org/roads/code_of_practice.htm

10. APPENDICES TO THIS REPORT:

- Appendix 1 – The Thurrock Highway Maintenance and Network Management Policy Guidance and Standards - Part 1: Highway Maintenance, showing the proposed amendments described in the report.
- Appendix 2 – Tables comparing existing and proposed highway defect definitions, response times and frequencies.

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