



CABINET

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Subject Heading:

Highways Maintenance Plan Policy

Cabinet Member:

Councillor Barry Mugglestone

ELT Lead:

Imran Kazalbash

Report Author and contact details:

James O Regan

James.OREgan@havering.gov.uk

Policy context:

The new draft policy seeks to replace the existing Highways Maintenance Policy

Financial summary:

There are no direct financial implications due to the adoption of the Highways Maintenance Plan Policy. The policy is to support highways inspectors in carrying out duties; the council as a whole when assessing legal claims relating to the highway

Is this a Key Decision?

Yes

When should this matter be reviewed?

N/A

Reviewing OSC:

Places

The subject matter of this report deals with the following Council Objectives

People - Things that matter for residents

Place - A great place to live, work and enjoy

Resources - A well run Council that delivers for People and Place.

SUMMARY

- 1.1 A national code of practice for highways maintenance and management (Well Managed Highway Infrastructure: A Code of Practice (the “Code”)), sponsored by the Department for Transport (DfT) and produced by the United Kingdom Roads Liaison Group (UKRLG) was published in late 2016. The 2016 Code replaces the previous 2005 Code.
- 1.2 The Code was introduced with a transition period in which to allow local highway authorities, such as the London Borough of Havering, to review their existing highway maintenance policies and delivery arrangements, consider which applicable aspects of the Code to adopt (in whole or in part) and to develop new maintenance policies and arrangements (where required) reflecting the recommendations of the Code.
- 1.3 Adherence to the Code is not a statutory requirement, and there has been no recent change in law, but it follows national good practice shared by many local highway authorities in establishing highway maintenance policy, strategy and operations of the highway maintenance service.
- 1.4 The Code provides highway authorities with guidance on highways management but adoption of the recommendations in the Code is a matter for the Council (as a local highway authority), based on its interpretation, assessment of risks, local needs and priorities.
- 1.5 Whilst the Code is not a legal / statutory document the significance of it is that the Courts will view it as a benchmark of best practice in discharging the statutory duty to maintain the highway. Failure to follow the guidelines and recommendations could be used against the Council in the assessment of claims.
- 1.6 A new Highway Maintenance Plan Policy (HMPP) for Havering has been produced to document the Council’s approach to highway maintenance and ensure the authority continues to have a statutory defence against all public liability claims arising on the Borough’s highway. Additionally, the introduction of a risk-based approach is aimed at optimising the use of resources and value for money.
- 1.7 The new Code has seen a shift in emphasis and has removed the reliance on specific guidance and recommendations in the previous Codes to a risk-based approach determined by each highway authority. Very few standards are prescribed in the new Code and the intention is that authorities will develop their own levels of service taking account of local need and assessment of risk.

1.8 Following review of the new Code and the Council's existing highway maintenance policies and delivery arrangements a new HMPP has been produced. Further information is provided below.

1.9 This report sets out:

- Highway maintenance requirements
- Context and background Information
- Development, implementation and key aspects of the Council's (proposed) HMPP – including adoption of a risk-based approach
- Cost implications

RECOMMENDATIONS

2.1 It is recommended that the Highways Maintenance Plan Policy be adopted by the Council. The Highways Maintenance Policy and Delivery Plan is attached as Appendix A.

REPORT DETAIL

3 Highway Maintenance Requirements

3.1 The delivery of the Councils highway maintenance service has to meet a number of objectives.

3.2 In general terms the public will focus on issues such as potholes and trips, speedy and accurate repairs, journey time arising from congestion; safety and reduction in crime; streetscape quality, streets free from litter and graffiti and the provision of a value for money and responsive service.

3.3 The Council has to manage the maintenance, operation and improvement of the highway in accordance with statutory requirements as well as its local policies, financial regulations and best practice.

3.4 The Highways Act 1980 sets out the basic statutory duty of the highway authority. Under Section 41 the Council, as highway authority, has a duty to 'maintain the highway' to be 'safe and fit for ordinary traffic'. Whilst this is an absolute duty there is a defence that the authority can offer under Section 58 which says that the highway authority will not be liable for a claim provided they have 'taken such care as in all the circumstances was reasonable' (to ensure the highway is safe). In this context 'ordinary traffic' means road,

footway and cycle path users, e.g. motorists, pedestrians, cyclists, the elderly and people with disabilities etc.

3.5 Over the past decade or more the general trend has been for highway authorities to receive an increasing number of claims. The Council needs to mitigate against both the number of claims for compensation and the likelihood of them being met. There is no automatic right to compensation and a claimant has to prove first that the highway was dangerous and secondly that the highway authority has been negligent. Both tests have to be passed before a Highway Authority can be considered legally liable and potentially responsible to compensate.

3.6 Whilst there are published standards and specifications for construction standards and regulatory requirements the Council must adhere to individual highway authorities are left to develop and adopt their own highway maintenance standards, policies and levels of service. The published Code of Practice is used to aid the development of these, as explained above.

3.7 Officers consider the best way to document the Council's Highway Maintenance Plan Policy, levels of service and delivery arrangement is to write and publish a single comprehensive document and source of reference. The Highway Maintenance Plan Policy document, the subject of this report, will:

- Act as a guide and source of information for the whole range of highway officers and practitioners working on / in the Council's highway.
- Advise residents of adopted levels of service (the document, once approved, will be published in the Council's website)
- Be used as a key document in the determination or defence of all highway related claims for compensation.

4 Key Background Information

4.1 The London Borough of Havering's highway network is one of its most valuable assets with a replacement cost close to £1bn. It consists of over 713km of highway, approximately 18,000 street lights, 150 structures (bridges and retaining walls etc), and 25,000 roadside drains.

4.2 The following table sets out the length of the various classes of road within the borough:

Type Class	Length in km
A (Principal Strategic Routes)	60
B (Secondary Distributor Routes)	26
C (Tertiary Distributor Routes)	95
Un-Classified	532
Total	713

Table 1 - breakdown of the Borough's road length by classification

- 4.3 Highway maintenance is split into a routine reactive service to ensure minor defects are identified and repaired and larger programmes of planned works to renew whole streets (or larger sections of streets). There is a direct link between the overall condition of the network (which can only improve through area wide planned work) and the rate at which minor defects, such as potholes form.
- 4.4 Currently all streets within the public highway are inspected on a regular basis; monthly in the main town centres and shopping areas and our busiest roads / pavements, and between three monthly and annually for all other streets. Damage and defects are assessed for short and longer term repair requirements and priority is given to those where accidents may occur.
- 4.5 Around 7000 individual pavement and road repair orders are raised per year, costing approximately £2.0m. (A total of around £4.0m is spent on all reactive highway works including street lighting, highway drainage, street furniture, etc). The entire cost of this reactive highway maintenance work is met from the Council's own revenue allocations.
- 4.6 The Highways' Maintenance Plan Policy will play a role in determining the council's legal liability and/or defence when claims for highways accidents are received. Each claim is and this is considered by the council's claims handling agent or insurers who evaluate. The Council's position on legal liability (whether to accept or repudiate the claim) based on the facts of each case and the law.
- 4.7 Where a claim is repudiated, the claimant has the right to challenge the Council's decision through the Courts.

5. **Development, Key Aspects and Implementation of the HMPP**

- 5.1 The review of the Councils highway maintenance arrangements and development of the new HMPP has been undertaken and implemented based on the current levels of service and the new recommendations of the Code and covered:
- The assessment of impact of adopting a risk-based approach.
 - Inspection frequency taking account of the relative importance of our roads, footways and cycle tracks (the network hierarchy).
 - Current repair thresholds (defect size before repairs are considered)
 - Repair response times.
 - Other highway management aspects including the materials and repair guidance and inspector training.
 - The new requirement for collaboration with adjoining boroughs.
 - Consideration of affordability – which is a new concept within the Code (i.e. budgetary constraints may now be a factor in decision making whereas previously the Court of Appeal confirmed that it could not feature in a s58 defence)
 - Legal review
- 5.2 The new Code recommends a risk-based approach to developing levels of service. This includes defining a hierarchy, setting an inspection regime (including frequencies), the assessment of defects and the required response times.
- 5.3 Through a series of workshops officers have reviewed all the existing safety maintenance operations and made recommendations for the introduction of these new risk-based maintenance arrangements.
- 5.4 Following analysis of the current inspection frequency and regime it is proposed to largely retain the same arrangements in the new inspection regime. The main change to this will be to reduce the number of driven inspections undertaken and, where required, increase walked inspections. The new policy will see a reduction in driven inspections to increase the effectiveness of inspections and minimise possible health and safety concerns when undertaken by single person. Inspections will be walked with the exception of rural lanes, roads with a speed limit above 30mph that do not accommodate a footway on either side of the road and other higher speed roads.
- 5.5 The frequency of inspections ensures that the vast majority of safety issues are managed during the scheduled beats and officers have determined that the current regime adequately meets this objective.

- 5.6 The review undertaken by officers has also looked at the quantum of every commonly encountered highway defect which should be considered for repair (the investigation level) and the likely impact and probability to determine the level of risk posed. The repair response time (the risk register) is therefore determined – so defects posing greatest risk will be repaired urgently, whereas defects of lesser risk can be repaired in a more planned and economical fashion.
- 5.7 A quicker repair response time increases the overall repair costs. Small safety repairs are relatively expensive (compared to planned work) and it is sensible to optimise safety repairs in order to maximise expenditure more cost effectively for major maintenance work.
- 5.8 Historically, during a safety inspection, the arrangements are to determine whether a repair is necessary depending on whether the size of the defect triggers a particular intervention level. 25mm has generally been the trigger for footway trips and 40mm is used for road defects.
- 5.9 As an example any footway defect greater than 25mm may be deemed to be a safety hazard and would be made safe urgently. However, this rather rigid approach does not take account of the specific circumstance - where the defect is and how likely it is to be encountered and cause an accident.
- 5.10 Instead of having fixed intervention levels, any defect which might be considered for a repair would trigger an investigation level. The investigation levels are to be based on the current level of service and would be triggered by a 25mm defect (on the footway). The inspector would then use their judgement based on a risk matrix to determine the repair priority. This risk based approach will help maximise effective use of resources. Although this concept has essentially been practiced by the council's highway inspectors in the past the procedure has never been formalised or documented.
- 5.11 Details of the inspection frequencies, risk register, risk matrix and priority response recommended in the HMPP are set out in Appendix A.
- 5.12 In addition to the above the new Code recommends collaboration between local highway authorities to try and ensure users do not encounter greatly different levels of service whilst moving for one authority to the next. To help establish this consistency officers have engaged with all the neighbouring boroughs and Transport for London (TfL) and have been active in pan-London workshops, training sessions and events.
- 5.13 During the development of the HMPP close liaison with the Council's Insurance team was necessary. Legal advice has also been secured and

comments from the Councils solicitors have been taken into account within the proposed document. The council's insurers and legal advisers were consulted to maximise the effectiveness of the plan and ensure clarity when this may be referenced in determining legal liability for claims brought against the council following accidents on the highway claims

6. **Document Structure**

6.1 The document is set out in the following structure, and adopts the layout of the Code:

Introduction – providing an overview of the borough, general highways information, purpose of documents, legal and policy framework

Maintenance Strategy and Hierarchy – this section develops the strategy through its constituent elements of a detailed inventory, a defined hierarchy and policies

Risk Based Approach – sets out the new recommendation to adopt a risk-based approach and implications, risk management and risk assessment general guidance

Highway Inspection, Assessment and Recording – defines the inspection and assessment regime detailing safety and serviceability inspections and recording requirements. Sets out how to treat repeated defects, defects to utility apparatus, assessments in private areas and approach during periods of inclement weather. Also details ad hoc inspection process, how repair orders are raised, emergency repair process, supporting information for insurance claims, service delivery and also details requirements for training and competency for inspectors.

Materials Products and Treatments – provides guidance on acceptable materials for use in highway maintenance

Planned Maintenance – sets out the approach of maximising planned maintenance and value for money

REASONS AND OPTIONS

Other Options Considered:

Taking account of the current Code and nature of the Council's existing Highway Maintenance Policy a summary of the available options are:

Option	Description	Comment
1	Do nothing (ie reject the report)	The existing highway maintenance policies (and practice) would remain in place but would not reflect the relevant recommendations of the new Code. This would mean the benefits and opportunities as a result of a risk based approach, amongst other things, would not be realised. It could also leave the Council exposed to more claims or weaken defence of claims as the Council would not be working in accordance with the latest best practice.
2	Endorse the report and proposed HMPP (including making recommendations for consideration in the final document)	This option would mean that Cabinet fully endorses the HMPP or endorses it with recommendations. This option would ensure the Councils highway maintenance and management arrangements are being delivered in broad accordance with the latest best practice guidance.
3	Decide not to comment or defer any recommendation	If so minded Cabinet could decide not to comment on or endorse the report. It could also defer any decision to a later date. Cabinet could request further information to be brought forward (to be shared directly with Members or brought back to a future meeting). This option would delay the implementation of the new HMPP.

Reasons for the Decision:

It is recommended the Cabinet adopts Option 2, notes the proposed HMPP and provides any comments and endorsement prior to the Council formally approving the document.

IMPLICATIONS AND RISKS

Financial implications and risks:

The nominal costs of adopting the policy have been contained within current budgets. The policies aim is to bring the council in-line with the 2016 code of practice and support highways inspectors when assessing the highway.

The 2024/25 year end forecast for Highways revenue maintenance is £2.250m.

The implementation of the risk based approach to Highways Maintenance allows the councils resources to be properly allocated to areas of greatest risk first and helps ensure the defence of any claims is as robustly defended as possible, within the scope of the relevant legislation.

Adopting the risk based approach should ensure the councils limited resources are targeted to the areas of greatest risk in priority order. Whilst there is a small chance this could lead to more claims this is offset by the fact the council will be working in accordance with the latest Code of Practice. The courts place significant weight in the code of practice and claims are assessed against the councils stated policies contained within the maintenance plan. Accordingly, provided the plan is fully implemented, the defensibility of any claim should improve. Legal Services have advised that liaison with the Insurance team means an insurance policy that places the Council in the strongest position to repudiate claims. There have been no increased insurance costs to date but this should be monitored with the application of the new policy.

Insurance implications and risks:

Officers have engaged with the Council's insurers and legal advisers in understanding the implications of the revised national code of practice and have developed the proposed HMPP to adopt the principles of this. This will assist in ensuring resources are effectively deployed for highway repairs, preventing accidents and mitigating the effect of claims where possible as well as ensuring the council is acting reasonably under the terms of the insurance arrangements.

This will contribute to a fair and effective process for considering legal liability claims made against the council by residents and other third parties.

Legal implications and risks:

The Council as local Highway Authority has certain legal obligations with which it needs to comply. Council has a statutory duty under s41 of the Highways Act 1980 to maintain the fabric of the publicly maintainable highway, which includes drainage and has a duty under s130 of that Act to assert and protect the right of the public to the use and enjoyment of any highway.

These obligations may become the subject of claims for loss, for personal injury or legal action by those seeking to establish non-compliance by authorities. Demonstrating that the Council maintains the public highway in accordance with the updated national code of practice is essential to be able to counter such claims, the expectation is that courts will look upon the code as evidence of good practice and in considering the legal test of reasonableness.

Officers have been engaged with the Councils insurance team in understanding the implications of the revised national code of practice and have developed the documentation entitled Highways Maintenance Policy and Delivery Plan to ensure that the Council is in the strongest possible position to repudiate potential claims.

Human Resources implications and risks: None

Equalities implications and risks:

The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have 'due regard' to:

(i) The need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;

(ii) The need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;

(iii) Foster good relations between those who have protected characteristics and those who do not.

Note: 'Protected characteristics' are age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex/gender, and sexual orientation.

The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce. In addition, the Council is also committed to improving the quality of life and wellbeing for all Havering residents in respect of socio-economics and health determinants.

A detailed equalities impact assessment for this policy is contained at Appendix B

Health and Wellbeing implications and Risks:

Maintaining a well-maintained highway is a vital part of protecting residents and visitors utilising roads, cycleways and walkways across the borough from the potential physical harms of defect-related accidents, trips and falls.

Within the draft Highways Maintenance Policy, the proposed adoption of a risk-based approach to defect assessment and response offers an important means by which those defects which pose the greatest risk are appropriately prioritised, helping to reduce the overall risk of physical harm.

Providing cycleways and walkways that are safe and with easily navigable surfaces is an important part of enabling residents and visitors to utilise sustainable transport methods, supporting efforts to increase physical activity and reduce emissions through reduced car use, both of which have positive implications for health and wellbeing.

ENVIRONMENTAL AND CLIMATE CHANGE IMPLICATIONS AND RISKS

The Highways Maintenance Policy Plan (HMPP) sets out the approach and context for how the Council's roads are to be assessed and maintained. Well maintained roads and road infrastructure is important to enable residents to walk and cycle as well as utilising sustainable transport methods. These modes of transport are important in tackling the causes of climate change.

The HMPP also sets out the context and approach for how drainage facilities are to be maintained. Well maintained highway and drainage infrastructure is of high importance in managing the adverse effects of climate change in particular flooding.

BACKGROUND PAPERS

Appendix A – Highways Maintenance Policy Plan

Appendix B – Equality and Health Impact Assessment (EqHIA)