



Derby City Council

**REGENERATION, VIBRANCY & CLIMATE
CHANGE SCRUTINY REVIEW BOARD
17 October 2023**

ITEM 05

Sponsor: Director of City Sustainability
Author: Head of Traffic & Transportation

Traffic Management Topics

Purpose

- 1.1 To update the Board members on elements of temporary works and the implementation of new infrastructure.

Recommendation

- 2.1 To note the issues in this report.

Reason

- 3.1 Regeneration, Vibrancy & Climate Change Scrutiny Review Board had requested an update on traffic management topics.

Supporting information

- 4.1 **Regulation of Temporary Street Works and Road Works**
Temporary work in the public highway is heavily regulated, primarily under the New Roads and Street Works Act 1991 and the Traffic Management Act 2004. These set out the legal framework and give powers to the Secretary of State to make regulations and issue codes of practice, which reflect the regulations, and provide strong guidance for both works promoters and highway authorities. Further regulations also influence utility company activities, including industry statutes and industry regulators, for example, Ofcom.
- 4.2 Street Works are defined as works required to place, retain, and maintain apparatus, primarily by utility companies, or other parties who qualify as work promoters. Road works are defined as works for the maintenance of the public highway and the execution of the highway authority duties and powers.
- 4.3 In relation to Street Works, there are approximately 8000 registerable works, each year in Derby. Road Works (DCC highway works) account for approximately 4000 registerable works. These works can vary from short term minor works to long duration major schemes. There are also around 1500 emergency works. These again can vary in scale depending on the cause and resulting damage, and the complexity of a repair.
- 4.4 The Notification and Permit process apply to both Street Works and Road Works, and the same standards on traffic management and safety also apply. In Derby we have inspected Street Works and Road Works using the same standards for over 20 years, long before it considered to be best practice.

4.5 **Street Works**

The legislation reflects the deregulation of utility companies and provides a framework for companies to enter the market. A company applies to the relevant government department to become a 'Statutory Undertaker' (establishing them as works promoter though the definition of this is wider). With this status they have the right to place, retain, and maintain apparatus in the public highway for the purpose of their business. With these rights, they have a duty to comply with the formal Notification and Permit process, where they apply to the works. They also have general duties to comply with minimum safety standards, and reinstatement standards. Fundamentally, the work promoter is responsible for the planning and the operation of their works. There is also a duty to actively engage to coordinate works.

- 4.6 In relation to Street Works the Highway Authority fundamentally has to maintain a register of works and actively coordinate works. Highway Authorities can inspect Street Works for safety and for reinstatement compliance. The Authority does not have to inspect works but it's in their interest to monitor works and protect the public highway. There is a national formula for setting the inspection level (around 10-12% of future works) and each inspection is rechargeable to the work promoter. The authority can inspect at a higher level but the cost is not recoverable (£50 per inspection).

4.7 **Street Works – Notices and Permits**

The New Roads and Street Works Act established a scheme of formal notification of works, with advance notice of major works, and shorter period of advanced notification for other works categories. The Traffic Management Act refined this, by allowing highway authorities to apply to implement Permit Schemes. Derby was the first Unitary authority to implement a permit scheme and obtained permission by Statutory Instrument in 2013 to operate a Permit scheme for the major road network, whilst retaining Notices for other parts of the network. Appendix 1 contains tables showing the categories for Permits and Notices and the standard fees.

- 4.8 The key difference between Notices and Permits is that permits require approval. The Highway Authority has some powers of direction in relation to Notices and Permits, however the detail required in a Permit Application is more than is required for a Notice. Powers of direction can be made on timing of works and to some extent traffic management and method of work, however the authority is required to act reasonably and justify the direction. Highway authorities do not have a blanket power to reject legitimate works.
- 4.9 All Street Works will be registered by works promoters using either a notice or by applying for a permit. For emergency works, this can be done retrospectively, as the concern is to ensure a response to the emergency.
- 4.10 For planned works (including minor works) the registration needs to comply with a minimum period. The longer the works duration the longer the notification or application period. Work can be registered much earlier, and the Permit scheme includes a formal Prior Advance Application, which should be registered 3 months before a Major works application is submitted.
- 4.11 For most major works, the notice and permit processes tend to start a process of negotiation and coordination of works. Many of the schemes of this scale will have been known about in advance, as the utilities and highway maintenance teams regularly exchange information on major planned works and emerging works.

- 4.12 Permit schemes also allow for the recovery of the cost of administering the schemes. This sets the fees charged at each stage and for each permit category. There is a national maximum limit, and the calculations must go through a series of formulas. Permit schemes cannot make a surplus from the application fees.

4.13 Charges for Overrunning Works

The regulations allow highway authorities to charge, based on a national structure, for occupancy of the highway where there isn't a valid permit to work. The charges are applied as a Fixed Penalty Notice (£120 for non-compliance with a permit condition, or £500 for working without a permit) and require the level of evidence that would need to be presented in a Magistrates Court. This means they are not issued without careful consideration, and they are open to challenge by the works promoter. Again, this can lead to protracted negotiation.

The scheme does not prevent a works promoter from applying to extend the original works. For example, the condition of a buried asset may be worse than expected and require works to continue. In such circumstances, this would not be chargeable. Failure to obtain a valid extension to a permit, would result in an overrun of works, which can trigger a charge based on the type of works and the type of road. Evidence is required to support the penalties being applied. These can be challenged by the works promoter.

Charges in relation to works occupying the **CARRIAGEWAY** during period of overrun

Description of street	Amount (£) (each of first three days)	Amount (£) (each of subsequent days)
Traffic sensitive street 0 or 1	£5,000.00	£10,000.00
None Traffic sensitive street 0 or 1	£2,500.00	£2,500.00
Traffic sensitive street 2	£3,000.00	£8,000.00
None Traffic sensitive street 2	£2,000.00	£2,500.00
Traffic sensitive street 3 or 4	£750.00	£750.00
None Traffic sensitive street 3 or 4	£250.00	£250.00

Charges in relation to works **OUTSIDE the CARRIAGEWAY** during period of overrun
(Footway verge etc.)

Description of street	Amount (£)
Streets 0 or 1	£2,500.00
Street 2	£2,000.00
Street 3 or 4	£250.00

4.14 Powers of Direction on Traffic Management Techniques

As mentioned in 4.6, highway authorities have limited powers of direction. The various regulations and codes of practice recognise standard working practices. If we ask to vary or direct works, we must justify this based on specific conditions of traffic flow, pedestrian movement, accessibility etc... - dependant on the site-specific conditions.

- 4.15 Fundamentally the highway authority role is to facilitate work. The work promoter and their contractors are primarily responsible for the execution of the work. The work is carried out by a chain of sub-contractors and reflects a commercial market over which the Highway Authority has no practical control.

4.16 S106 Contributions

These are contributions, generally negotiated in relation applications for development. They are to mitigate the impact of that development, which can include improvements to the highway network. The funds can be available immediately, or there may be conditions in the agreement for when the funding can be accessed and utilised.

4.17 Unlike s278 agreements, which allows a third-party to carry out works on behalf of the highway authority, s106 agreements provide funding for the authority to implement projects. Sometimes the precise schemes will not be defined, but a list of potential typical projects may be used in negotiations, from which some projects, but not all will be delivered. Depending on what is covered, it is likely that projects will have to be included in the Capital Programme. Generally, a scheme needs to be committed before the funding can be accessed. On occasion s106 funding may be held by a neighbouring planning authority, which requires additional administration.

4.18 The contributions for new physical infrastructure don't usually cover on-going revenue maintenance for infrastructure. There may be a contribution held as a commuted sum, which traditionally covers the gross replacement cost from year 10 onwards.

4.19 This is a significant current issue facing Local Authorities as funding may be available for the installation, however, pressure on revenue funding means that adding assets increases existing overspends, particularly on fixed costs such as energy. This has therefore to be taken into consideration as part of the delivery of projects (including capital grants) where implementation funding is secure, but revenue funding is not available.

Public/stakeholder engagement

5.1 In relation to works, there is now a central government support system where the public can view active and proposed works. There are also several other Apps and Websites that make versions of the data available for journey planning. The permit scheme was originally subject to industry and public consultation. Works promoters are engaged in a statutory structure of coordination and joint working groups at local and regional level.

5.2 The Highways and Transport work programme is presented to cabinet each year, including some of the S106 projects, which are deliverable within the context of the available staff resources and the demands of other projects and programmes.

Other options

6.1 N/A

Financial and value for money issues

7.1 As described in the report in relation to the permit scheme and FPNs.

As described in the report in relation to s106, financial caution is required in relation to future costs and pressured.

Legal implications

8.1 As outlined in the report

Climate implications

- 9.1 Making the best use of the highway network for the movement of all road users is a fundamental aspect of the regulations. Additional congestion is likely to result from temporary works, however active travel should not be sacrificed to promote vehicular traffic. Infrastructure improvements are required to support active travel, this increases the case for supporting infrastructure, such as crossings.

Socio-Economic implications

- 10.1 The cost of congestion from temporary works is hard to calculate and various figures are sometimes suggested. However, the delivery and maintenance of utilities is also a socio-economic issue. The provision of reliable services inevitably requires excavation of the public highway.

Revenue cost constraints are beginning to impact on the provision of infrastructure, with consequential impacts for communities.

Other significant implications

- 11.1 None directly relevant to this report.

This report has been approved by the following people:

Role	Name	Date of sign-off
Legal	Olu Idowu, Head of Legal and Insurance Services	06/10/2023
Finance		
Service Director(s)	Verna Bayliss, Director of City Sustainability	28/09/2023
Report sponsor		
Other(s)		

Background papers:	Appendix 1, attached. Tables of Permit and Notice Categories and Fees
--------------------	---

Appendix 1

Permit Application and Response Times

Activity Type	Minimum Application Periods ahead of Start Date		Minimum periods before permit expires for application for variation (including extensions)	Response times for issuing a permit or seeking further information		Response times for responding to applications for permits variations
	Provisional Advance Authorisation	Application		Provisional advance authorisation	Application	
Major	3 Month	10 days	2 days or 20% of original duration whichever is longer	1 calendar month	5 days	2 days
Standard	N/A	10 days		N/A	5 days	
Minor	N/A	3 days		N/A	2 days	
Immediate	N/A	2 hours after		N/A	2 days	

Permit Type	FEES	Variation
Major – PAA – 3 months advance	105	0
Major - 11 days	231	45
Standard – 10 days	130	45
Minor – 3 days	62	45
Minor – no excavation	0	0
Immediate – N/A	60	45

Notice Periods and Categorisation of Works

Works are categorised by duration, except for immediate works, which are not time specific.

Minimum notice periods			
Works category	s 54	s 55	s 57
Major	3 months	10 days	n/a
Standard	n/a	10 days	n/a
Minor	n/a	3 days	n/a
Immediate -- Urgent	n/a	2 hours after	n/a
Immediate -- Emergency	n/a	n/a	2 hours after