

# London Councils' Transport & Environment Committee Executive

## Damage to Highways - Update

Item no: 04

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**Date:** 9 February 2017  
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**Summary:** TEC discussed the issue of highways damage in June 2015. This report provides members with an update on work undertaken since that meeting.

**Recommendations:** The Committee is asked to:

- Note and comment on the report.

## **Damage to highways**

1. Building works and the delivery of equipment and materials can sometimes damage the highway (roads and pavements). Legislation allows councils to make good any damage caused by works on land adjacent to publicly maintainable footpaths or highways and recover the expenses incurred. However, boroughs have identified that there are a number of difficulties to pursuing this.
2. TEC previously discussed damage to highways caused by construction work at its meeting on 18 June 2015. That paper outlined the issues relating to damage to highways and set out some possible actions. From that meeting, it was agreed that greater sharing of best practice on this issue was desirable. In addition, there were three specific actions;
  - Check and report back on whether Section 278 of the Highways Act (1980) applied to all planning applications;
  - Cllr Coleridge would ask officers at the Royal Borough of Kensington & Chelsea to write a short paper on construction work and damage to highways and share this best practice with TEC;
  - Noted that London Councils officers would pursue legislative changes when opportunities to that effect arose (e.g. when wider changes to the planning system were proposed).<sup>1</sup>

## **Best practice**

3. Following the TEC meeting, officers started to compile a best practice publication using information provided by boroughs in a survey about how they tackle damage to highways.
4. Boroughs were requested to provide case studies where they self-identified that they were having success in tackling the problem. Four case studies were received from three boroughs.
5. TEC members were asked in the Chair's Report at the October 2015 TEC meeting that if their borough was tackling highways damage particularly effectively to contact London Councils' officers. LoTAG (the London Technical Advisory Group) were asked to submit case studies. Case studies have also been requested from a highways authority outside London.
6. To date no further case studies have been received and so rather than produce a publication, it is proposed that the content already gathered on legislative options and case studies will be made available on the London Councils' website. This could be easily added to over time if more case studies are provided.

## **Action reporting**

7. It was requested that clarification was provided on whether Section 278 of the Highways Act 1980 could only be applied to larger developments or whether it was applicable to all developments. Section 278 of the Highways Act 1980 allows the highways authority to enter into an agreement with any person for the execution of works. It can be used with developers to enter into legal agreements with a local authority to make improvements or alterations to the highway to support a proposed development. However, as Section 278 isn't specifically about development it is our view that it can apply to any size of

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<sup>1</sup> Minutes of the meeting on 18 June 2015 can be viewed here: <http://www.londoncouncils.gov.uk/node/27494>. The construction work & damage to highways item can be found on page 11.

development. Members should note that it is not the only mechanism boroughs can use, and alternatives were set out in the report to TEC on 18 June 2015, a link to which can be found at the end of this report.

8. Information has been received from officers at the Royal Borough of Kensington & Chelsea about their approach to damage to highways which is included in Appendix A.
9. There have been no opportunities to date to pursue legislative changes regarding damage to highways, but this is noted and officers continue to scrutinise new government legislation for potential opportunities.

## **Recommendations**

The Committee is asked to:

- Note and comment on the report.

## **Financial Implications**

There are no financial implications to London Councils arising from this report.

## **Legal Implications**

There are no legal implications to London Councils arising from this report.

## **Equalities Implications**

There are no equalities implications to London Councils arising from this report.

## **Previous reports**

Construction Work Causing Damage to Highways, 18 June 2015,  
<http://www.londoncouncils.gov.uk/node/26364>

## Appendix A

The Royal Borough of Kensington and Chelsea uses section 133 of the Highways Act 1980 which allows the authority to recover the cost of repairs to the highway caused by development of adjacent land from the responsible party or the land owner.

Due to the large number of properties owned offshore our preference is to do so via responsible parties, usually the contractors. If the opportunity arises to licence the site for scaffolding, hoarding etc. an appropriate deposit from the contractors will be taken in advance as part of the conditions of licence. The deposit is based on the likelihood of damage to the highway from building works and is assessed on following basis:

- details of planning permission including any traffic management plan;
- basic knowledge of construction process and methods involved;
- estimated damage from above and actual costs that would cost authority to replace highway like for like;
- this can be lowered in instances where there is separate payment to be made to the authority via section 106 planning obligations, section 184 crossover construction or section 278 agreement – as those payments will be paid by the developer rather than the contractor;
- the authority should be able to quantify and justify the deposit requested based on a proper calculation and why that level is necessary.

Points to note:

- The size of the structure and the duration of the works has no part in determining the deposit level – for example 10 metre or 200 metres of scaffolding to paint windows will attract the same nominal deposit as this is not likely to cause damage to highways;
- Licensing, estimating, subsequent repairs and cost recovery is done by the Projects Engineer who is part of Highways Maintenance and Projects and has no involvement with the enforcement side;
- There is a single point of contact within the authority (the Projects Engineer) who deals with building works. Other council officers who undertake inspections (for example enforcement, highways safety and inspection, network management etc.) know to whom they should pass information should they see damage, by taking photographs of damage cause by the building works so it can be used as evidence to assist cost recovery.
- The cost of the damage has to be of reasonable value to justify spending time pursuing the owner / contractors.

When the deposit cannot be taken upfront before the development commences the authority will collate evidence as appropriate. Although the authority is entitled to carry out the work and invoice the owner for cost of repairs without notification the authority's preference is to write to the owner in advance and advise him/her of the authority's intentions to charge for damage, providing supporting evidence, before the final completion of works. Owners will often instruct contractors to pay the costs or have some of their fee retained.

One such example of where the The Royal Borough of Kensington and Chelsea has used this approach is the case of 77-79 Southern Row. Officers were able to justify the level of deposit requested when queried by the owner; supporting evidence of the damage was provided using photos taken by highway safety and network management colleagues; and the cost of repairs of £7411.39 was offset against the deposit taken in advance of £7500.00.