

# **Report to Planning Services Scrutiny Panel**

**Date of meeting: 02 December 2010**

**Subject: Construction Damage to Highway Infrastructure**

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**Committee Secretary: Mark Jenkins (01992 56 4607)**

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## **Recommendations/Decisions Required:**

1. That further investigation is carried out to determine whether damage to highway verges can be controlled by conditions/obligations attached to planning permissions.

## **Report:**

Minute 5 Item 11 of Planning Service Scrutiny Standing Panel meeting dated 03 June 2010 required Officers to look at this issue of damage to highway infrastructure during construction work and whether there was a way of forcing developers to make good any damage that had been created at their cost. It was also requested that a Essex County Council Officer could attend this particular meeting. A Development Manager Engineer from Essex will be available to take part in the discussion on this issue. Chigwell Parish Council have also brought officers attention to damaged green verges in their local area.

Essex advise that ultimately any damage to the highway include grass verges, which has been raised as a particular issue by a few Members, should be reported to the Maintenance Team at the West Area Highway Office, where it will be logged on a priority basis. The difficulty is gathering evidence and proving who or what has caused the damage and therefore how the perpetrator can be held responsible to pay and rectify the damage. Routine maintenance inspections are carried out by highway inspectors for the Highway Authority, who record damage/faults and start the process of rectifying and repair.

There is of course the difficulty of proving whether the damage was caused by construction related work as a result of development that required planning permission. Since October 2008, there is now a great deal of extension work to houses that no longer require planning permission. Even where extension work does require planning permission, the highway authority are only consulted if there is a highway safety issue as a result and in the case of householder type applications, this is very rare.

This is not a planning enforcement function, because the damage itself is not subject to planning control. Some recent developments in Chigwell have resulted in damage to grass verges, though the Maintenance team of Highways have stated that they are dealing with these matters. Unfortunately, they may not be high in priority in terms of other more pressing highway safety issues and there is understandable frustration that enforcing the perpetrators of the damage takes time.

For large-scale planning applications, it is possible to condition a construction management plan and a "before and after" condition survey where construction damage is put right, however this is only feasible on lower used roads (i.e. estate roads) as there will be difficulty in gathering proof to show construction of the development was the sole responsibility on well-trafficked roads.

Grampian style planning conditions could be another possibility but only where there is likelihood of proving where damage has originated from in terms of where construction and delivery vehicles/ lorries, for example, have resulted in damage to the highway. However, planning should not take on a responsibility that is controllable by the landowner, in this case, likely to be the highway authority (although some verges can be privately owned). The enforcing of such planning conditions would place more burden on the planning enforcement team because it would firstly require evidence of the condition of the highway prior to the work being carried out and secondly, require proof of the contractor companies vehicles causing the damage, meaning that the condition is unlikely to be enforceable.

Another alternative is use of planning obligations, whereby the applicant enters into a legal agreement that he agrees to pay for any repair damage, should it occur. Again, this could only be realistically be done in the case of grass verges outside or in the immediate vicinity of the property where the development is taking place.

**Reason for decision:**

Further discussions will take place between the highway and the planning authorities to see how best this matter can be controlled and enforced, though this would be only in the case of damage to grass verges outside the application site and in the case of planning, only where planning permission is required.

**Options considered and rejected:**

Nil

**Consultation undertaken:**

Essex County Council - Highway Authority

**Resource implications:**

Budget provision: Nil

Personnel: Planning Officers and Highway Officers of the County Council

Land: Nil

Community Plan/BVPP reference: Nil

Relevant statutory powers: The Highways Act

Background papers: None

Environmental/Human Rights Act/Crime and Disorder Act Implications: Nil

Key Decision reference: (if required)