

# SCRUTINY PROJECT – FOOTWAYS IN BETTER CONDITION

## SUMMARY OF FINDINGS AND RECOMMENDATIONS

*“Of all exercises walking is the best.”*  
(Thomas Jefferson)

### KEY FOCUS

1. The following were identified as areas of focus for the scrutiny investigation into footways:
  - Are we achieving value for money through our existing approach?
  - What is the extent of the footway network in County Durham; how much is adopted/unadopted and who is responsible for it?
  - What are the implications of the Gullicksen judgement in relation to the role of the County Council and how will the Council address the issues?
  - What is the role of the County Council in providing services and how, where and when are they delivered?
  - What is the role of District/Parish Councils and how can closer working be developed?
  - Which Policies and Strategies are in place in relation to the provision and maintenance of the footways network?
  - How can damage to footways and safety issues linked to car parking on footways be minimised?
  - How can the risks of trips, slips and falls be minimised?
  - How can walking and cycling be promoted using footways?
  - How can works by Utilities be better programmed and the quality of reinstatements improved?
  - How can the provision of good quality footways be used to promote more walking and cycling?
  - What opportunities exist for efficiencies in the current arrangements (making current funding perform better)?
  - What best practice is there in the field of footway provision and maintenance nationally?

### KEY MESSAGES

2. The footways network is a key asset and significant aspect of local communities. The increasing emphasis on walking and cycling and the rights of the pedestrian mean that having a well-maintained footway network is important.
3. Regular maintenance and continuing investment in the footways network is essential in ensuring that the County Council meets its statutory duties; ensures the safety of pedestrians; prevents costly insurance claims and associated costs against the Council; and improves its best value performance in relation to BV 187 and against other local authorities. However, although the Council's performance has improved in the last few years, it has remained static in terms of its quartile position, because of improving performance in other local authorities.

4. Under investment in the footways network in recent years and the damage caused by lack of maintenance associated with utility works and car parking on footways in urban areas has resulted in a network with more significant remedial works required. It is estimated that some £75M would be required to bring footways back up to good condition across the County. In relation to utility works there are existing limitations in the Council's ability to "police" such works because of the limited numbers of staff, which mean there is no weekend working.
5. Legislative changes will improve the ability of the Council to better tackle poorly reinstated utility works in future with the introduction of penalty notices. The Council will need to consider how it can better monitor the quality of reinstatements of footways, possibly by increased core sampling. Allied to the damage caused by utility works is the impact on footways arising from the growth in car ownership. Conditions on many housing estates mean that parking on footways is a growing problem. Verge hardening schemes (jointly funded with District Councils) have provided an effective solution in some areas.
6. The one-off payment of PLI monies has enabled improvements to be undertaken in nine settlements across the County in specific areas with some of the worst footway conditions and where there have been larger numbers of insurance claims. This "invest to save" approach should bring about a reduction in claims in future years which, in turn, should impact on the level of the PLI premium.
7. The Gullicksen judgement has the potential to require the Council to take on responsibility for an additional significant network of footways in former housing authority developments and so on, parts of which may not have been substantially maintained in the past. However, depending upon the outcome of the Council's submission in relation to the establishment of a new unitary Council for County Durham, this is an issue which may need to be addressed by a new unitary authority in any event. Currently, this is a risk which the Council needs to both recognise and manage and it is important that data about the potential size of the network is collated to enable a more accurate assessment to be undertaken.
8. Opportunities continue to exist to work effectively with District and Parish Councils in relation to footways maintenance. Some District Councils still undertake work on an orders basis and feedback about the effectiveness of the Community Highways Workers has been good. However, many Parish Councils are not able to provide their share of the funding to implement this innovative way of working.

## **KEY FINDINGS**

### **Role of the Council**

9. Section 41 of the Highways Act 1980 imposes a duty on the Highway Authority to maintain "highways maintainable at public expense".
10. The County Council is responsible for maintaining 3380 kilometres of footway forming part of the adopted highway network. In addition, there are 1000 private streets which are unadopted because they may not reach the

minimum adoptable standard or have not been offered for adoption. The extent of the footways forming part of housing estates, which are not adopted, but are the responsibility of District Councils, is not known, but attempts are being made to collect this data.

### **Why Footways are Important**

11. Good, well-maintained footways lead to achievement of equality and social inclusion through better accessibility i.e. promotion of walking and cycling. Local Transport Plan 2 has a strong focus on these issues and having networks that are fit for purpose, particularly in relation to “utility” journeys (i.e. to and from work, shops, hospitals etc.) LTP2 delivers at both a county-wide and local area basis.
12. There are changing attitudes with an increased profile on walking and improvement of people’s health, and the need to promote walking and cycling, with a higher priority being given to the needs of pedestrians.
13. The highway network forms the largest and most visible community asset for which the County Council is responsible. It is fundamental to the economic, social and environmental well being of our communities, shaping the character and quality of local areas and contributing to wider Council priorities, including regeneration, social inclusion, community safety, education and health. The network is valued at some £500M.

### **Maintenance of Footways**

14. The Environment Service is guided by Best Value Performance Indicators, Codes of Practice, the Operational Plan and Local Transport Plan 2 (LTP2) when setting priorities for maintenance.
15. The County Council have adopted the Code of Practice for Highway Maintenance Management. The Code of Practice recommends five broad footway hierarchies. These include:
  - Category 1A - Prestige Walking Zones – i.e. the Market Place in Durham City
  - Category 1 - Primary Walking Routes – these cover busy urban shopping and business.
  - Category 2 - Secondary Walking Routes - these cover medium usage routes through local area and feed into primary routes.
  - Category 3 - Link Footways – these link local access footways through urban areas and busy rural footways.
  - Category 4 - Local Access Footways – these are associated with low usage, short estate roads to the main routes and cul-de-sacs.
16. Most footways in the County fall in the lowest category (4). The major part of the footway network is constructed from bitmac, with next largest category being concrete flagstones.
17. The Environment Service employs 23 highway inspectors to carry out regular inspections of footways. Defects greater than 20mm are reported to the Paths Action Team (PAT) team who, subject to workload, will try to rectify

faults within 24 hours. As a result of health and safety legislation, damaged large flagstones are usually replaced with bitmac infill.

18. Some works are carried out District level by means of works orders, but the previous agency arrangements, which existed at a local level, are no longer in place. At Parish level, there are a number of Community Highway Workers who have been in place since 2002 and are partly funded by the County Council and Parish Councils. All Parish Councils have been consulted and whilst some are not interested in having a community highway worker, 42 Parish Councils are interested but do not have the funding.
19. A prioritisation system operates to target the most serious defects with a programme drawn up annually. Complaints to the Highways Action Line about footway condition also draw the attention of the Authority to faults, which need to be rectified. These are the third highest after drainage and carriageway complaints and these are addressed by the Environment Service as they are received.
20. Regular maintenance improves the lifespan of footways – most are damaged by cars parking on them or by utility works.
21. The current condition of the footway network is linked to the significant under-investment of the late 1980s and early 1990s. Whilst some of this has been addressed by increased investment, there are still widespread signs of neglect. Although the incidence of minor defects is falling, major defects are rising.
22. It is estimated that it will cost £75M to bring all footways up to an acceptable standard. At the present time the combined footway expenditure is £2.6M per annum (including the one-off PLI funding).

### **Performance Measures**

23. The relevant Best Value Performance Indicator for 'Footpaths in better condition' is BV 187. This is measured by inspecting the condition of the footway surface. BV187 only covers footways in categories 1A, 1 and 2 which constitute 7% of the network, which means that 93% of the network is not covered by BV 187.
24. Because the categorisation of footways is at the discretion of local authorities, the extent of footways subject to the BV 187 measure can vary significantly and this can make comparisons of performance between authorities difficult.
25. Whilst our BVPI performance is rising, it is doing so against rising performance in most other authorities which means that our quartile position remains relatively static.

### **Funding Issues**

26. An additional funding of £688,000 was provided from the public liability insurance fund in 2006/2007 which has been used to target footpath condition improvement works in a number of localities across the County which historically have had high levels of insurance claims. A robust approach to claims in recent years has also meant that the levels of settlement and

number of claims accepted are falling. This has resulted in reductions in the County Council's PLI premiums (of which the major constituent is highways) and it is from this reduction that the above funding has been drawn. Nine settlements across the County, which are currently subject to high levels of claims, have been identified for the improvement works.

### **The Gullicksen Judgement**

27. The legal position regarding responsibility for unadopted footways in housing estates constructed by local authorities is somewhat ambiguous and is linked to a recent judgement (the "Gullicksen" case). A potential outcome from the Gullicksen judgement is that footways in housing estates formerly built by local authorities, as housing authorities, might become the responsibility of the County Council. This has implications not only in terms of maintenance, but also liability for trips, slips and falls. The full extent of these footways is not currently known.
28. The Council's solicitor's have rebutted any claims linked to these types of footway to date, on the basis that they are not the Council's responsibility, but the Council should recognise the potential financial risks which might arise.

### **Public Utility Works**

29. There are a number of issues linked to public utility works in footways, including the lack of notification of works, duration of works and quality of reinstatements. Co-ordination, communication and co-operation (3 C's) are key to success, but many Utility Companies fail to give adequate notice of works. There are also concerns about the lack of proper signing of works and safeguarding of the public during the progress of works.
30. Works by Utilities or Statutory Undertakers (SU) are governed by the New Road and Street Works Act 1991 (NRSWA) together with a number of codes of practice. The legislation is very complex and many Highway Authorities feel that the Act is weighted in favour of the Utilities/SU's. CE Electric advised that over 90% of its network is in footways.
31. New regulations under the Traffic Management Act 2004 will strengthen and enhance local authority powers and sanctions over utilities' street works. This will include - longer periods of notice for works; cancellation of Notices; the ability for local authorities to issue fixed penalty notices (£120 proposed) for unreasonable prolonged occupation of highways by utilities; and a longer embargo on companies opening up roads or footways which have recently been resurfaced/re-laid. Currently the Council's Network Control officers only work weekdays - some utility works have been undertaken at weekends

### **Car Parking on Footways**

32. Parking on the footway is an increasing problem, with greater car ownership and use across the County. The main problem areas usually have an additional factor such as nearby factories/offices, or inadequate parking provision for residents in areas such as where there is older terraced housing.

33. There is no nationwide ban on parking on the pavement but there is legislation in London banning parking on the pavement. Local Authorities are able to introduce traffic regulation orders banning parking but it is unlikely that orders will be enforced under current arrangements because of demands on police time. There are also issues in some areas where bans have been introduced because of the need for significant signing. The Police are able to take action when a vehicle is deemed to be causing an obstruction.
34. A number of local authorities have introduced various initiatives, including the introduction of decriminalised parking, publicity campaigns, pavement parking ban zones, designated areas of pavement parking and conversion of some grass verges to parking areas. The new planning guidance, which limits car parking provision on new residential development to 1.5 cars per household, is also likely also force cars onto footways. Funding of £40,000 which has been matched by District Councils has been invested in verge hardening to solve parking problems on some footways in the County and solutions for most streets can be achieved following consultation with residents. This might also include banning parking on one side of the street.

### **Public Liability Claims**

35. The Council has a statutory duty under Section 40 of the Highways Act 1980 in relation to maintenance of highways. However, Section 58 of the Highways Act 1980 states that a statutory defence against third party claims is provided where the Highway Authority can establish that reasonable care has been taken to 'secure that part of the highway to which the action relates' to a level commensurate with the volume of ordinary traffic such that it 'was not dangerous to traffic'.
36. A detailed inspection regime and record keeping aim to meet the Council's role and responsibilities in relation to this area of provision and the Highway Safety Inspection Manual is prepared in accordance with the National Code of Practice adopted by the Council.
37. Levels of successful claims were much higher in the early 1990s with a significant number undertaken by "no-win no-fee" solicitors, only 40% of which were repudiated. The numbers of claims successfully repudiated today now stands at nearer 70%. The expectation is that successful claims will continue to remain at low or falling levels. The majority of claims seem to emanate from the older mining settlements in the County – and this may be linked to the condition of housing and the infrastructure associated with it in those areas. The highest level of claims is from Derwentside.
38. Investigating claims can require significant resources and involve much officer time. Some claims can take up to 5 years to settle. Most claim handling is outsourced to a firm of solicitors. Where claims are settled, this is normally within the £100,000 excess, which applies to the Council's policy. The costs for Public Liability Insurance (PLI) premium have fallen to £2.5M from a high of £3M in recent years and these savings have been reinvested in the footways network in 2006/7.

## KEY CONCLUSIONS

39. The importance of the footways network cannot be underestimated. The increasing emphasis on walking and cycling, as outlined in LTP2, and on the rights of the pedestrian, mean that having a well-maintained footway network is important.
40. The County Council has a statutory duty to maintain the highway. Regular maintenance and continuing investment in the footways network is essential in ensuring the safety of pedestrians; prevention of costly insurance claims and associated costs against the Council.
41. There is a Best Value Performance Indicator (BV 187) in relation to footways. In recent years the Council's Best Value position has remained in the lower quartiles and is only likely to rise with additional targeted investment in the footways network. Although the Council's performance has improved in the last few years, it has remained static in terms of its quartile position because of improving performance in other local authorities.
42. Decreasing funding for the footways network in recent years has meant that some areas of the network require more significant remedial works. It is estimated that some £75M would be required to bring all footways across the County back up to good condition.
43. In relation to utility works, resource limitations place restrictions upon the Council's ability to "police" such works because of the numbers of inspection staff, which mean there is no weekend working. Additional staff, or, changing the rotas of existing staff to include weekend working, could help alleviate this problem.
44. Statutory changes will improve to ability of the Council to better tackle poorly reinstated utility works in future, with the introduction of penalty notices, but more needs to be done in terms of monitoring the quality of reinstatements through more invasive and costly techniques such as sampling.
45. The growth in car ownership and consequent rise in parking of vehicles on footways on narrow estate roads has led to increasing damage to footways. Verge hardening schemes (jointly funded with District Councils) have provided an effective solution in some areas, although there may be a need to consider parking restrictions in some areas in the future (i.e. parking on one side of the road only).
46. In those areas where community highways workers have been appointed with joint County/Parish Council funding, the scheme appears to have been a success. There is a need to reinvigorate and better publicise the benefits of the scheme to Parish Councils across the County.
47. The one-off payment of PLI monies has enabled improvements to be undertaken in nine settlements across the County in those areas with some of the worst footway conditions and where there have been larger than normal numbers of insurance claims. There is an expectation that future insurance claims should fall as a result of these actions.

48. The Gullicksen judgement potentially could have both financial and legal implications for the County Council. It is important that data about the potential size of the network is collected to enable a more accurate assessment of any potential liabilities to be undertaken.

## **RECOMMENDATIONS THAT IDENTIFY FINANCIAL IMPLICATIONS**

49. The following might potentially have financial implications:
- (i) Continuing year on year funding from falling PLI annual premiums
  - (ii) An additional one-off contribution to the highways maintenance budget to:
    - a. Carry out remedial repairs either across the footways network, or target footways in Categories 1, 1A and 2 (these are the footways against which BV 187 is measured)
    - b. Implement weekend working for highways inspectors
    - c. Jointly fund (with District Councils) verge hardening schemes
    - d. Act as pump-priming for community highways inspectors