



## Environment and Climate Change Committee

14 March 2023

<b>Title</b>	<b>Damage to Highways – Project update</b>
<b>Report of</b>	Chair of Environment and Climate Change Committee
<b>Wards</b>	All
<b>Status</b>	Public
<b>Urgent</b>	No
<b>Key</b>	No
<b>Enclosures</b>	<b>Appendix 1 – Examples of damage caused to the public highways as a result of third-party development</b>
<b>Officer Contact Details</b>	Ian Edser, Director of Highways and Transportation, Customer and Place <a href="mailto:ian.edser@barnet.gov.uk">ian.edser@barnet.gov.uk</a>

### Summary

In Sept 2015 the Environment Committee approved for a pilot scheme to be trialled for a period of three months in Finchley and Golders Green, where a large number of development activities had been identified, to inspect for visible damage to the highway. The process was for an Officer to inspect development sites in those areas and where visible damage to the highway fronting the development was observed, a notice would be served under Section 133 of the Highways Act 1980 on the landowner in order to inform them of the Council's intention to recover from them the cost of the damage to the highway caused by them.

Subsequently in May 2017 the Environment Committee gave further approval for the highways service to take the following approach to Damage to Highways

- Building Control to inform the Highways Service when notification to start work is received from owners / developers.
- On receipt of notification, the Highways Service will inspect and take photographic evidence of the footway condition before, during and post work.
- The cost of repairing any damage identified would be recovered from the landowner under Section 133 of Highway Act 1980.

This approach is currently focussed on seven Wards (Childs Hill, East Barnet, Golders Green, High Barnet, Mill Hill, Totteridge and Woodside and Whetstone) The Wards selected were based on the highest number of reported damage to highway incidents and the levels of development work taking place in these Wards.

In order to support active travel, encourage walking and ensure that footways are safe for pedestrians, the damage to highways service should be expanded to cover the whole of the Borough.

## Officers Recommendations

- 1. That the Environment and Climate Change Committee notes the current activities undertaken by the Highways Service team to tackle incidents of damage to highway caused by development works.**
- 2. That the Environment and Climate Change Committee approves the proposal that the Highways Service team expands its work to tackle incidents of damage to highway to cover all 24 Wards, and that this will be the subject of a future report to Cabinet.**

### 1. WHY THIS REPORT IS NEEDED

- 1.1 As a result of the ongoing problem of a large number of small-scale development works across the Borough and the associated damage to the footway, in Sept 2015 the Environment Committee approved for a pilot scheme to be trialled for a period of three months in Finchley and Golders Green. The aim of the pilot was to recover the cost of repairs from the property owners whose development works had caused the damage. A further report in May 2017 gave approval for the highways service to take a proactive approach to tackle the problem by requesting notifications from Building Control colleagues about start work dates for developments.
- 1.2 The majority of the damage is caused by inappropriate use of the footway such as delivery and removal of skips, storage of materials on the footway, using the footway as part of the works site and sometimes lowering of kerbstones to accommodate illegal crossovers at completion of the works. Some examples of this can be seen in Appendix 1.
- 1.3 Many of the issues are with smaller single property developments, larger developments are regulated through Highway Development Control activities and Section 278 agreements (under the Highways Act 1980) or planning conditions.
- 1.4 The pilot project was initially in Finchley and Golders Green, this has now been expanded to Childs Hill, East Barnet, Golders Green, High Barnet, Mill Hill, Totteridge and Woodside and Whetstone. The selected Wards were based on highest number of reported damage to highway incidents and levels of development work taking place in these Wards.

1.5 The activity to date can be summarised as follows

Status April 2021 to date	No of Sites
Intervention level damage found	165
Work complete, no damage	510
Work ongoing, currently no damage	349
Other/work not started	181
Total number of sites involved in the project	1205

- 1.6 Since a restart and reset of the project in April 2021 the Highways Team began invoicing landowners to recover the costs for Damage to Highway. £415,000 worth of damage to the highway has been repaired at the Council's expense and so far £244,000 has been recovered from the landowners responsible for causing the damage. The remainder is being progressed through the Council's normal cost recovery process.
- 1.7 Section 133 of the Highways Act 1980 states that if the footway of a street that is a highway maintainable at the public expense is damaged by or in consequence of any excavation or other work on land adjoining the street, the highway authority for the highway may make good the damage and recover the expenses reasonably incurred by them in so doing from the owner of the land in question or the person causing or responsible for the damage. As the costs of a repair relate to the Highways Act 1980, any unpaid costs can be registered as a local land charge as detailed under S.1 of the Local Land Charges Act 1975. The Council's preference however is to work with residents and/or their developers to ensure all the appropriate licences are in place before work commences so that we can protect the integrity of the footway throughout their works.
- 1.8 To cover the seven Wards the Highways Team is currently resourced with 1 Technical Supervisor and 0.5 FTE Business Support Officer. Officers consider that there would be real benefit to expanding this service across the Borough, subject to suitable funding and that this will be the subject of a report to a future Cabinet meeting. For Members information, indicative resource requirements, to expand across the borough would require an additional 2 Technical Supervisors and 1 Business Support Officer.
- 1.9 Ultimately the intention of the Damage to Highways service is to maintain the integrity of the public highway and ensure that the cost of repairs caused by third parties is paid for by those third parties, rather than at the public's expense.

## 2. REASONS FOR RECOMMENDATIONS

- 2.1 Barnet's highway network is our largest, most valuable and most visible community asset and is probably the most used of all our services, by nearly all residents daily. It is vital to the economic, social, and environmental well-being of our residents and wider community.
- 2.2 The Highways Act 1980 ("**HA 1980**") sets out the main duties of highway authorities in England and Wales. Highway maintenance policy is set within a legal framework. Section 41 of the HA 1980 imposes a duty to maintain highways which are maintainable at public

expense. The HA 1980 sits within a much broader legislative framework specifying powers, duties and standards for highway maintenance.

- 2.3 The Council has a duty to ensure that the statutory functions and responsibilities in relation to those highways for which the local authority is responsible are discharged. The Council also has a duty to ensure a safe passage for the highway user through the effective implementation of the legislation available to it, principally the HA 1980, with reference to Section 41, of the HA 1980.
- 2.4 Section 133 HA 1980 states that If the footway of a street that is a highway maintainable at the public expense is damaged by or in consequence of any excavation or other work on land adjoining the street, the highway authority for the highway may make good the damage and recover the expenses reasonably incurred by them in so doing from the owner of the land in question or the person causing or responsible for the damage. Some examples can be seen in appendix 1.
- 2.5 If the Council were not able to use s133 HA 1980 or section 1 Local Land Charges Act 1975 the cost of repairing the public highway would fall to the Council and this would need to be funded out of existing budgets.

### **3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED**

- 3.1 The Council has a range of potential short-term options available; these include:
  - Stop what we are doing
  - Maintain what we are doing

Option 1 has been discounted as it requires public money to be spent on repairing the highway when damage has been caused by a third party.

Option 2 is not the preferred option as it presents a disparity with how residents or their agents are treated in different Council Wards. The current approach could be retained, but Officers' preference is to expand the service incrementally across the Borough, for which a business case will be presented to Cabinet in due course.

### **4. POST DECISION IMPLEMENTATION**

- 4.1 The Highways Team will consolidate current activities with a view to incrementally expanding the service across the whole borough, subject the approval of the business case and associated funding.
- 4.2 The Highways team will develop a business case which will be presented to the next available meeting of the Cabinet.

## **5. IMPLICATIONS OF DECISION**

### **5.1 Corporate Priorities and Performance**

- 5.1.1 The continuation and expansion of the Council's Damage to Highways service will contribute to the Council's sustainability strategy through the promotion of better practices exercised by landowners and developers in relation to the protection of the Highways network.
- 5.1.2 A project to tackle third party damage to the highway ensures swift response to unsafe footways and recovery of costs from the party who has caused the damage, which would otherwise have to be paid for at the public's expense
- 5.1.3 The Highway network is the Council's most valuable asset and is vital to the economic, social, and environmental wellbeing of the Borough as well as the general image perception. The Highways provide access for business and communities, as well as contribute to the area's local character and the resident's quality of life. Highways really do matter to people and often public opinion surveys continually highlight dissatisfaction with the condition of local roads and pavements and the way they are managed.

### **5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)**

#### 5.2.1 Finance & Value for Money

- 5.2.1.1 The current annual staffing cost of delivering the damage to highways project is circa £100,000.
- 5.2.1.2 Since April 21 the cost of repairing the footway due to damage caused by third party development works is £415,000k \*.
- 5.2.1.3 The amount recovered so far is £244,000k\*.
- 5.2.1.4 Unpaid invoices go through the Council's normal reminder letters and cost recovery process. The process recognises people can be in a position of hardship and therefore allows for payment plans to be set up. Unpaid debts may eventually be registered as a Local Land Charge against the property, as last recourse.
- 6.2.1.5 A business case for expansion of the Damage to Highways project to all Wards will be prepared for presentation to a future the Cabinet meeting.

\* Figures are yet to be audited

## 5.2.2 Procurement

### 5.2.2.1 No procurement implications

## 5.2.3 Staffing

None as a direct result of this report, however the expansion of the service and deployment of additional resources will be the subject of report to a future meeting of the Cabinet.

## 5.2.4 IT

There are no direct IT implications for the council as a result of extending the current arrangements.

## 5.2.5 Property

There are no direct Property implications for the Council as a result of extending the current arrangements.

## 5.2.6 Sustainability

The aim of Damage to Highways project is to actively maintain the footway network for all users and to encouraging landowners to treat the public highway with respect and thus minimising repeat work and recover monies from those identifiable third parties responsible for the damage to the Highway, to avoid the Council bearing all the cost of the repairs

## 5.3 Legal and Constitutional References

5.3.1 Under Article 7 of the Council's Constitution, the Environment and Climate Change Committee is responsible for all borough-wide or cross-area matters relating to the local environment, which includes highways.

5.3.2 As a highway authority the Council has a duty under section 41(1) HA 1980 to maintain the public highway.

5.3.3 Section 133 HA 1980 states that if the footway of a street that is a highway maintainable at the public expense is damaged by or in consequence of any excavation or other work on land adjoining the street, the highway authority for the highway may make good the damage and recover the expenses reasonably incurred by them in so doing from the owner of the land in question or the person causing or responsible for the damage.

5.3.4 Section 1 of the Local Land Charges Act 1975 enables any charge by a local authority for Damage to Highway under s133 HA 1980 to be registered as a Local Land Charge against the land.

## 5.4 **Insight**

5.4.1 Not applicable to this report, however the work is informed by Building Control reports and Highways Officers inspections.

## 5.5 **Social Value**

5.5.1 The Public Services (Social Value) Act 2012 requires people who commission public services to think about how they can also secure wider social economic and environmental benefits. This report does not relate to the procurement of services contracts.

## 5.6 **Risk Management**

5.6.1 The Council, as Highway Authority, has various responsibilities and duties. To address these responsibilities and duties the council has established policies, systems and processes that are regularly audited, reviewed, and amended where necessary to reflect current policy and guidance and provide the council with a robust defence against insurance claims on the public highway.

5.6.2 The Damage to Highways project is a means of ensuring that intervention level damage caused by third parties are repaired efficiently and effectively and the integrity of the footway is maintained for all users.

## 5.7 **Equalities and Diversity**

5.7.1 The Equality Act 2010 requires organisations exercising public functions to demonstrate that due regard has been paid to equalities in:

- Elimination of unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010.
- Advancement of equality of opportunity between people from different groups.
- Fostering of good relations between people from different groups.

5.7.2 The Equality Act 2010 identifies the following protected characteristics: age; disability; gender reassignment; marriage and civil partnership, pregnancy, and maternity; race; religion or belief; sex and sexual orientation.

5.7.3 To assist in meeting the duty the council will:

- Try to understand the diversity of our customers to improve our services.
- Consider the impact of our decisions on different groups to ensure they are fair.

- Mainstream equalities into business and financial planning and integrating equalities into everything we do.
- Learn more about Barnet's diverse communities by engaging with them.

5.7.4 The broad purpose of this duty is to integrate considerations of equality into day-to-day business and keep them under review in decision making, the design of policies and delivery of services.

5.7.5 Good roads and pavements benefit all sectors of the community by removing impediments and assisting quick, efficient, and safe movement to access school, work and leisure facilities. This is particularly important for the elderly, people caring for children and those with mobility difficulties and sight impairments. The condition of roads and pavements is regularly at the top of concerns expressed by residents and the Council is listening and responding to those concerns by committing funding and resources to its planned highway maintenance programmes across the borough on a prioritised basis.

5.7.6 The physical appearance and the condition of the roads and pavements also have a significant impact on the quality of life of residents and visitors to the borough. A poor-quality street environment will give a negative impression of an area, impact on people's perceptions and attitudes as well as increasing feelings of insecurity.

5.7.7 An Equality Impact Assessment will be carried out before the scheme is expanded, if required.

## 5.8 **Corporate Parenting**

No direct or indirect impacts on looked after children or care leavers identified beyond those applicable to the population as a whole.

## 5.9 **Consultation and Engagement**

This section does not apply to this report.

## 6. **ENVIRONMENTAL IMPACT**

Implementing the recommendations in the report will lead to a positive impact on the Council's carbon and ecology impact aligned to the council's emerging Sustainability Strategy in relation to supply chain operations and material selection including use of low carbon and recycled materials.

## 7. **BACKGROUND PAPERS**

7.1 Environment Committee Meeting Sept 2015  
[Damage to the Public Highway Caused by Development Activities.pdf \(moderngov.co.uk\)](#)

7.2 Environment Committee Meeting May 2017



[\(Public Pack\)Addendum - Items 8 and 10 Agenda Supplement for Environment Committee, 11/05/2017 18:30 \(moderngov.co.uk\)](#)