

North Yorkshire County Council
Business and Environmental Services

Executive Members

18 February 2022

Review of Driven Carriageway Inspections during Covid-19

Report of the Assistant Director – Highways and Transportation

1.0 Purpose Of Report

- 1.1 The purpose of this report is to seek agreement from the Corporate Director, Business and Environmental Services (BES), in consultation with County Councillor Don Mackenzie, Executive Member for Access, for a continuation of an amendment to the current Highway Safety Inspection Manual V2.0 where deemed necessary, but also to begin a move back towards double-crewed highway safety inspections. This would continue to make provision in the exceptional circumstances due to the outbreak of Covid-19 for single person highway inspections of all categories of road for which the Highway Authority is responsible based on the proposal outlined later in this report, but also recognise the lifting of restrictions in line with Stage 4 of the Government's roadmap.
- 1.2 The intention is to continue to manage the risk to the Council's employees by striking a balance between the new mantra of 'living with Covid' whilst maintaining and delivering a resilient service. It is acknowledged that at the time of writing this report some further restrictions have now been lifted, however if new or additional guidance is released or the situation has changed, a further verbal update may well be required during the meeting of 18 February 2022.

2.0 Background

- 2.1 Earlier reports were presented to this meeting on 7 May 2020, then again on 18 December 2020, 23 July 2021 and 22 October 2021. In those reports, officers outlined that in complying with its duty to maintain the highway, as outlined within Section 41 of the Highways Act 1980 and for the purposes of Section 58, which provides for special defence, North Yorkshire County Council undertakes inspections of the highway. These inspections incorporate the carriageway, footway, grass verge and pathways upon which the public have a right of access and which are maintained at public expense.
- 2.2 The first report on 7 May 2020 outlined in detail the background to and purpose of the NYCC Highways Safety Inspection Manual (HSIM) and its the primary aim of providing operational guidance to those officers involved in undertaking highways safety inspections and the method of assessing, recording and responding to defects in the highway using a risk based approach.
- 2.3 Also contained in that report was an overview of the Coronavirus Act 2020 and the proposal to amend the HSIM to ensure compliance with the Act and the Regulations without compromising the Council's statutory duties nor unduly compromising the health and wellbeing of Council staff during the Government declaration of a threat to public health.

- 2.4 As such, an amendment to the wording in HSIM V2.0 was approved so that all Category of Roads may be inspected without a dedicated driver so long as that inspection be carried out in both directions and in accordance with the specific Risk Assessment. Following agreement at your meeting, the relevant part of Section 2 of the manual was amended to read as follows:

“As an exception to the above, driven inspections can be carried out from a slow moving vehicle without a dedicated driver being present in low risk situations on category 4b roads, and in the event of a Government declaration of threat to public health for the duration of the declaration made under statutory provisions. This would be in situations where any actionable defects can still be identified and there are no additional public safety risks from not having a dedicated driver. In such circumstances the normal safety inspection vehicle may be replaced with an appropriately liveried Highways Officer’s van. In urban areas, the inspection will be carried out at no more than 10 mph on category 4b roads and 20 mph on higher category roads and in both directions and the Highways Officer must walk any sections where parked vehicles restrict the view of the full highway extent. A record must be kept of the inspection method used.”

- 2.5 Minor changes were also made to Section 2.6 – Performance Management, Page 15 of HSIM, regarding the frequency and methodology of safety inspection audits and specifically two types of random inspections.

3.0 Review of these (modified) arrangements

- 3.1 There have been a number of phases and changes to the landscape of national guidance and restrictions during the pandemic. In the summer of 2020, both infection and death rates were falling and restrictions were eased significantly from those initially imposed during the first ‘lockdown’. Towards the end of the summer of 2020, sadly rates rose again, necessitating a second ‘lockdown’. Given this ever changing picture, enquiries from local teams regarding how inspections were being undertaken and the pandemic continuing with no clear end in sight, it was agreed between the Assistant Director, Highways and Transportation and Head of Highway Operations that regular reviews of these arrangements should be undertaken

4.0 Review Process

- 4.1 The report of December 2020 outlined how input from key personnel / groups was requested and associated discussions were also held. This led to the following recommendations being approved at that meeting (18 December 2020):
- i. the relevant part of Section 2 of the Highway Safety Inspection Manual that currently reads: ‘*The maximum speed of the inspection vehicle throughout an inspection will be 20mph*’ is amended with the highlighted text shown below to read:
 - a. ‘*The maximum speed of the inspection vehicle throughout an inspection will be 20mph unless a dynamic risk assessment on rural roads concludes it is safer to undertake these inspections at a speed more in keeping with traffic flows. However, this would still be limited to no more than 20mph on category 4b roads and 30mph on higher category rural roads*’

- ii. to retain the amendments made to the HSIM following the BES Executive Members meeting of 7 May 2020 shown in italics in para 2.4 of this report, with the addition of the text shown as highlighted below:
 - a. *“As an exception to the above, driven inspections can be carried out from a slow moving vehicle without a dedicated driver being present in low risk situations on category 4b roads, and in the event of a Government declaration of threat to public health for the duration of the declaration made under statutory provisions. This would be in situations where any actionable defects can still be identified and there are no additional public safety risks from not having a dedicated driver. In such circumstances the normal safety inspection vehicle may be replaced with an appropriately liveried Highways Officer’s van. In urban areas, the inspection will be carried out at no more than 10 mph on category 4b roads and 20 mph on higher category roads and in both directions and the Highways Officer must walk any sections where parked vehicles restrict the view of the full highway extent. A record must be kept of the inspection method used including those occasions where the inspection was conducted between 20mph and 30mph in rural locations.*
- iii. that such amendments are only to be effective for the duration of the public health response period as conferred by the Coronavirus Act 2020 and the Health Protection (Coronavirus Restrictions) (England) Regulations 2020 and made by Government declaration
- iv. that a further review is undertaken at the end of March 2021 unless deemed necessary to be undertaken sooner.

4.2 Whilst the March review was delayed due to a variety of factors including that restrictions were still such that social distancing / wearing of masks etc. had not changed, officers were also dealing with a particularly challenging winter season (until May 2021) and other resource was also focused on the launch of NY Highways. In this intervening period, the practice of single crewed inspections was still in force and the arrangement continued throughout. Following the meeting on 23 July 2021 based on input and advice at the time from key consultees and the prevailing situation it was resolved that single-crewed inspections would continue, with a further review in October 2021.

- 4.3 The October 2021 report contained a number of recommendations which are listed below for ease of reference:
- That a transition to double crewed inspections commences from 1 November 2021, including consultation / engagement with Highway Officers via local management teams.
 - As part of that consultation / engagement, where specific circumstances might preclude double crewed inspections - including personal/underlying health conditions - and Highway Officers are in agreement that single crewed inspections are retained in those circumstances
 - Where double crewed inspections commence, the Health & Safety / Fleet / Public Health guidance contained in this report regarding mitigation and control measures is followed as rigorously as possible / activities permit and that this is done in conjunction with any task specific and Covid related risk assessments
 - That provision remains in place to revert to single-crewed inspections on a larger scale if there is either a large outbreak amongst the workforce and/or the Government’s Plan B on the Autumn /Winter roadmap is invoked
 - That ongoing monitoring of the situation continues over the coming months and a further report is submitted to your meeting of 18 February 2022 (unless deemed necessary to be reported sooner).
 - That the transition back to double-crewed inspections is fully concluded by the end of March 2022 unless circumstances dictate otherwise.

- 4.4 Since the meeting of October 2021, a new variant of Covid – the Omicron variant – emerged. This particular variant was highly transmissible and did give cause for ongoing caution and consideration from a business and service continuity perspective. This was particularly salient given that Highway Officers who undertake routine and non-routine highway inspections are also duty officers for our winter service, so any impact of Covid-19 would have the potential to impair two key service functions in Highway Operations.
- 4.5 As such, single crewed inspections have remained in place since the last report.
- 4.6 In preparation for this latest review, key colleague / subject matter experts' views have once again been sought as per previous reports – these are summarised in the remainder of this section.
- 4.7 In terms of Legal and Democratic Services:
- The PM announced on 19th January 2022 a return to Plan A. Working from home, mandatory face coverings, and mandatory Covid passes are no longer required. The Coronavirus Act 2020 expires on 24 March 2022, but there is power within it to extend that date. It is understood that there is an intention to bring forward the Government's long term strategy for living with Covid before the expiry date of the Act. The many Regulations which flow from the CA 2020 can also be subject to extension.
 - The government guidance was (at the time of writing) last updated on 27th January 2022 Coronavirus (COVID-19): safer transport guidance for operators and people who work in or from vehicles - GOV.UK (www.gov.uk) This non statutory guidance suggests wearing a face covering in enclosed spaces if possible. For staff members working in vehicles the guidance suggests reducing the number of people travelling in the same vehicle where possible and ensuring ventilation.
 - Highways Act 1980: The return to Plan A and the indication that the Government's intention is for the Regulations to lapse signals living with Covid without mandatory restrictions in place. An allegation of a breach of duty under s41 will as ever fall on its own facts. In the absence of restrictions and working practices which can be managed, it follows that Courts will expect the HA to have carried out its statutory duty. Self-isolation regulations remain in force which may mean staff absences having a detrimental effect on work streams and prioritisation, although those regulations may be revoked before they expire in March.
 - S58 defence: that the HA had taken such care as in "*all the circumstances*" was reasonably required to secure that the part of the highway to which the action relates was not dangerous for traffic. Subsection (2)(a) to (e) are matters the Court will take into account in considering whether the defence is available to the HA.
 - The "*all the circumstances*" element may include relevant issues arising from the pandemic but as all restrictions are eased it may be more difficult to justify. Recording decisions made on a risk basis is advised should evidence be required to defend a claim.
 - Our standing advice is to ensure compliance with the statutory obligations and the Council's own policies, having regard to the most up to date government guidance. Decisions should be taken on a risk based approach, after a risk analysis has been undertaken and recorded.

- 4.8 From an Insurance & Risk Management (IRM) Perspective:
- Insurance claims – repudiation rates are in line with expectation and not showing deterioration.
 - If tested evidentially (in court) IRM believe our lawyers and insurers *would prefer* twin crewed inspections simply to take away any challenge - however whilst the required measures for staff safety are in place then that remains the justification for single crewed inspections.
- 4.9 In terms of ADEPT (Association of Directors of Environment, Economy, Planning & Transport) Engineering Board,
- NYCC's Assistant Director H&T confirmed that the latest feedback from ADEPT members indicates a range of risk-based approaches are currently being taken ranging from:
 - arrangements being reviewed on an individual officer basis,
 - to a blended 2/1 person approach
 - to a dedicated driver & inspectors
 - and double crewed inspections for high speed roadsso no one single approach is dominant or being favoured at present
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- 4.10 From a Health & Safety perspective, the following feedback was received:
- Covid-19 infection rates continue to remain high throughout North Yorkshire. We have had 6 positive cases reported for staff working from Highways and Transportation offices during the previous three month period, none of which were found to be likely through transmission within the workplace environment.
 - Government guidance for working safely during Coronavirus, updated 27th January 2022 remains the same for those sharing vehicles, with the exception of point one, which now requires that we only encourage people to use fixed travel partners or avoid sitting face to face.
 - The updated controls are:
 - Encouraging people travelling together in any one vehicle to, wherever possible to use fixed travel partners or avoid sitting face-to-face.
 - Providing adequate ventilation by switching on ventilation systems that draw in fresh air or opening windows
 - Cleaning shared vehicles between shifts or on handover.
 - We would therefore suggest that we continue to look towards transitioning towards double-crewed inspections with appropriate controls in place as above and ensuring a suitable risk assessment is completed taking into account those staff who may be at higher risk of infection or an adverse outcome if infected.
- 4.11 With regard to NY Highways (NYH) (under normal circumstances NYH would typically provide drivers to assist NYCC Highway Officers undertake such inspections):
- NYH's Operations Manager (NYHOM) re-affirmed the position communicated in October 2021 where NYH were regularly reviewing whether the additional fleet vehicles were still required to allow single crewed travel to site and in addition had already returned to double crewing in some circumstances. NYHOM stated he would be comfortable with providing a driver in a double-crewed scenario if control measures such as those outlined above were followed.
- 4.12 HR colleagues' comments remain unchanged from October 2021 and were:
- We would agree with everything that H&S have said, and would add that we need to ensure that appropriate risk assessments are in place for all involved, just to take account of any pre-existing health conditions, and indeed any emerging health matters such as pregnancy etc.

- We would also recommend engagement and consultation with the workforce around the future working arrangements around driven inspections to address any concerns coming from employees

4.13 Public Health colleagues commented:

- In terms of the direction of travel, the Government's direction is clearly towards "living with COVID" (with details to be confirmed). Plan B restrictions were removed last week, and we are not likely to have further extension of the Coronavirus Regulations after March. This suggests that we should be trying to get back to business as usual as much as possible [N.B. this doesn't mean no mitigations – ventilation, face coverings, vaccination and (for the moment) regular testing are still important]
- The current position is despite the above, there are still extremely high levels of COVID-19 across the county (and country). Children and young people are currently worst affected, but there is spread into parent ages too. Omicron is extremely infectious (and more so than other variants), although with boosters a smaller proportion of people are experiencing severe symptoms. Current rates are hovering around 1000 per 100,000 (significantly higher than anything pre-Omicron).
- Regarding guidance changes, close contacts are no longer required to isolate, but are asked to do daily LFD testing for 7 days. Self-isolation time can also now be shorter than 10 days if two negative LFDs are taken 24hrs apart from Day 5. These should mean that the impact from isolation on staff should be reduced (but not (yet) removed – however we may see complete removal of isolation requirements over the next few months).
- We are disinclined to change anything immediately but think we need to be planning for a potential return over the next couple of months (which will align with expected removal of regulations in March). Keeping measures like good ventilation, face coverings if rates high, not sharing if close contact etc. will help mitigate any ongoing risk following that.

4.14 UNISON, having taken soundings from members who work in this area and replied as outlined below in October 2021:

- We have spoken to our members who are involved in this work and, although there aren't strong feelings either way, our position is as it was at the last review. We feel that we are now at a stage in the Covid pandemic where the risks associated with single-crew (i.e. the risks associated with driving slowly, having to concentrate on both driving and inspection, etc.) outweigh the risks of double-crew (i.e. Covid transmission).
- Most employers have now resumed double-crew (and triple-crew in some cases) for similar roles, e.g. refuse collection, delivery drivers, etc.
- Notwithstanding appropriate measures such as ventilation, mask-wearing where appropriate, etc., we believe it is appropriate to return to double-crew.

4.14.1 Having discussed the matter again as part of this round of engagement, UNISON conformed that their position was the same as previously, stating they think we are at a stage in the pandemic where we should be able to resume double-crewed inspections. Obviously with some guidance to staff about ventilation, being aware of what you have to do if you have Covid symptoms etc.

4.15 Within Highway Operations, a selection of Maintenance Managers were canvassed; comments and their summarised feedback was:

- The majority view seems to be moving slightly toward double crewed inspections. There will be some specific instances of individuals who still do not want to mix with others due to underlying health conditions, but the majority view seems to be that whilst our inspection success rate may be holding up, the (other) benefits gained by having 2 people in the cab are starting to be missed.

- If the desire is to revert back to double crewed inspections, would like to see a way in the recommendations for some individual HOs with any issues to be able to still run single crewed.
- 4.16 Colleagues in Fleet stated, from a fleet perspective double crewing was feasible based on other areas of fleet activity, maintaining the suggestions offered in the October 2021 report, namely:
- Adequate ventilation
 - Regular cleaning with appropriate cleaning materials of surfaces especially regular touch points
 - Maximise distance between passengers – use outer seats.
 - Sit side by side and not behind others
 - Use a face covering when travelling with others that you do not usually travel with
- 4.17 Taking into account all of the points listed above, comments in the October 2021 report relating to striking balance between ‘Living with Covid’ whilst maintaining an appropriate level of workforce resilience remains valid. This ensures service delivery & continuity as well as taking account of individual circumstances (such as underlying health conditions and/or people who may be clinically vulnerable).
- 4.18 Whether the Omicron wave has or has not peaked, it does appear that the impact of this latest strain has been less than anticipated in terms of severity or staff absences in Highway Operations and NYHighways. Any issues due to isolated staff absences have been mitigated along the way, and a blended approach of working from home / limited time in the office has no doubt assisted alongside Highway Officers’ mobile/lone working. Retaining a direction of travel back to full business as usual in a measured manner still seems feasible. Ensuring the appropriate risk mitigation and control measures are in place, such as the wearing of face masks, ventilating vehicles and ‘buddying up’ / same pairings as much as possible in order to reduce the risk of transmission or loss of personnel in the case of positive tests will also assist.
- 4.19 With regard to the specific point of fixed travel partners, it has previously been acknowledged this may not always be possible, since Highway Officers (HO) have specific knowledge of their areas and (where they are not driving for NYCC) the NYH employee will be working with other NYH employees therefore not always in the same ‘bubble’. Whilst it might be deemed feasible to have one NYCC HO undertaking all inspections, this will mean a shift in working practice that would result in inefficiencies given where some HOs live / would have to travel to in order to undertake their inspections or cover colleagues’ other duties. Where fixed travel partners is not achievable, it is imperative that additional control measures referenced earlier in this report are adhered to, since those other control measures (such as wearing face coverings) should be fully achievable.
- 4.20 A key consideration throughout these series of reports during the pandemic has always been the ability to maintain as much resilience and business continuity as possible whilst protecting staff. Having personnel double-crewed means twice the impact in terms of absences if a positive test results and the second person contracts Covid-19 from the first and therefore this would still need close monitoring as part of any change in approach or return to double-crewed inspections. However, as can be seen from earlier commentary in this report, ultimately there is that balance to be struck between living with Covid and managing the associated risks. These risks include managing the health and well-being of employees, safety elements associated with single crewed driving, the County Council’s ability to successfully defend against third party claims and the benefits that can be gained from shared

knowledge, mentoring and 'live' training with an experienced and new HO sharing a vehicle.

- 4.21 Having taken all of the above into account, the recommendations in section 9 of this report outline a way in which the direction of travel, transition and ultimately a return to double crewed inspections can be enacted and managed.

5.0 Equalities

- 5.1 An initial equality and impact assessment screening form has been completed and is outlined in Appendix A

6.0 Finance

- 6.1 There are no additional financial implications arising from this report. Activity will continue to be managed within existing budgets.

7.0 Legal

- 7.1 The County Council as Local Highway Authority, Street Authority and Traffic Authority has a wide range of statutory duties imposed by a variety of legislation.

- 7.2 The legal impacts of the emergency legislation, which have been enacted are outlined in this report and were referenced in the report of 18 December 2020 and background paper (Executive Members report of 7 May 2020) as well as the report of July 2020.

8.0 Climate Change Impact Assessment

- 8.1 The current changes to the Highways Safety Inspection Manual with respect to driven carriageway inspections during Covid-19 were put in place to allow certain safety inspections to be completed without a dedicated driver. This amendment to how the service is delivered has no impacts with respect to climate change and so there is no requirement for a climate change impact assessment.

9.0 Recommendations

- 9.1 It is recommended that the Corporate Director, Business and Environmental Services (BES), in consultation with County Councillor Don Mackenzie, Executive Member for Access agree:
- i. That the transition to double crewed inspections that was enabled from 1 November 2021 (following your last meeting/discussion on this matter) continues, including consultation / engagement with Highway Officers via local management teams.
 - ii. As part of the above consultation / engagement, where specific circumstances might preclude double crewed inspections (such as personal / underlying health conditions) and Highway Officers are in agreement, that single crewed inspections are retained in those circumstances but reviewed bi-monthly by the Highway Officer concerned and their line manager
 - iii. Where double crewed inspections commence, the Health & Safety / Fleet / Public Health guidance contained in this report regarding mitigation and control measures is followed as rigorously as possible / as activities permit and that this is done in conjunction with any task-specific and Covid-related risk assessments
 - iv. That provision remains in place to revert to single-crewed inspections on a wider scale if there is either a large-scale Covid outbreak amongst the workforce and/or Government guidance changes

- v. That the transition back to double-crewed inspections is fully concluded by the end of March 2022 unless circumstances [such as (iv)] dictate otherwise.
- vi. That ongoing monitoring of the situation continues over the coming months and a final report is submitted to your meeting of 29 April 2022 (unless deemed necessary to be reported sooner) in order to bring this matter to a conclusion and return to Business as Usual. This would ultimately be dictated by factors such as the anticipated lifting of all restrictions and overall infection rates.

BARRIE MASON
Assistant Director
Highways and Transportation

Author of Report: Nigel Smith

Background Documents:
Reports to Executive Members 7 May 2020, 18 December 2020, 23 July 2021 & 22 October 2021

Initial equality impact assessment screening form (As of October 2015 this form replaces 'Record of decision not to carry out an EIA')			
This form records an equality screening process to determine the relevance of equality to a proposal, and a decision whether or not a full EIA would be appropriate or proportionate.			
Directorate	BES		
Service area	H&T		
Proposal being screened	Amendment to Highways Safety Inspection Manual V2.0 (HSIM)		
Officer(s) carrying out screening	Nigel Smith		
What are you proposing to do?	Amend the HSIM to allow for single person carriageway inspections during the Covid-19 social distancing protocols		
Why are you proposing this? What are the desired outcomes?	Endorsement of the Recommendations within this report allows NYCC to fulfil its obligations under the Highways Act 1980 whilst complying with the social distancing guidelines set down by Public Health England.		
Does the proposal involve a significant commitment or removal of resources? Please give details.	No		
Is there likely to be an adverse impact on people with any of the following protected characteristics as defined by the Equality Act 2010, or NYCC's additional agreed characteristics?			
As part of this assessment, please consider the following questions:			
<ul style="list-style-type: none"> To what extent is this service used by particular groups of people with protected characteristics? Does the proposal relate to functions that previous consultation has identified as important? Do different groups have different needs or experiences in the area the proposal relates to? 			
If for any characteristic it is considered that there is likely to be a significant adverse impact or you have ticked 'Don't know/no info available', then a full EIA should be carried out where this is proportionate. You are advised to speak to your Equality rep for advice if you are in any doubt.			
Protected characteristic	Yes	No	Don't know/No info available
Age		✓	
Disability		✓	
Sex (Gender)		✓	
Race		✓	
Sexual orientation		✓	
Gender reassignment		✓	
Religion or belief		✓	
Pregnancy or maternity		✓	
Marriage or civil partnership		✓	

NYCC additional characteristic			
People in rural areas		✓	
People on a low income		✓	
Carer (unpaid family or friend)		✓	
Does the proposal relate to an area where there are known inequalities/probable impacts (e.g. disabled people's access to public transport)? Please give details.	No.		
Will the proposal have a significant effect on how other organisations operate? (e.g. partners, funding criteria, etc.). Do any of these organisations support people with protected characteristics? Please explain why you have reached this conclusion.	No		
Decision (Please tick one option)	EIA not relevant or proportionate:	✓	Continue to full EIA:
Reason for decision	The proposed works will have no negative impact on the operation of the highway from the current position. As a consequence no people will be impacted including those with protected characteristics.		
Signed (Assistant Director or equivalent)	Barrie Mason		
Date	08/02/2022		