

North Yorkshire County Council
Business and Environmental Services

Executive Members

23 July 2021

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 County Councillor Don Mackenzie the Executive Member for Access, for a continuation of an amendment to the current Highways Services Inspection Manual V2.0 until such time that Covid-19 guidance & restrictions relating to social distancing and other key factors are no longer in force. Therefore, until that time, this would continue to make provision in the current 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.
- 1.2 The intention is to continue to minimise the risk to the Council's employees by adhering to the Government requirement for social distancing and so that highway inspections are carried out within Public Health England Guidelines during the emergency period. This approach also maintains resilience in the delivery of other key services. It is acknowledged that at the time of writing this report certain restrictions are in place, however at the date of the meeting on which this report will be discussed the situation may well have changed and further debate may well be required during that meeting

2.0 Background

- 2.1 Earlier reports were presented to this meeting on 7 May 2020 and again on 18 December 2020. 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 7 May 2020 report 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 proposed 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 thus far 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, 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 ADH&T and Head of Highway Operations that a formal 6-month review of these arrangements should be undertaken

4.0 Review Process

- 4.1 The report of late 2020 outlined how input from key personnel / groups was requested and associated discussion that were held discussions were also held. This led to the following recommendations being approved at your meeting of 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 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 With reference to point iv, above, 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 continued.
- 4.3 More recently, and in preparation for this most recent report, key colleagues and subject matter experts’ views have again been sought – these are summarised below in the remainder of this section of the report.
- 4.4 In terms of Legal and Democratic Services, colleagues were asked to comment in relation to what will be current legislation at that time (end June) pertaining to Coronavirus Act 2020 and cognisant of S41 and S58 of Highways Act 1980; their response was:
- Regarding Current Regulations: previous advice given for the BES Executive Members Report was in relation to the Coronavirus Act 2020 (passed on 25th March 2020 and due to expire at the end of 2 years from 25th March, but there is power to extend it under s90) and the Health Protection (Coronavirus Restrictions) (England) Regulations 2020. The current relevant Regulation is the Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020 which were amended by the “Steps Regulations” in so far as they are extended only up to the end of 18th July 2021 (and which also amended the Health Protection (Coronavirus, Restrictions) (Local Authority Enforcement Powers and Amendment) (England) Regulations 2020 to the same date)
 - On 15 June 2021, the Health Protection (Coronavirus, Restrictions) (Steps and Other Provisions) (England) (Amendment) (No 2) Regulations 2021 (SI 2021/705) were made and come into force on 20 June 2021. They primarily amend the Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021 (SI 2021/364), which implemented the government's roadmap out of lockdown for England, to reflect the four week delay in moving

England into Step 4. The Steps Regulations will expire and cease to have effect from the end of 18th July 2021, although as you will be aware the Regulations can be reviewed at short notice and extended to continue with the restrictions if all the criteria in the roadmap has not been met

- Regarding working and travelling in a vehicle: Briefly, under the current restrictions, gatherings indoors are limited to six people, and any gathering above six people is covered by an exemption for the purposes of work. When meeting others for work the government guidance states that when working, you should remain 2 metres from anyone you do not live with or at least 1m with additional mitigations. When travelling in a vehicle, the guidance remains the same for protecting yourself and others you are sharing a car with
- In relation to the Highways Act 1980: just to recap the s41 duty to maintain the highway is absolute. The test for the standard of maintenance is an objective one so that the highway is maintained in such a state of repair it is reasonably passable for the ordinary traffic of the neighbourhood without danger caused by its physical condition
- The s58 special defence is that the Highway Authority had taken such care 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. This is not an absolute duty as the obligation is to act “reasonably”. On a practical basis, in seeking to establish a defence the burden of proof is on the Highway Authority to show that it has carried out inspections and dealt with defects, and took such care as in all the circumstances was reasonably required to secure that the highway is not dangerous. Only if the policies and procedures in place were considered to have been carried out properly could the Highway Authority seek to establish on the balance of probabilities that it had taken such care as was reasonably required to secure that the highway was not dangerous in order to rely on the s58 defence
- To conclude: In making amendments to policies and procedures, decisions which are based on for example the distribution of available workforce and/or resulting in changes to the nature of inspections during restrictions (or indeed at any other time) may be justifiable on a risk based approach, after a risk analysis has been undertaken and recorded

4.5 From an Insurance & Risk Management (IRM) Perspective: in the report of 18 December 2020 it appeared single crewed inspections did appear to be the norm across most local authorities and it was confirmed that inspecting in both directions did assist with any defence. What NYCC was currently doing was not felt to be ‘out of kilter’ to other local authorities. A further (verbal) update will be provided at the meeting of 23 July 2021 on this, however recent discussion with IRM at a Highways & Transportation Heads of Service meeting did not indicate any notable increase in third party claims arising from the current method of single-crewed inspections.

4.6 In terms of ADEPT (Association of Directors of Economy, Planning & Transport) Engineering Board, NYCC’s Assistant Director H&T confirmed in the October 2020 meeting of that group, the vast majority of authorities were still undertaking single crewed inspections and weren’t currently planning any change. Since that time, the tiered system had changed to reflect the recent lockdown arrangements as COVID infection rates had risen both nationally and locally and then during 2021, the various stages of lockdown easing were enacted resulting in a variety of approaches. Most recently (July 2021), feedback from ADEPT members is that the approach is currently varied with:

- Some members retaining single crewed inspections ‘for now’
- Some members having moved permanently to single crewed inspections
- Some members having reverted to double crewed inspections

4.7 From a Health & Safety perspective, the following feedback was received:

- Government guidelines on sharing workplace transport continue to remain the same at present i.e. avoid multiple occupancy vehicles where safe to do so and prevent vehicles being shared if possible. I advise that we continue with single crewed inspections for the present with an aim to return to two person inspections at the next stage of the roadmap subject to government guidelines removing the above requirements.
- Across the County we are again seeing a rise in positive cases of the Covid19 virus, the new Delta variant appears more transmissible than previous variants and although those who have been fully vaccinated are at less risk of contracting the virus and are likely to have lesser symptoms we still need to remain cautious. It is therefore advised when we return to two person inspections we continue to promote Covid-secure measures i.e. awareness of symptoms, hand / vehicle sanitising, ventilation of vehicles. We introduce fixed pairing of staff where possible and advise staff to wear face coverings unless exempt or for example drivers who are spectacle wearers were wearing a face covering may cause a hazard to visibility.

4.8 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 confirmed NYH were still following national guidance to observe the 2m distancing as much as possible, however this would be subject to review after 19 July 2021 if ‘Freedom Day’ happened.

4.9 HR feedback: is that the approach is still very much service led, with services needing to make sure the appropriate risk assessments are in place. HR acknowledge the H&S comment that numbers are on the increase with the Delta variant and therefore, when we return to double crewed inspections, all appropriate steps are taken to ensure employee safety and minimise any risk of spread. A further comment from HR was that whilst single crewed inspections are continuing and even when there is a return to two person inspections, there is a need to ensure that employee health and wellbeing was supported, and there is a route for all employees to raise any clarifications, or concerns, as things progress. HR did comment that they anticipated such measures would already be in place through normal supervision arrangements.

4.10 Public Health colleagues commented that they were in agreement with comments from HR and Health & Safety and offered the following additional narrative:

- Currently as the guidance, stands avoiding multi-person crews is preferred, however when we get to Stage 4 of the roadmap it is likely these conditions will be reviewed. What is becoming increasingly clear is that at Stage 4 we are actually going to be at much higher levels of community transmission than we have been under Stage 2/3, so keeping as many COVID-secure measures as possible will be key (e.g. ventilation etc. as others have mentioned below). Staff vaccination will also help, as this has had clear benefits in preventing people both catching and transmitting the virus
- If/when 2+ person crews are used, there will need to be recognition that whole crew will need to isolate as close contacts if a case is identified – there should

be some contingency in risk assessments to cover for this. Trying to keep people paired up with the same person(s) each time will minimise the risk of losing more than one crew

- We are likely to see fluctuating case numbers across the rest of the year, so if we were to delay reintroducing double crews until we are in a better position we are probably looking at Spring realistically. On that basis moving to an approach where you use double crews but with risk mitigation in place may be preferred when we hit Stage 4

4.11 UNISON were again engaged with; having taken soundings from members who work in this area their view is:

- In respect of changes to the working day to take advantage of longer daylight hours, we think this makes perfect sense. As you have confirmed any changes would be discussed between managers and staff, with changes being agreed on an ad-hoc basis to suit the needs of the service and the staff affected.
- In respect of single-crew working for inspections, our view is that we should return to double-crew operation as soon as possible. Our view is that this should happen when the government moves to the next stage of its 'roadmap' (likely to be 19 July now). Obviously, we would encourage the risk assessment to be updated, and even though most legal restrictions will have been lifted, we would want to see acknowledgement in the risk assessment of continuing to exercise good hygiene, awareness of symptoms, etc. Interestingly, the whole Covid episode has prompted us all to reflect on where people are working in close proximity to other colleagues and we would hope the 'new normal' for all society includes a greater awareness of all viruses and respiratory illnesses such as colds and flu at work

4.12 Taking into account all of the points listed above, there is a balance to be struck. Regarding a return to a more BAU approach, 19 July clearly offers such an opportunity. There is risk mitigation suggested by colleagues that could be put in place such as the wearing of face masks, ventilating vehicles and 'buddying up' / same pairings in order to reduce the risk of transmission or loss of personnel in the case of positive tests.

4.13 However, those mitigations then need to be considered against the potential impact on service delivery. Where NYH drivers are concerned, it may not always be possible to assign the same driver to NYCC; additionally, on non-driving days the NYH employee will be working with other NYH employees and therefore not in the same 'bubble'. Similarly, the NYCC Highway Officer (HO) undertaking inspections will also vary. Whilst it might be 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.

4.14 One further consideration is the ability to retain a wider degree of resilience and business continuity. Having personnel double-crewed means twice the impact in terms of absences if positive tests result and the second person needs to isolate or also contracts Covid-19 from the first. The impacts of this would be particularly significant until isolation rules are relaxed (currently scheduled to be 16 August) and given the greater transmissibility of the Delta variant plus the current substantial rise in infections there is the potential for a notable impact on delivery of subsequent inspections and other task that fall within the HOs' remit.

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 No financial impact

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).

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 need for a climate change impact assessment.

9.0 Recommendations

- 9.1 It is recommended that the Corporate Director BES in consultation with County Councillor Don Mackenzie, the Executive Member for Access agree:
- i. The recommendations in para 9.1 (i-iii) of the report of 18 December 2020 listed in Para 4.4 (i-iii) above remain in place
 - ii. That ongoing monitoring of the situation is undertaken over the coming months and a further review concluded in order that an update position and recommendations can be reported to your meeting of 22 October 2021 (unless deemed necessary to be undertaken sooner). This would enable an informed decision to be taken at a time where winter service duties are also required of Highway Officers and the timing of this next review also be coincidental with the end of British Summer time.

BARRIE MASON
Assistant Director
Highways and Transportation

Author of Report: Nigel Smith

Background Documents:

Reports to Executive Members 7 May 2020 and 18 December 2020

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 <u>Equality rep</u> 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 or on any of the protected characteristics.		
Signed (Assistant Director or equivalent)	Barrie Mason		
Date	12 July 2021		