



## **CABINET – 16 DECEMBER 2022**

### **LEICESTERSHIRE HIGHWAY DESIGN GUIDE REFRESH - APPROVAL TO UNDERTAKE ENGAGEMENT**

#### **REPORT OF THE DIRECTOR OF ENVIRONMENT AND TRANSPORT**

### **PART A**

#### **Purpose of the Report**

1. The purpose of this report is to advise the Cabinet of the work to undertake a full refresh of the Leicestershire Highway Design Guide (LHDG) and to seek approval to undertake an engagement exercise on matters including the overarching policy and principles currently under development. The draft Leicestershire Highway Design Guide Principles are appended to this report.

#### **Recommendations**

2. It is recommended that the Cabinet:
  - (a) Notes the key influencing factors on the development of the new Leicestershire Highway Design Guide (LHDG) as set out in Part B of this report, with particular reference to matters that need to be addressed in respect of the potential for increased maintenance liabilities on the Authority;
  - (b) Notes the early work undertaken to date as part of the full refresh of the LHDG, particularly in respect of commuted sums and existing LHDG principles and policies;
  - (c) Agrees that engagement exercise be undertaken on the Draft Leicestershire Highway Design Guide Principles and any other policy, technical and procedural matters necessary for the development of a new LHDG.

#### **Reasons for Recommendation**

3. Although the LHDG has undergone a recent light update (which made no material changes to the Authority's overall approach to dealing with the design and adoption of new developments), the content is essentially over 15 years old and needs a substantial refresh to ensure that it reflects the latest national policies, standards, regulations and guidance, and the Council's priorities, as well as a much changed financial position.

4. The additional burdens placed on the Council's already stretched maintenance budgets through the creation of new highway assets as part of development must be effectively managed and mitigated; the current design guide is no longer sufficiently robust and up to date in this respect.
5. Engagement with stakeholders on the policy and principles to be applied in future, considerations such as commuted sums and future adoption of highway assets, and other technical and procedural matters will help to inform the development of the content of the new LHDG.

### **Timetable for Decisions (including Scrutiny)**

6. Formal engagement activities will begin in January 2023, subject to the Cabinet's approval.
7. It is intended that the Highways and Transport Overview and Scrutiny Committee will receive a report as part of the engagement exercise at its meeting on 26 January 2023.
8. Following the engagement exercise further reports will be submitted to members regarding formal consultation on a draft LHDG. The planned timetable is set out in Part B of this report.

### **Policy Framework and Previous Decisions**

9. The Council's Strategic Plan (adopted in March 2022) outlines the Council's five key outcomes for 2022 to 2026. As a tool providing policies and guidance for development and the basis for the Council's highway observations as a statutory consultee in the planning process, the LHDG helps to support these outcomes, and particularly that of a "Strong Economy, Transport and Infrastructure".
10. The LHDG is also a key supporting document of the Local Transport Plan 3 2011-2026 (LTP3), helping to deliver the Plan's six priorities.
11. On 15 May 2019, the County Council declared a Climate Emergency, with a commitment to achieve carbon net zero by 2030 for its own emissions and 2050 for Leicestershire emissions. The Council's Environment Strategy sets out how it will reduce the environmental impacts of travel and transport and a Net Zero Strategy is in the final phase of development.
12. The outcome of this work will help to inform the development of the next Local Transport Plan and its associated programmes. Through provision of guidance on the development of active travel options, the LHDG supports this ambition. The LHDG project will undertake a Strategic Environmental Assessment of the LHDG to evaluate opportunities to integrate environmental and net zero carbon objectives.

13. In line with new national guidance, the Council adopted its Cycling and Walking Strategy in 2021, which presents a vision “for Leicestershire to become a county where walking and cycling are safe, accessible and obvious choices for short journeys and a natural part of longer journeys, helping to deliver healthier, greener communities.” The LHDG supports this ambition through provision of guidance on the design of new development that supports active travel.
14. The LHDG should also consider how to manage the influence of national policies and strategies, as outlined in paragraphs 28-40 of this report.

### **Resource Implications**

15. The immediate work involved in the LHDG refresh is considerable and will require collaborative effort from across the Environment and Transport Department as well as the wider Authority. The internal work is being funded from the Highways and Transport Programmes approved by the Cabinet in March 2022. Limited consultant support will be required to deliver specialist elements of the project such as a Strategic Environmental Assessment.
16. The highway maintenance budget is under huge pressure. At a time when the number of highway assets requiring maintenance is increasing and placing an additional burden on budgets, there has been a real term, year on year reduction in funding for 12 of the past 13 years, when inflation is accounted for.
17. Leicestershire’s population is projected to rise by 19% between 2021 and 2043. This population increase will require growth in housing and associated highway infrastructure to support this. At the same time, the new National Planning Policy Framework (NPPF) and National Design Guidance emphasise that development should create “beautiful places” where street trees should be a prominent feature. These factors have the potential to worsen the already significant pressures on maintenance budgets, putting into question the future affordability to the Authority of maintaining ever more highway assets.
18. The highway maintenance budget is supplemented through developer contributions, the details of which are set out within the LHDG’s commuted sums policy. It is considered that current rates charged within LHDG do not reflect levels of inflation or changes in the national context. The LHDG refresh project will review the current commuted sums schedule.
19. The Director of the Corporate Resources has been consulted on the content of this report.

### **Legal Implications**

20. The LHDG supports the Council’s responsibilities as Local Highway Authority (LHA). There are matters that will require consideration by the Council’s Legal Services in the development of the LHDG refresh, including issues of liability, risk management and regarding processes such as legal agreements that form part of the LHDG.

21. The Director of Law and Governance has been consulted on the content of this report.

**Circulation under the Local Issues Alert Procedure**

22. This report will be circulated to all members.

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## **PART B**

### **Background**

23. The Leicestershire Highway Design Guide (LHDG) provides guidance regarding highways and transportation infrastructure for new developments in areas for which Leicestershire County Council is the Local Highway Authority (LHA). The principal intention of having the LHDG is to have a consistent approach to development across Leicestershire.
24. The LHDG is also the basis for the Council's highway observations on planning applications as a statutory consultee in the planning process.
25. The Council was previously a member of the 6Cs Highway Design Guide Board (a collaboration of six LHAs including: Leicestershire County Council, Leicester City Council, Nottinghamshire County Council, Nottingham City Council, Derbyshire County Council and Derby City Council). In 2018, the County Council withdrew from the 6Cs Highway Design Guide Board, the documentation was rebranded as the LHDG, and a project was initiated for its review.
26. It was recognised in 2018 that, whilst a full refresh was needed, the LDHG required immediate amendment to reflect a number of changes since its creation and to ensure that references to legislation, for example, were up to date. Pending the outcome of the full refresh an interim LHDG was produced - this comprises the core Parts 1-6 and a suite of appendices and companion documents. The documents cover a range of aspects relating to highway approvals from guidance for highway design and construction (including trees and landscaping) to information about applying for a Section 278 Agreement (to enable third parties to work within the public highway) and how to manage road safety in relation to new development.
27. The full refresh of the LHDG is now underway. This is a significant piece of work that will look at all aspects of the LHDG and enable the assessment of changes to national and local policy and guidance, including the National Planning Policy Framework (NPPF) in 2021, and decisions about how they might be integrated within the new LHDG.

### **Key Factors Influencing the LHDG Refresh**

28. Changes to the NPPF and new national guidance such as the Local Transport Note 1/20 and the National Design Guide have made reviewing the LHDG even more pressing.
29. The NPPF now necessitates that all planning authorities create design guides or codes consistent with the National Design Guide and National Model Design Code, updated in 2021 and that they reflect an aspiration for places to be "beautiful, healthy, greener, enduring and successful".

30. A new clause in the NPPF states that ‘planning policies and decisions should ensure that new streets are tree-lined, that opportunities are taken to incorporate trees elsewhere in developments (such as parks and community orchards)’. It also says that existing trees should be maintained wherever possible and that planners should ensure measures are in place for the long-term maintenance of newly planted trees.
31. In July 2020 the Government published Local Transport Note (LTN) 1/20, which provides guidance for local authorities on designing high-quality, safe cycle infrastructure. It also released “Gear Change” a vision for cycling and walking in England.
32. In response to LTN 1/20, the Council adopted its Cycling and Walking Strategy in 2021, setting out a vision “for Leicestershire to become a county where walking and cycling are safe, accessible and obvious choices for short journeys and a natural part of longer journeys, helping to deliver healthier, greener communities.”
33. As part the LHDG Refresh project, officers will need to consider how to embed the Cycling and Walking Strategy within the new suite of documents in a way that manages financial risk to the Authority.
34. The current LHDG references and aligns itself with national guidance Manual for Streets, which “explains how to design, construct, adopt and maintain new and existing residential streets”. The guidance is currently under review and due to be issued in the near future; progress with this work will be monitored.
35. The Council is broadly supportive of these national principles, but their application within a new LHDG needs to be carefully considered if they are not to put undue pressure on an already stretched maintenance budget. These matters will also need to be considered alongside the Council’s own developing policies and guidance.
36. The additional financial burdens placed on the Authority through the creation of highway assets as part of new development must be effectively managed and mitigated; the nature and tone of the LHDG is no longer sufficiently robust in this respect.
37. Housing developers are also facing increased expectations for affordable housing, delivering net biodiversity gain, providing significantly enhanced cycling facilities in accordance with LTN1/20 and other measures arising from the new legislation. This is compounded by the increasing material and labour costs. It is also important to note that landowners could continue to have expectations regarding the financial value of their land, which may not reflect the increasing financial pressures faced by housing developers. All this could put pressure on scheme viability, i.e., whether there is a sufficiently strong commercial case for a developer to invest in a project, or indeed any prospect of making any financial return at all. In such case, the house building market could stall.

38. The Department is currently developing its Asset Risk Management Strategy, which will define how the Council will manage its highway assets in the future. This work will influence the expectations the Council places on developers within the LHDG in terms of the types of materials used in the construction of new adopted highway and the anticipated levels of maintenance.
39. Similarly, once adopted, the Council's emerging Road Safety Strategy will need to be considered in relation to the LHDG.
40. The Department is currently working on a Value of Trees project that considers how the re-establishment of trees on or adjacent to the highway can be encouraged. How this toolkit might be applied within a revised LHDG will be assessed as part of the refresh.

### **LHDG Project and Progress to Date**

41. The full refresh project is now underway, and it is estimated that the new LHDG will be published in late 2023/early 2024.
42. The Project vision is "To deliver a Leicestershire Highway Design Guide that:
  - a) Facilitates sustainable growth that meets the needs of the people of Leicestershire.
  - b) Provides an achievable base from which the Environment and Transport Department can facilitate the delivery of sustainable growth.
  - c) Provides clear, accessible and common guidance.
  - d) Considers the impacts of climate change
  - e) Considers the latest guidance, policy and regulations.
  - f) Allows for some flexibility and encourages new approaches.
  - g) Considers the current economic challenges."
43. The work will involve a holistic review of all guidance and processes contained within the LHDG, including guidance on:
  - a) Design layouts, materials and construction;
  - b) Third parties working within the existing highway (Section 278 Agreements);
  - c) The procedures for road adoption, including technical approvals and the application of Section 38 Agreements;
  - d) Council's Road Safety Audit requirements;
  - e) Traffic Regulation Orders.
44. Critical to the progress of the review will be consideration of the fundamental policies and principles that then underpin the LHDG, including:
  - a) The highway assets that the Council will agree to adopt in the future;
  - b) The application of commuted sums policy (the maintenance activities and materials for which costs are recovered under the commuted sums schedule);

- c) The Council's policy relating to road safety, inclusive access and new connections to the road network;
  - d) Consideration of LHDG's role in facilitating beautiful places and sustainability including carbon net zero.
45. Work to date has focused on the future policy and principles of the LHDG. A key issue is the future affordability to the Council of maintaining ever more highway assets arising from new developments and how the funding imbalance could be redressed.

### **Commuted Sums and Road Adoption**

46. In line with the principle set out in national guidance "Commuted Sums for Maintaining Infrastructure Assets", the LHA currently seeks commuted sums for the maintenance of new highway assets that are over and above the minimum required for its safe functioning (or "standard items"), such as:
- a) Soft landscaping in excess of the grass verge, including trees;
  - b) The use of materials that will result in replacement costs over and above the standard specification;
  - c) Street furniture not required for safety purposes;
  - d) Bridges and other structures.
47. Current policy states that the Council will adopt new highway where:
- a) Road layouts are designed to an adoptable standard defined by the LHA;
  - b) Residential roads serve more than five dwellings;
  - c) Industrial or commercial development is occupied by more than one company.
48. Options regarding the future of commuted sums and highway adoptions and work to define the underlying principles of the LHDG have been considered through workshops with the Departmental teams.
49. In relation to these specific policy aspects, initial appraisal work has been undertaken on the following Options:
- a) **Option 1** - Do nothing.
  - b) **Option 1(a)** - A full review of the rates charged and the items and maintenance activities included under the commuted sums schedule.
  - c) **Option 2** - The charging of commuted sums for maintenance of all adopted highway infrastructure, including those items considered as standard.
  - d) **Option 3** - The creation of a new standard palette of materials that the Council will consider for future adoption. (This is a significant and ongoing piece of work that will be undertaken outside of the Refresh project to prevent any delay to delivery of the new LHDG).



- e) **Option 3(a)** - The creation of a bespoke restricted “beautiful” palette of materials that could be charged at a lower rate than all other commuted sums.
  - f) **Options 4** - Reducing the scope of new highway to be adopted in the future.
50. Options 1, 3(a), and 4 were discounted for scenario testing as part of the scope of the current LHDG work as:
- a) Option 1 “Do nothing” does not tackle the critical budget issue and as a minimum reviewing the commuted sums schedule should be treated as business as usual.
  - b) Option 3(a) will not help to resolve the maintenance budget issue in the short-term and creates significant additional work that may substantially impact on the timescales of the project.
  - c) Option 4 would reduce the developer payments the Council receives through commuted sums and fees, which would negatively affect maintenance budgets. There is a higher risk of developers seeking highway to be adopted under S37 of the Highways Act. A successful challenge would result in a loss of recoverable costs for fees and commuted sums and additional legal work and costs defending the Authority’s position. The developer’s challenge would need to successfully argue a case that the development provided significant wider community benefit in order to “force” adoption. Additionally, it is not considered to be in the best interest of residents of new development.
51. Subject to ongoing option development, consideration is being given to the new assets Council adopts as LHA in the future. For example, some local authorities are no longer encouraging the automatic blanket provision of street lighting in new developments and where, nonetheless, it is to be provide, it will only be adopted where it meets their own particularly criteria for adoption.

### **LHDG Policy and Principles**

52. Part 1 of the LHDG, which considers the LHA’s policy regarding the delivery of highway as part of new development, is currently under review. Initial discussions have taken place regarding the principles that underpin the LHDG, which are predominantly covered within the existing Policy IN4.
53. Policy IN4 defines the LHA’s principles regarding issues such as:
- a) Road Safety;
  - b) Accessibility for highway users;
  - c) Sustainability;
  - d) Design quality and asset maintenance.

54. A set of draft principles have now been produced and is appended to this report. The Council remains committed to these important themes (with safety a paramount concern) but consideration will need to be given to the level of influence of the current maintenance affordability issue and changes to national policy and guidance.
55. These principles will need to be discussed with stakeholders as part of any engagement work. The detailed guidance that will support the principles is still to be defined and is subject to additional evaluation, such as the Strategic Environmental Assessment work currently under development.
56. A change of approach regarding Policy IN5 “Access to the Road Network” has been proposed for further investigation and discussion with stakeholders. Current policy regarding the creation of new accesses onto existing roads or the increased use of an existing access, primarily focuses on road classification; it has been suggested that future guidance uses a risk-based approach to assessment, with consideration of traffic volumes and highway purpose and usage (schools, bus routes etc.). It is expected that this approach would provide an effective way of maintaining safety and the free flow of traffic.

### **Engagement and Consultation**

57. Changes to the LHA’s position on commuted sums and road adoption and to current LHDG principles and policies are fundamental to shaping the content of the new LHDG. It is therefore important to seek the views of key stakeholders on the implications for them of such changes prior to preparing a draft of the new LHDG itself for formal consultation. To prepare a draft without this engagement work creates a risk of parties raising fundamental issues, which had they been known about earlier could have materially affected its content. At the very least, this could lead to considerable abortive work that could have been avoided. Thus, it is important that an early, separate engagement exercise should take place prior to public consultation.
58. Considerations regarding policy, principles and procedures in relation to the project are likely to be complex in the context of highway maintenance budget pressures, the aforementioned changes to national and local policy and guidance, the developing risk-based approach and the Council’s commitment to carbon Net Zero.
59. To help inform the development of the LHDG and ensure that stakeholders are “signed up” to a future published Guide and that the Council is giving full consideration to Equalities and Human Rights issues, substantial engagement work will be required in the lead up to formal consultation on the draft LHDG.
60. The engagement activities will primarily involve developers and their consultants as the main users of the LHDG. However, other key stakeholders with an interest such as equality groups, statutory consultees to the planning process and emergency services, will need to be involved during the development phase.

61. The LHDG is also a key point of reference for the LHA in providing its advice to Local Planning Authorities (the district councils) where development that has a highway aspect is progressed through the planning application process. There are clear interfaces between the LHDG and Local Plan documents that need to be considered during the development phase. Other local authority services might also take an interest in the development of a new LHDG such as waste collection or environmental health.
62. The planned engagement activities would include the establishment of reference and focus groups, meetings and the use of online consultation tools. Representation at local forums will also be considered (e.g., Local Access Forum or Leicestershire and Rutland Association of Local Councils).
63. As part of the engagement process the Environment and Transport Overview and Scrutiny Committee will consider a report on 26 January 2023.
64. Once a draft new LHDG has been prepared it is intended that a further report, detailing the outcome of the engagement work and seeking approval to consult will be presented to the Cabinet in late 2023.

#### **Proposed full LHDG refresh programme**

65. The timetable (Table 1) below is subject to the Cabinet approvals and ongoing refinement further to engagement work; in particular, whether the Authority is prepared to make some very significant policy changes (as highlighted above) and if so, the process by which those changes need to be made and endorsed has a major bearing on the early stages of the programme.

<b>Action</b>	<b>When</b>
Cabinet (Approval to Engage)	December 2022
Highways and Transport Scrutiny	January 2023
Stakeholder Engagement	February 2023 to Autumn 2023
Board Full Refresh sign off for presenting to the Cabinet	Autumn 2023
Cabinet (Outcomes of engagement work and approval to consult on the Draft LHDG)	Autumn 2023
Consultation on the Draft LHDG	Autumn/Winter 2023
Highways and Transport Overview and Scrutiny Committee – Draft LHDG consultation	Winter 2023
Cabinet LHDG final version approval	Winter 2023
LHDG published	Late 2023/early 2024

Table 1 - outline LHDG programme

### **Equality and Human Rights Implications**

66. The Equality Act 2010 requires the Authority to consider the need to eliminate discrimination and to promote equality of opportunity between different protected groups.
67. The current LHDG guidance has been developed with the intention of facilitating developments that are “accessible to all people..., including those with sensory and mobility impairments.” Throughout the course of the Refresh project, impacts on protected characteristic groups will continue to be assessed.
68. An EHRIA and Human Rights initial screening exercise has been undertaken and presented to the Departmental Equalities Group. At this stage, it is thought that the overall impact of the refreshed LHDG is likely to be neutral. However, as further detailed work and evidence gathering needs to be completed to confirm this, the overall impact is currently classed as unknown.
69. Age and Disability protected characteristic groups have the greatest potential to be impacted by the project. Tailored consultation will be undertaken to ensure the views of these groups are properly understood.
70. A full assessment will be undertaken following the development of the refreshed LHDG to ensure that any potential negative impacts have been identified and opportunities for positive outcomes considered.

### **Crime and Disorder Implications**

71. One of the key policy objectives highlighted in the current LHDG is consideration of road and personal safety and that developments:
  - a) are safe for all users,
  - b) promote road safety, and
  - c) reduce personal safety risks (whether real or imagined).
72. An appraisal of the crime and disorder implications of the refresh will be undertaken.

### **Environmental Implications**

73. The LHDG refresh is a significant project where there is potential for change of policy and guidance to have consequential impacts on the environment. The production of a Strategic Environmental Assessment (SEA) report and subsequent consultation will be required to understand the implications of the any changes to the LHDG.

### **Partnership Working and Associated Issues**

74. Discussions will need to be undertaken with district councils, primarily regarding their role as Local Planning Authorities and any concerns relating to the LHDG

and the refresh work. Additionally, it is the intention to engage with other highway authorities to understand their approach to highway design guidance and any recent experience of reviewing their guides within the context of more recent national policy and guidance.

### **Risk Assessment**

75. A project risk assessment has been established to identify potential issues that could impact on project delivery. In addition to this, a strategic risk assessment will be maintained and updated through the course of the project. This will assess the risks in relation to changes in policy and approach.
76. Financial risk relating to the project are presented in Part A “Resource Implications”. However, there are additional strategic risks that require consideration.
77. The Council’s Strategic Plan (adopted in March 2022) defines five key strategic outcomes for 2022 to 2026. As a key tool providing guidance for development and the basis for Council’s highway observations as statutory planning consultee, LHDG helps to support these outcomes, and particularly that of a “Strong Economy, Transport and Infrastructure”. There is a risk that certain changes to LHDG policy and guidance could adversely affect the attractiveness of Leicestershire from the perspective of investment in future development. This may particularly be the case where proposals relate to the way the Council recovers costs from developers through commuted sums or changes to its policy regarding adoption of new highway assets.
78. Additionally, there are reputational risks to such changes. Reducing the scope of new highway that the Council is prepared to adopt may be viewed unfavourably by residents who find themselves responsible for paying maintenance companies to manage highway assets. The impact on the standards of future highway maintenance would also need to be understood. Engagement will be undertaken with highway authorities to understand the impacts of differing approaches to these issues.
79. The Council has committed to becoming a carbon net zero authority by 2030. The Council’s Net Zero Action Plan states that the Leicestershire Highway Design Guide should be revised to incorporate environmental and net zero carbon objectives.
80. As stated in the proposed LHDG principles, consideration will be given to the carbon and wider environmental impacts of the revised guidance. However, there is a risk that more innovative designs and materials may be relatively untested in terms of safety, durability (itself a key aspect of sustainability) and performance. This will need to be carefully considered during assessment to ensure there is no increased liability or risk of legal challenge to the Council. Engagement with the Council’s Legal Service will be undertaken to ensure any risks relating to change of policy or approach are fully considered.

81. The LHDG will continue to encourage spaces that promote active travel as a key part of a sustainable future, and encourage the inclusion of green infrastructure (Sustainable Drainage Systems, tree planting etc.), in line with the NPPF's aspiration for creating beautiful places. However, considerations will need to be given to the principles of asset risk management (as highlighted in paragraph 80 above), the LHA's priorities regarding the key role of ensuring safe and functional highway and any potential additional burden on already limited resources.

### **Background Papers**

Commuted Sums for Maintaining Infrastructure Assets

<https://bit.ly/3H617KQ>

Leicestershire Highway Design Guide webpage

<https://bit.ly/3OZNnTF>

### **Appendix**

Draft Leicestershire Highway Design Guide Principles