

Leicestershire Highway Design Guide

LHDG Decision 15(a) – Adoption and Commuted Sums Options Report

1. Purpose

- 1.1. Further to the decision recorded at Project Board 15 regarding the assessment of commuted sums and road adoption options, the purpose of this report is to:
 - i. Ensure additional concerns raised by members of the LHDG steering group are considered as part of the initial appraisal work.
 - ii. Seek Project Board approval of the recommendations presented in Section 4 of this Report regarding a course of action for the options considered within the [scenario testing table](#).

2. Background

- 2.1. Leicestershire's population is projected to rise by 19% between 2021 and 2043. In its vision for the Leicestershire, LCC's Strategic Plan 2022-2026 defines five outcomes, including a Strong Economy, Transport and Infrastructure to help accommodate this additional population. A key aim of this outcome is that "*Leicestershire has the infrastructure for sustainable economic and housing growth*". LHDG can facilitate this aim by working positively with developers to deliver highway infrastructure that supports built development.
- 2.2. The latest National Planning Policy Framework and National Design Guidance have now been updated and published. The documents emphasise that development should create "beautiful places" where street trees should be a prominent feature.
- 2.3. The above 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.
- 2.4. It has been reported that the current highways maintenance funding, which contributes towards those elements of the adopted highway that would not normally qualify for commuted sums contributions, is insufficient for the council to satisfactorily maintain the existing adopted highway network. Except for the 2020/21 financial year (LCC received one off pothole and challenge fund money from DfT), when inflation is accounted for, there has been a real term, year on year reduction in funding for the past 13 years. The yearly shortfall during this time has varied between 12 and 35%. Between 2014/15 and 2021/22, the Department for Transport maintenance grant has also decreased by nearly £7m.
- 2.5. LCC's highway maintenance hierarchy is currently in development as part of the forthcoming Asset Management Strategy. The principle of a maintenance hierarchy is that it takes a risk-based approach to maintenance (so those roads that are lower risk are subject to less

frequent maintenance). If adopted, implementing this approach is expected to contribute to reducing the cost of maintenance across the highway network.

- 2.6. The Environment and Transport Department (the Department) needs to consider further ways to reduce expenditure or increase income through the LHDG Refresh Project (the Project).

3. Options Appraisal

Commuted Sums and Adoption Policy development

- 3.1. In the superseded LHDG Decision 15 Report, four options were presented for discussion at Project Board meeting 14. It was agreed that, for the purposes of further appraisal, the options should be modified as detailed below.
- 3.2. At Project Board 15 a decision was recorded that Options 1 and 3a are discounted for further assessment and that Options 1a, 2 and 4 undergo scenario testing. An initial assessment was undertaken using the [scenario testing table](#) bringing to light further matters for consideration.
- 3.3. Following Project Board 15, additional issues were raised by steering group members regarding the deliverability, timescales and resource requirements required for Option 4 “adopt less new highway”.
- 3.4. This Report updates and replaces LHDG Decision 15 Report taking the above matters into account.
- 3.5. The primary risks and benefits for each option are presented below; for a more comprehensive appraisal please see the scenario testing table. Key risks are also shown and have been rated according to Low, Medium or High likelihood.

Option 1: Do Nothing

Summary and scope

To retain the existing rates and items that attract commuted sums.

Benefits

- i. Timescales for the option have not been calculated but are potentially shorter than a programme that presumes that significant policy changes will be required and therefore extensive consultation and engagement and Member approvals.
- ii. Reduced workload is beneficial to business as usual.
- iii. Likely to be less contentious with stakeholders (and simpler consultation process) compared to an option where a review takes place and results in increased rates and a more extensive list of items.

Disadvantages

- i. No opportunity to tackle the issue of maintenance affordability.

Risks

- i. The funding gap for maintenance of future adopted highway infrastructure increases resulting in deterioration in asset condition and an impact on Strategic Plan's policy aspirations for a "Strong Economy, Transport and Infrastructure" **(H)**
- ii. Additional work will be required to find the savings needed to resolve the budgetary issue **(H)**

Option 1a: To review the rates charged and items and maintenance activities included under the current commuted sums policy.**Summary and scope**

The rates charged for commuted sums in the current LHDG list have not been reviewed in detail for some time. The proposed scope would be:

- A full review of the current commuted sums rates that will account for current inflationary issues and the related unprecedented changes in material costs.
- Review the scope of items currently contained in the commuted sums list.
- Consider options for charging for cyclical maintenance and inspections.

Benefits

- i. It is considered that this Option is likely to contribute to alleviating the shortfall in maintenance funding by bringing charges up to date. The review of rates is particularly pressing given the current inflationary pressures.
- ii. Deliverability and certainty of assessment is relatively high.

Disadvantages

- i. Depending on the extent of changes there could be objections from developers to any proposals that could impact profitability.
- ii. On its own, Option 1(a) does not address the matter of material durability and performance or sustainability.

Risk

- i. It is feasible that a review of rates could result in a reduction in charges for some items within the list. It is also possible that decisions may need to be taken to remove existing items from the list of commuted sums. **(L)**
- ii. Uncertainty over the ease with which materials/labour costs can be indexed/assessed accurately **(L)**

Option 2: Consider charging commuted sums for the future maintenance of standard highway infrastructure.

Summary and scope

The guidance document “Commuted Sums for Maintaining Infrastructure Assets” states that, “*the formula application (for funding support) by the Government accounts for a ‘simple’ road layout using ‘standard’ construction, for example:*

- *Carriageway, kerbs and associated footways*
- *Verge areas for service strips and visibility splays*
- *low level earthworks i.e. very minor lifting, or cutting,*
- *of carriageway into ground profile, and*
- *Street lighting, drainage and signing”*

The guidance also states that “*It is not appropriate to request commuted sums for ‘standard’ highway network, or street lighting, adoptions”.*

The scope of work is to consider inclusion of the maintenance of standard highway assets within the list of items that attract commuted sums.

Benefits

- i. Allows greater scope for attracting commuted sums for maintaining adopted highway, thereby easing pressures on budget.

Disadvantages

- i. It is likely to be a controversial approach, going against the principles set out in national guidance and adopted by most authorities. There is likely to be criticism from stakeholders of an approach that seeks to attract commuted sums for the maintenance of infrastructure where existing funding streams are available
- ii. Developers are likely to push back against a change in council policy that might incur increased expenditure and impact on the viability of their development. This could result in reduced levels of engagement with the developing LHDG.
- iii. Any impacts (perceived or otherwise) on viability resulting from applying this approach would conflict with the Council’s policies that aim to encourage growth in the County and local plan housing targets.

Risks

- i. This Option is likely to be contentious with developers and does not align with the general approach taken by most highway authorities who follow the principle of not charging for maintenance of “standard” highway infrastructure. This may influence decisions by developers as to whether they choose to continue to build in Leicestershire, which would in turn conflict with the Strategic Plan’s ambition for “Strong Economy, Transport and Infrastructure” **(M)**

- ii. Risk of developers using S37 to bypass the S38 agreement, leaving LCC with maintenance of adopted highway without commuted sums **(M)**
- iii. The LCC legal position in respect to Option 2 is currently unknown **(M)**
- iv. Impact on key stakeholder relationships could lead to reduced willingness to work collaboratively **(H)**

Option 3: Create an updated palette of standard materials

Summary and Scope

LCC has committed to carbon neutrality as an organisation by 2030 and as such the Department should consider opportunities for carbon reduction as part of the development of LHDG. A comprehensive single list of standard materials that would not attract commuted sums does not exist. The LHDG will undergo a Strategic Environmental Assessment as part of its development.

The scope would include:

- A review and assessment of current standard materials in order to create an up-to-date single list.
- Consideration of sustainable and low carbon materials

Benefits

- i. Enables the opportunity to influence durability and performance and consider sustainability (including low carbon) of standard materials in line with asset management policy, carbon and environmental strategies.
- ii. Delivering internally will help to develop (particularly in relation to carbon) and retain expertise within the department and ensure us of current knowledge of local issues

Disadvantages

- i. The resource involved in development of the new palette of materials is likely to be significant and could impact on timescales for delivery of the new LHDG.

Risks

- i. By creating a hard list, the Department might take more responsibility for materials used and therefore increased risk of future challenge or claims. **(M)**
- ii. Divergence of views on what should be included in the list, particularly in relation to sustainability aspects, delays the development of the Refreshed LHDG. **(H)**

Option 3(a): Create a ‘beautiful places’ acceptable palette**Summary and Scope**

There are increasing pressures in the form of national policy and guidance on the creation of beautiful places. LCC has also committed to carbon neutrality as an organisation by 2030 and as such the Department should consider opportunities for carbon reduction as part of the development of LHDG.

The scope would be to create a single comprehensive list of bespoke or ‘beautiful place’ materials (including low carbon) that would be charged at a lower rate than all other commuted sums.

Benefits

- i. Enables the opportunity to influence durability and performance and consider sustainability (including low carbon) of materials in line with asset management policy, carbon and environmental strategies.
- ii. Delivering internally will help to develop (particularly in relation to carbon) and retain expertise within the Department.

Disadvantages

- i. Reduces the costs recovered compared with the current commuted sums approach.
- ii. The resource involved in development of the new palette of materials is likely to be significant and would need to involve a wide range of stakeholders, including borough and district councils; this could impact on timescales for delivery of the new LHDG.
- iii. Creates additional future complexity for users and producers of the LHDG.
- iv. The difficulty of developing a definition of ‘beautiful’ that would apply across the county without consideration of local conditions and planning matters.

Risks

- i. By creating a hard list, the Department might take more responsibility for materials used and therefore increased risk of future challenge or claims. **(M)**
- ii. Divergence of views on what should be considered for inclusion within the palette and regarding sustainability matters (both internal and external stakeholders), delays the development of a Refreshed LHDG. **(H)**
- iii. Potential for using materials with relatively unknown qualities that are not as durable or do not performance as well. The palette would need to be assessed against robust criteria to ensure the Department was happy with its durability, safety etc... **(M)**

Option 4: Consider options to amend policy so that the County Council adopts less new highway in future.

Summary

Consider a change of policy that increases the number of dwellings that need to be served and/or introduces other criteria (such as roads that serve wider community benefit) before new highway is agreed for adoption.

Benefits

- i. In the longer term, the benefit to the Council would be a reduction in the number of roads adopted in the future and therefore maintainable at the Council's expense.

Disadvantages

- i. The approach would reduce levels of costs recovered from commuted sums and inspection fees, thereby increasing immediate pressures on maintenance budgets.
- ii. The resource required to assess the financial benefits of reduced maintenance across the network against loss of income through commuted sums/inspection fees is significant and would impact the LHDG delivery programme. It would require establishing a historic baseline regarding the money we've spent maintaining adopted highway and the costs recovered; it is uncertain whether sufficient information exists to create this baseline.
- iii. A reduction in scope is likely to be controversial, both politically and among key stakeholders, including future residents. Members are likely to raise concerns that frontagers' interests will no longer be protected. Residents may object if they feel that they have future financial and legal responsibilities for maintenance of highway infrastructure. This issue may impact on LCC's reputation and project delivery timescales.
- iv. A robust rationale would be required to defend this position against future challenges. The approach is not aligned with most other highway authorities.
- v. Increasing the number of dwellings that a road would need to serve before being considered for adoption could impact disproportionately on small housing scheme developers, who may consider challenging the approach.

Risk

- i. A reduced ability to control the quality, performance and safety of highway assets, potentially impacting on:
 - Future condition of assets and ambition for "Strong Economy, Transport and Infrastructure" and HAMP policy "maintaining the county's highway assets for the benefit of current and future stakeholders."
 - LTP s Goal for a resilient transport system
 - Ability to influence Asset Management aspirations **(H)**

- ii. Developers may try and bypass the process and compel an authority to maintain new highway at public expense by employing Section 37 of the Highway Act. The result of this may be that LCC must maintain the highway and all associated infrastructure at public expense and without the benefit of attracting commuted sums. **(H)**
- iii. The LCC legal position relating to this approach is currently unknown. Outside of London, most if not all highway authorities currently employ the six dwellings or more approach to new highway adoption. **(M)**

4. **Recommendation**

OPTIONS:

- 1 Do Nothing
- 1 (a) Review rates
- 2 Charge CS for all infrastructure
- 3 Update Standard palette
- 3 (a) Create a Beautiful palette
- 4 Adopt less

4.1. It is recommended that:

- a) Option 1 is discounted as it does not account for the substantial maintenance budget issues.
- b) Options 1a and 2 are taken forward for scenario testing.
- c) Scenario testing of Option 2 is based on the Department's current standard materials and maintenance work rates.
- d) Further to discussions with the Options Working Group on the 14th October, Option 3 is delivered in parallel but not within the scope of the LHDG Project. Option 3 has wider Departmental implications (including in-house design and delivery matters) than those solely related to the LHDG; it presents a significant on ongoing piece of work that has the potential to impact on LHDG delivery timescales, without the short to medium term financial benefits.
- e) Option 3(a) is discounted for the purposes of the current review due to the negative impact on commuted sums, the increased complexity of delivery and the impacts on timescales of the Project.
- f) Option 4 would reduce the developer payments LCC 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. The option is likely to be unfavourably viewed by Members and residents.

LHDG Decision 15(a) – Adoptions and Commuted Sums Policy Options Report

- g) A schedule of review is developed for the future assessment of commuted sum rates (as part of the Project) and standard materials palette.
- h) members and residents, presenting a significant risk to the likelihood of approval of the approach.

This page is intentionally left blank