



**HIGHWAYS AND TRANSPORT OVERVIEW AND SCRUTINY
COMMITTEE: 18 JANUARY 2024**

THIRD-PARTY FUNDED SCHEMES IN THE PUBLIC HIGHWAY

REPORT OF THE DIRECTOR OF ENVIRONMENT & TRANSPORT

Purpose of Report

1. The purpose of this report is to advise the Committee of the process for approval of third-party funded schemes within the public highway. This follows a request by the Scrutiny Commission made at its meeting in June 2023.
2. The report provides a general overview of the planning process and the Local Highway Authority's (LHA) remit as a statutory consultee to the planning process.
3. The report also explains the criteria the County Council applies in the consideration of highway schemes proposed and funded by third parties, including some recent examples as set out in paragraphs 23-28 of this report.

Policy Framework and Previous Decisions

4. In June 2011, the Cabinet agreed to delegate power to the Director of Environment and Transport, to:
 - a) Respond on behalf of the highway authority and as the waste disposal authority to any consultations by the local planning authority;
 - b) Enter into agreements with third parties for a contribution towards highway works by person deriving special benefit from them;
 - c) Approve, following consultation with the Cabinet Lead Member, details of routine minor transport schemes in the approved transportation Capital Programme, including associated Traffic Regulation Orders, provided the schemes have the support of the Local Member(s);
 - d) Enter, following consultation with the Cabinet Lead Member and subject to current approved budget provision, into arrangements for the introduction, continuation and/or variation of bus service contracts.

5. In September 2022, the Cabinet considered an update report on the Medium Term Financial Strategy (MTFS) and noted with concern the increasing pressures on the revenue budget and the Capital Programme and considered the elements required to manage the financial risk to the Council, including the impact of rising inflation.
6. In November 2022, the Cabinet considered a joint report of the Chief Executive and Director of Corporate Resources regarding the financial implications for the Council of delivering sustainable and inclusive growth and the approach and principles that it was proposed the Council would adopt to address and manage these risks.
7. At its meeting in June 2023 during consideration of the quarterly MTFS Monitoring update, the Scrutiny Commission questioned the reasons for delay in the Council, as the Highway Authority, agreeing road schemes which were developer led and whether this resulted in increased costs for developers and therefore risked them choosing to no longer build on the basis that, over time, schemes became unviable. The Scrutiny Commission was concerned that this could result in the County Council having to provide alternative highway solutions and so requested that a report outlining the process for approval of third-party funded schemes be presented to the Highway and Transport Overview and Scrutiny Committee.
8. On 19 December 2023, the proposed MTFS for 2024/25 to 2027/28 was approved by the Cabinet for consultation and this will be considered elsewhere on the agenda for this meeting.
9. The Council's Environment Strategy 2018 – 2030, outlines the Council's key environmental objectives, including carbon emissions and climate change, biodiversity, habitats and local environment, resource use and low/zero carbon energy, local economy and travel and transport.
10. The Council's Strategic Plan 2022-2026, provides a framework of outcomes, including Clean and Green and Strong Economy, Transport and Infrastructure.

Background

11. Third-party funded schemes in the public highway are split into three main categories:
 - a) Highway mitigation agreed under the planning process - funded by the developer of the site.
 - b) Small improvements schemes that could be funded by a parish council or similar.
 - c) Large improvement schemes – the only current example being the Enderby Relief Road (ERR).

Highway mitigation agreed under the planning process

12. The National Planning Policy Framework¹ (NPPF, 2023) sets out Government planning policies for England and how these are expected to be applied. This policy framework stipulates what the LHA can comment on within the Highway Development Management (HDM) process and also defines thresholds and tests that must be met in order to secure highway mitigation through the planning process.
13. When formulating the LHA's technical highway response for a new development, officers must assess the submitted evidence to determine if the proposed traffic generated can be safely and appropriately accommodated on the highway network and/or identify if mitigation is needed.
14. The LHA can only recommend to the Local Planning Authorities (LPAs) that development be refused on highway grounds if there would be an unacceptable impact on highway safety, or if the residual cumulative impacts on the road network would be 'severe'. It is worth noting that the LHA are only a Statutory Consultee in the planning process and have no ability to prevent development.
15. Mitigation proposals and highway schemes are developed in support of planning applications (following the transport assessment process) by the scheme promoter/developer to mitigate the agreed residual cumulative impact of development. The LHA would seek to secure such schemes by advising of the need for planning conditions or planning obligations in the highway advice submitted to the LPA. It is then for the LPA to consider and to decide whether to include these conditions/obligations as part of its determination of the planning application.
16. In accordance with national policy, any measures that the developer is required to implement to mitigate the impact of their development must be:
 - a) Necessary to make the development acceptable in planning terms;
 - b) Directly related to the development;
 - c) Fairly and reasonably related in scale and kind to the development.
17. The LHA's highway advice could be tested at an appeal by an independent Planning Inspector. It must, therefore, be able to demonstrate that its technical highway advice is supported by evidence, rather than perception or having been influenced by others.
18. Once a planning application is determined, the length of time it takes for highway mitigation to be delivered is dependent on when the developer is required to deliver the highway improvements, for example, prior to occupation or after 50 dwellings are complete, and how long the developer takes to submit the necessary information to achieve technical approval and to agree the terms of the required legal agreements. Depending on the complexity of the highway

¹ https://assets.publishing.service.gov.uk/media/64f991c99ee0f2000fb7c001/NPPF_Sept_23.pdf

improvements and the quality of the submission, it can take scheme promoters between six and nine months to demonstrate they can meet the technical standards/approvals required.

Consideration of Third-Party Funded Schemes by the Council as the LHA as part of the planning process

19. The County Council is prepared to accept offers of funding by a third-party promoter (organisation or individual) for the full cost of highways and transportation proposals (including physical works, promotional material, training schemes etc). However, any third-party funded scheme must align to the policy principles set out in the Appendix attached, as well as the requirements set out in this report.
20. The scheme or initiative (proposal) should reflect the strategic goals and outcomes that the County Council is seeking to deliver through its Strategic Plan 2022-26, Environment Strategy 2018 – 2030, and Local Transport Plan (LTP3 (emerging LTP4)), and there should be evidence to suggest that the proposal will provide genuine benefits for the surrounding area/target community.
21. The proposal will also need to offer value for money and be something that the County Council would have otherwise considered if it had the necessary funds available. The proposals should not, however, result in any risk and/or additional contingent liabilities beyond those already committed by the Council as part of its course of business unless those liabilities are fully funded by the third party.
22. The County Council must be fully satisfied that any physical measures proposed are appropriate for the site in question and that they do not adversely impact on the existing highway network, associated infrastructure and the surrounding area/community.

Common smaller improvement schemes

23. Typical examples of highway schemes, that may be put forward and funded by third parties outside of the statutory planning process or requested by local communities, include:
 - a) Traffic Calming - As available funding has reduced, the County Council has used an evidence-led appraisal to identify where the very limited budgets should be used. If a location is justified under the appraisal, third-party funding could be used to deliver schemes. However, if there is no actual speed or accident issue and the scheme results in a maintenance liability to the Highway Authority, then commuted sums will be required.
 - b) Bus Services - Where proposed bus services are part of a sustainable travel offer, there would be support for the implementation as long as there was no cost to the County Council.

- c) Cycling and Walking Improvements – Improvements that are contained in the Council's published Local Cycling and Walking Infrastructure Plans would be supported as long as there was no additional cost to the County Council.
- d) Pedestrian Crossings - For safety reasons, any crossings proposed on the public highway require appropriate assessment criteria to be met in accordance with adopted design guidance and industry best practise. This assessment criteria must be met regardless of the funding mechanism or origin of the scheme proposal. A further review of this position will be carried out during 2024.

Large Improvement Schemes

- 24. Very occasionally, developers may offer to deliver works on the public highway over and above those that can be considered necessary to mitigate the impact of their development. Any additional proposals to be delivered by the developer would need to be submitted as a separate planning application to the LPA as they are not directly associated with a planning application for commercial or residential development. It is then for the LPA to consider the application including whether to include any conditions/obligations as part of its determination of the planning application.
- 25. The proposals would still need to comply with relevant national and local policies and would need to demonstrate full compliance with adopted standards and that their delivery is in the public interest. Public interest, generally meaning the welfare and general well-being of society or the general public, could include in this context things like opportunities for active travel to improve health, support for economic growth of an area, provision and access to open spaces, reduced isolation, and environmental benefits. This is usually supported by some form of public consultation. However, if there were greater safety risks to the public when travelling or considerable disbenefits such as severe congestion then the scheme would not be considered as being in the public interest.
- 26. It would be expected that the developer will need to fully fund the development and delivery costs, and if the scheme were not considered necessary for the safe functioning of the public highway, then the developer will need to pay full commuted sums in accordance with the Leicestershire Highway Design Guide².
- 27. An example of when a developer may offer to deliver major works on the public highway over and above those that would be considered necessary to mitigate the impact of their development would be the ERR proposal. The ERR was submitted as a standalone planning application and not directly associated with a planning application for commercial or residential development and it was therefore not required to support/mitigate new development. The strategic impact of the ERR has yet to be assessed by the scheme promoter and,

² <https://resources.leicestershire.gov.uk/environment-and-planning/planning/leicestershire-highway-design-guide>

therefore, the impact of the proposal on the highway network is not yet known. The last meeting the LHA was asked to attend was in November 2021 and it will continue to work with the applicant team through the assessment process required prior to determination of the planning application.

28. As well as the highway impacts, there are a number of other considerations the LHA will need to make in relation to the ERR proposals when details are submitted by the applicant. This includes issues associated with environmental risks, design and maintenance specifications due to the ERR's proximity to an unlined landfill site. These types of issues can lead to significant liabilities if the ERR were to be adopted by the LHA in future. For example, the necessity to address and plan for relocation of existing leachate equipment associated with the landfill site, revised environmental permits, and the enhanced design and maintenance considerations associated with the delivery of road infrastructure in the immediate vicinity of the unlined landfill site.

Financial risks to the Council

29. In addition to the requirements already highlighted, there are also challenges around the impact on resources for the County Council both during development/delivery and long-term maintenance. The challenges of reducing budgets and the financial implications for the Council of delivering sustainable and inclusive growth has been the subject of a number of reports to the Cabinet over the last two years including those detailed in the proposed MTFS for 2024/25 to 2027/28 to be considered elsewhere on the agenda for this meeting.
30. The County Council's engagement with the development of third-party proposals, therefore, needs to be limited to the provision of advice on the possible options together with an estimate of the likely costs. All of these activities must be funded by the relevant third party (including Council officer time). The third-party promoter would then be required to meet the subsequent costs of developing and implementing the proposal, for example, in addition to construction costs, this would include the costs of detailed design, technical approval, legal agreements, consultation, and site supervision.
31. The proposal would also need to be deliverable without adversely affecting the priority of the other highways and transportation projects in the Council's Capital Programme or the ability of the County Council to implement its own programmed schemes and initiatives.
32. Dependent on the size and nature of any physical measures proposed, the third-party promoter may be required to provide a commuted sum towards the future maintenance costs of that proposal, the value of which would be at the discretion of the County Council as LHA.

Resource Implications

33. The agreed process limits the County Council's contribution to any third-party proposal to the provision of advice on the possible options together with an estimate of the likely costs, all of which must be funded by the relevant third

party (including Council officer time). The third-party promoter would then be required to meet the subsequent costs of developing and implementing the proposal, for example, in addition to construction costs, this would include the costs of detailed design, technical approval, legal agreements, consultation, and site supervision.

Conclusions

34. The County Council is willing to support offers of funding by a third-party promoter (organisation or individual) that cover the full cost of highways and transportation proposals (including physical works, promotional material, training schemes etc.) provided the requirements outlined in this report are met.

Background papers

Leicestershire County Council's Strategic Plan 2022-26

<https://www.leicestershire.gov.uk/about-the-council/council-plans/the-strategic-plan>

Leicestershire County Council's Local Transport Plan

<https://www.leicestershire.gov.uk/roads-and-travel/road-maintenance/local-transport-plan>

Leicestershire County Council's Local Cycling and Walking Infrastructure Plans

<https://www.leicestershire.gov.uk/roads-and-travel/cycling-and-walking/local-cycling-and-walking-infrastructure-plans-lcwips>

Provisional Revenue and Capital Outturn 2022/23, Report to the Scrutiny Commission, 12 June 2023

<https://democracy.leics.gov.uk/ieListDocuments.aspx?CId=137&MId=7101&Ver=4>
(item 11)

Circulation under the Local Issues Alert Procedure

35. None

Equality Implications

36. There are no equality implications arising from the content of this report.
37. Equality Impact Assessments will be carried out in relation to work undertaken on individual projects when appropriate.

Human Rights Implications

38. There are no human rights implications arising from the content of this report.
39. Human Rights Impact Assessments will be carried out in relation to work undertaken on individual projects when appropriate.

Environmental Implications

40. There are no environmental implications arising from the content of this report.
41. Environmental Impact Assessments will be carried out in relation to work undertaken on individual projects when appropriate.

Appendix

Third-Party Funded Schemes in the Public Highway – Policy Principles

Officers to Contact

Ann Carruthers
Director, Environment and Transport
Tel: (0116) 305 7000
Email: Ann.Carruthers@leics.gov.uk

Janna Walker
Assistant Director, Development and Growth
Tel: (0116) 305 0785
Email: Janna.Walker@leics.gov.uk