

## Definition of Traffic Conditions

Report of the Head of Planning, Transportation and Environment

***Please note that the following recommendations are subject to consideration and determination by the Cabinet (and confirmation under the provisions of the Council's Constitution) before taking effect.***

**Recommendation:** It is recommended that:

- (a) that the County Council be advised to take no further action on the Notice of Motion in respect of the definition of severe impact on the grounds that, while the factors determining the scale of impact can be set out, a prescriptive quantification of severity of impact would be difficult to defend at any appeal, and no basis for such a definition is included within the National Planning Policy Framework;**
- (b) with regard to the second part of the Motion, the Head of Planning, Transportation and Environment be asked to ensure that, when the Development Management Committee is considering responses to consultations from local planning authorities on the transportation aspects of planning applications, members are made aware of representations made directly to the County Council.**

### 1. Summary

This report considers (a) the adoption of a Devon wide definition of 'severe' in the context of paragraph 32 of the National Planning Policy Framework and, (b) that Development Management Committee be made aware of representations received.

### 2. Background/Introduction

At Cabinet on 14 January 2015 the following notice of motion, submitted to County Council and referred to Cabinet in accordance with Standing Order 8(2) for consideration and report back, was received:

*"that County Councillors develop a local Devon planning definition of the meaning of severe traffic conditions to assist Development Control Officers in making highways recommendations to local planning authorities and when planning applications are considered by the Development Management Committee all consultation responses received by the local planning authority to date be reported to Members of the Development Management Committee; it being noted that these proposed changes are designed to make planning recommendations by the County Council more sensitive to the communities of the County."*

Cabinet resolved that consideration of this matter be deferred pending a detailed report to a future meeting of Cabinet (Minute 286 (c) refers).

### 3. Proposal

(a) The National Planning Framework suggests in Section 4, paragraph 32 that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe. However, neither the National Planning Framework nor the National Planning Practice Guidance contain a definition of severe.

The reason for this is that it is up to the Highway Authority and Local Planning Authority to define 'severe' on a site specific basis. Congestion alone does not imply a severe impact as there are many junctions that experience congestion during periods of the day or at certain times of the year and this will continue to be the case in the future and is likely to get worse, particularly if the economy grows. In making a decision on the level of impact, the Highway Authority will take into account a number of issues such as the type of development, hierarchy of the road, levels of traffic and the extent of existing congestion (such as length of queue and period for which that queue exists). DCC will also take into account safety, accessibility by sustainable modes of travel, standard of the road network and mitigation measures provided, as well as timescales for delivering such mitigation.

In particular, the Highway Authority will take into account the status of the development in the Local Plan. If a site is allocated in the Local Plan by the Local Planning Authority and the plan has "weight" or is adopted then the presumption should be in favour of the development. *DfT Circular 02/2013 (For Trunk Roads)*, paragraph 18 states that "capacity enhancements and infrastructure required to deliver strategic growth should be identified at the Local Plan stage, which provides the best opportunity to consider development aspirations alongside the associated strategic infrastructure needs. Enhancements should not normally be considered as fresh proposals at the planning application stage." This entails, general highway impacts should have already been considered at the Local Plan stage, and at the planning application stage, considerations will normally be limited to the agreement of the details of the transport solution, including any necessary mitigation measures, and to ensuring that the transport impacts are included in the overall environmental assessment provided to the local planning authority, rather than the principle of the development itself in terms of highway impacts.

There have been a number of appeal cases since the publication of the NPPF. These have established a range of planning outcomes for highway impacts due to the complexity of the issues the Highway Authority needs to consider in its assessment, rather than establishing a solution that can be universally applied to all developments. To provide more prescriptive, numeric detail in relation to the issues described above would undoubtedly be tested at appeal and is likely to fail as it would not accord with national guidance and policy. Also, any numeric checklist would have to be aimed at a worst case scenario and could work against local interests in some circumstances. For instance, there are urban areas which have substantial queuing traffic for relatively long periods of the day and there is no desire to refuse planning applications for developments allocated in the Local Plan. Setting the benchmark for severe at these levels would mean that it would effectively nullify the opportunity to use it elsewhere in the County.

Furthermore, it should be noted that when considering whether an impact is 'severe', both Inspectors and advocates acting for appellants and local authorities, apply limited weight to local anecdote and are requiring evidence to support the claim of a severe impact. This can variously be stated as additional minutes of delay, queue length increase, percentages of either, or the introduction of delay or queuing where none previously exists.

By way of example, an additional 15 vehicles added to an existing long queue in an urban area in a peak hour may not be desirable but is unlikely to be classed as 'severe'. Whereas a new queue of 15 vehicles at a junction in a smaller settlement with lighter traffic flows and where emerging drivers may take risks as a consequence of the change might be considered 'severe'.

When either the District Council or Highway Authority is not able to provide appropriate evidence for a reason for refusal that they have advanced, appellants are in the position to be awarded a reimbursement of the costs incurred when challenging that reason. Historically, such costs were borne by the deciding body, the Local Planning Authority, however, Members should be aware that since 2012 the costs are awarded against the body that recommended the reason for refusal i.e. in this case DCC as Highway Authority. It is anticipated that such costs would be £15,000 per appeal but in some case will generally be substantially higher.

It is therefore recommended that no further action is taken on part (a) the Notice of Motion for the reasons set out above.

(b) When compiling consultation reports on the highway aspects of a planning application, Highways Development Management Officers take in to account the views of consultation responses as part of the technical and objective consideration of the development proposals. The Notice of Motion requests that those consultation responses are drawn directly to Members attention. It is therefore proposed that the Head of Planning, Transportation and Environment be asked to ensure that, when the Development Management Committee is considering responses to consultations from local planning authorities on the transportation aspects of planning applications, members are made aware of representations made directly to the County Council.

#### **4. Consultations/Representations/Technical Data**

None.

#### **5. Financial and Resource Considerations**

(a) The main financial consideration is the substantial risk of being awarded costs at planning appeal as set out above and potentially the employment of advocates to defend appeals. In terms of resources, the key aspect will be the use of officer time to prepare documents and proofs of evidence and appear at the appeal Hearing or Public Inquiry. There is a dichotomy that preparing such documents and defending them in the absence of evidence to support the assertion of a severe impact actually takes more time than where clear evidence is available.

#### **6. Sustainability and Equality Considerations**

Not applicable.

#### **7. Carbon and Economic Impact Considerations**

Neither Notice of Motion issue is considered to have any direct carbon impact. However, emissions and pollution are factors that are considered when assessing if the traffic impact of a development is severe and is an area where empirical evidence can be advanced.

In terms of economic impacts, there are sometimes development proposals which may increase congestion or queuing but as part of the overall planning balance, including the growth agenda, are considered acceptable. The adoption of a rigid description of severe

across Devon could effectively put the County Council in a position whereby it would be forced by such a policy to object to development proposals that it might otherwise have considered acceptable.

## **8. Legal Considerations**

There are no legal considerations identified arising from either aspect of the Notice of Motion.

## **9. Risk Management Considerations**

As outlined above with part (a) of the motion there is a risk of being awarded costs if a standard definition of severe is adhered to with little or no evidence to support it. There are no risks associated with aspect (b) of the Notice of Motion.

## **10. Public Health Impacts**

When considering development proposals, air quality is generally a matter considered in detail by Local Planning Authority in their consideration of planning proposals. However, where the traffic impacts are considered severe, in terms of air quality, appropriate liaison with the Local Planning Authority takes place.

## **11. Options/Alternatives**

In respect of (a) of the Notice of Motion, the current practice is to determine whether the traffic impact of a development proposal is severe on a case by case basis using all available evidence. The alternative would be to adopt a formulaic, prescriptive definition of 'severe', out of line with national policy and guidance, and be at risk of high costs being awarded to the County Council if planning application were to go to appeal. It is recommended the current practice of Highway Development Management Officers continues and no action is taken for the reasons set out in detail above.

It is recommended that the current practice of officers taking consultation responses in to account in making their recommendations is enhanced by the provision of consultation responses to Development Management Committee members as set out above.

## **12. Reason for Recommendation/Conclusion**

The continuation of identifying severe traffic impacts on a site by site and case by case basis is recommended as best serving the needs of the County Council and in compliance with the National Planning Policy Framework and Guidance.

The provision of consultation responses to Development Management Committee is recommended to enhance the information available to Members when determining the authority's transportation response to planning consultations.

Dave Black  
Head of Planning, Transportation and Environment

## **Electoral Divisions: All**

Cabinet Member for Economy, Growth and Cabinet Liaison for Exeter: Councillor Andrew Leadbetter

*Strategic Director, Place: Heather Barnes*

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Reference
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Nil

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