

Corporate, Infrastructure and Regulatory Services Scrutiny Committee  
25 June 2019

## **Maintenance of Vegetation and Drainage Adjacent to the Highway**

Report of the Chief Officer for Highways, Infrastructure Development and Waste

### **1. Introduction**

This report seeks to set out the responsibility of Devon County Council and landowners in respect of the cleaning of ditches and maintaining hedges adjacent to the highway, as requested at the last meeting of the Committee in March.

### **2. Background**

Devon County Council manages a policy and procedure for Siding and Watertabling operations that seek to deliver the following objectives:

- to prevent flooding, ponding and seepage; and keep the carriageway, cycleway and footway as free of water as possible
- to ensure surface water falling on the highway enters the drainage system or natural watercourse as quickly as possible and in a controlled manner
- to keep the underlying road structure as dry as possible
- to maintain the carriageway, cycleway or footway width
- to maintain the structural integrity of the verge or hedgebank
- to clear known trouble spots where drainage problems exist.

To achieve these objectives, the following actions are undertaken:

- bundle holes, grips and easements are cleaned annually
- ditches are cleaned on an “as needs” basis
- cleaning works are carried out at the carriageway, footway or cycleway edge on unkerbed sections prior to surface treatment works and on a more regular basis at known drainage trouble spots.
- ditch, bundle hole, grip and easement cleaning works are carried out prior to surface treatment works.

There are approximately 40,000 bundle holes, grips and easements in the verge, hedge or bank that permit the water to drain from the road. To work effectively these assets are often reliant on the associated ditches being clear and running.

Devon County Council has produced an advice leaflet summarising rights and responsibilities for rivers, streams, ditches and surface water – [Living with Water](#).

A factsheet titled Roads and farmers is produced by Devon County Council and is available at the following [Link: https://www.devon.gov.uk/roadsandtransport/factsheet/roads-and-farmers/](https://www.devon.gov.uk/roadsandtransport/factsheet/roads-and-farmers/)

Many hedges grow on the edge of the highway and mark its boundary with private property. It is the responsibility of the adjacent landowner or occupier to properly maintain them and any trees or other vegetation the hedge contains.

Landowners and occupiers are required by the Highways Act to trim any hedge next to the public highway where the growth is preventing the passage, or affecting the safety, of the highway user.

Information regarding overgrown vegetation is available on the DCC website at the following link: <https://www.devon.gov.uk/roadsandtransport/maintaining-roads/trees-and-vegetation/overgrown-vegetation/>

### **3. Responsibilities and Legal Considerations**

The Highway Authority has a prescriptive right to drain the highway to adjoining roadside ditches. Common Law imposes a duty on the owner of land adjoining a highway to maintain ditches that provide natural drainage for both the land and highway. In the majority of cases, the responsibility for ditch maintenance rests with the adjacent landowner.

Section 100 of the Highways Act 1980 gives the Highway Authority, for the purpose of draining or preventing surface water from flowing onto the highway, the power to:

- construct or lay, in the highway or land adjoining or lying near to the highway, such drains as they consider necessary
- erect barriers, to divert surface water into or through any existing drain
- scour, cleanse and keep open all drains situated in the highway or land adjoining or lying near to the highway.

Under the Flood and Water Management Act 2010, riparian owners maintain all the duties and responsibilities for watercourses in their land set out in the Land Drainage Act 1991.

A riparian owner is someone who has any watercourse within or adjacent to any boundary of their property. Where a watercourse is sited between two or more property boundaries each owner may be equally responsible. Riparian owners are responsible for maintaining the river bed and banks within their section of the watercourse. It is their duty to work towards minimising pollution and preventing obstruction to the water flow.

Sections 333 and 137 of the Highway Act, are permissive powers exercised at the discretion of the Highway Authority to remove obstructions from the highway and penalise responsible parties as appropriate. The sections can relate to a third party wilfully allowing the transfer of water from their land ownership on to the public highway, thus causing an obstruction to the free passage of the highway.

Where a hedge, tree or shrub overhangs a highway, road or footpath, so as to endanger or obstruct vehicles or pedestrians, Section 154 of the Highways Act enables DCC, as Highway Authority, to serve notice to the owner of the hedge, tree or shrub, or to the occupier of the land, to remove the obstruction within 14 days. Subject to any order made on appeal, if a person on whom a notice is served fails to comply with it within 14 days, DCC may carry out the work required by the notice and recover the expenses reasonably incurred by them.

### **4. Options/Alternatives**

Currently Devon County Council undertake the maintenance and cleansing of ditches, at cost to the authority, using the powers enabled by Section 100 of the Highways Act.

An alternative option would be to undertake a programme of communication and education with communities and key stakeholders. When and where necessary, undertake enforcement of land owners' duties and responsibilities imposed by common law and the

Highways Act. In the short term, this process, will provide a reduction of service, causing a potentially increased level of damage to the highway network. It will increase correspondence for officers within the Neighbourhood Team and potentially Finance and Legal Services, the quantum of this is difficult to estimate, but would likely to be significant, with increased staff required. The approach if not communicated effectively could be reputationally damaging. There is likely to be significant opposition from landowners, on the basis that the County Council has traditionally carried out this work. Longer term, the process of education should increase the levels of responsibility and self-help within communities. The support of local communities and councils would be critical to the success of this approach.

## **5. Financial Considerations**

Revenue funding for highway maintenance provides for the funding of reactive repairs and routine/cyclic works including ditch clearance and the maintenance of overgrowth.

The road maintenance revenue budget allocation for 2019-2020 has an allocation of just over £1million for ditching, ploughing, buddlehole and grip clearance works, on the non-salting network. A further £400,000 is allocated for the same works on the salting network.

## **6. Environmental Impact Considerations**

The ability to efficiently transport people and goods around the County underpins Devon's economy and has a direct impact on the quality of the environment.

When maintenance work is undertaken it is managed to ensure that the effect on the surrounding environment is kept to a minimum. When cleaning and other cyclic work is undertaken soil and other material is returned to roadside verges if appropriate. Any works are undertaken paying particular consideration of the following legislation and regulation:

- Environmental Protection Act 1990
- Environmental Permitting (England and Wales) Regulations 2016
- The Waste (England and Wales) Regulations 2011

## **7. Risk Management Considerations**

The Highway Inspection Safety Policy is applied where a speed limit of 40mph or above is in force and where highway users can reasonably travel at 40mph or above to minimise the risk of aquaplaning. It states that if after 24 hours from when rain has ceased, the road is impassable, or it is forcing vehicles, cyclists or pedestrians away from the nearside of the carriageway by more than 1m, or if vehicles have to cross the centreline marking the following will be undertaken:

1. Undertake risk assessment to determine response
2. Attempt to clear standing water if appropriate
3. If unable to clear water, use flood sign or guard area or close road to make safe
4. Investigate permanent solution.

Highway Inspection Safety Policy is applied where overgrown hedges and bushes adjacent to a carriageway are obstructing the highway user, or it is forcing vehicles, cyclist or pedestrians away from the nearside of the carriageway by more than 1 m, or vehicles have to cross the centreline marking, or if cyclists have to cross a cycle lane boundary marking. Adjacent to a footway, where a hedge or bush is overhanging in sight lines at locations where pedestrians/cyclists are encouraged to cross the carriageway, or it is overhanging the highway and obstructing the clear passage of pedestrians/cyclists forcing them off the

footway/cycleway, or it reduces the vertical clearance above the footway to less than 2.1m or 2.5m on a cycleway. Where this is the case, the following actions will be undertaken:

1. Cut back overgrowth or if required close road/footway to make safe
2. Initiate DCC noticing procedure for overgrown vegetation if appropriate.

## **8. Summary**

The alternative solution to ditch clearance could be pursued, but there would be additional costs involved, which would be difficult to currently quantify. These costs should however reduce over time. The alternative option would also require local community engagement, at a time when communities have already taken on other aspects of the highways service.

Meg Booth  
Chief Officer for Highways, Infrastructure Development and Waste

### **Electoral Divisions: All**

Cabinet Member for Highway Management: Councillor Stuart Hughes

Local Government Act 1972: List of Background Papers

Contact for enquiries: Tom Vaughan

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Background Paper	Date	File Reference
Nil		

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