

Agenda Item No. 4(e)

DERBYSHIRE COUNTY COUNCIL

**MEETING OF CABINET MEMBER – HIGHWAYS, TRANSPORT AND
INFRASTRUCTURE**

20 July 2017

Report of the Strategic Director – Economy, Transport and Communities

VIRGIN MEDIA FIBRE BROADBAND WORKS

(1) **Purpose of Report** To advise the Cabinet Member of the action being taken in relation to Virgin Media Fibre Broadband works in Derbyshire to ensure the integrity of the highways asset and to seek approval for serving an Improvement Notice.

(2) **Information and Analysis** Virgin Media (VM) is implementing a major roll out of fibre broadband within Derbyshire as part of its nationwide £3bn “Project Lightning” network expansion. It is a national programme likely to continue for the next couple of years.

VM is a Statutory Undertaker and, as such, has a statutory right to undertake works within the highway, including excavations and installation of ducting, cabling and cabinets. These works must be carried out in accordance with The New Roads and Street Works Act 1991 (NRSWA) and comply with associated codes of practice.

VM has already completed installation of fibre broadband in Long Eaton, and is currently undertaking works at Repton, Codnor, Ripley, and Chesterfield. The works are substantial in nature and involve narrow trenches along most footways in an area. Council officers are aware of other urban areas likely to be included but, due to commercial sensitivity, VM is yet to notify Derbyshire County Council formally of its future intentions.

For all Statutory Undertakers works, the Council’s NRSWA inspectors inspect a random sample of sites and record performance at various stages of the works:

- Category A – whilst in progress.
- Category B - 6 months after completion.
- Category C – 21 months after completion.

In accordance with NRSWA and the Code of Practice for Inspections, where more than 10% of these inspections fail, the Highway Authority should issue

an Improvement Notice. The failure rate for VM inspections in Quarter 1 – 2017-18 is 11.6%, while the overall failure rate during 2016-17 was 15.96%.

The inspection failures are attributed to trench reinstatements and include:

- Poor trench edges.
- Cracking.
- Sinking/depressions.
- Surface course failure.
- Service boxes not laid to level with adjacent reinstatement.

Between 1 April 2016 and 30 June 2017, NRSWA Inspectors have revisited defects on 126 occasions; financial penalties have been issued to VM for each inspection.

Any NRSWA Improvement Notice has to be served on VM within 28 days of the end of the previous quarter i.e. by 28 July 2017. A requirement of this Notice is that officers seek to agree an Improvement Plan with VM in the coming weeks.

Derbyshire County Council is one of a number of Local Highway Authorities facing similar issues with this project.

When undertaking footpath trenching works; VM is required to reinstate the footway in accordance with the Specification for the Reinstatement of Highways (SROH). This includes:

- Breaking the Surface – Section 3.1.1 Care must be taken when cutting surface layers to avoid undue damage to the running surface or to the bond between the surface course and binder course materials. Cutting by machine, e.g. road saw, coring equipment or planer is preferred. All loose materials shall be removed to ensure that the trench edge is in a safe and stable condition.
- Edge Regularity – Section 6.5.2.1 The edges of excavations may need to be trimmed, at binder course and/or surface course level, to meet the following requirements 1) All bound edges shall be essentially straight, smooth and vertical. Edge regularity requirements are intended to provide a shape that will not hinder the compaction of material adjacent to the reinstatement edge.

VM has recently raised concerns that on a large number of Derbyshire footways, they are experiencing difficulties finding a “clean edge” to trim back to, as the trench edge is crumbling following excavation. In such circumstance, the NRSWA Inspectors require trimming back of the trenches until such point is reached. In most cases this results in widening of the reinstatement at VM's cost. VM's current view is that to achieve compliance

with the requirements is making its current works programme unsustainable as a commercially viable programme. VM has approached the Council with a view to pursuing a local agreement, which seeks to depart from the SROH, and includes:

- Trimming back edges of trenches but not replacing the surrounding area, the costs of which would then have to be met by the County Council.
- Seeking re-assurance that defects will not be raised against the above issue.
- That VM will only guarantee the trench but not the adjacent surfaces.

VM's proposals would keep the works required by it to a minimum, and would also minimise its risk, liability and costs. However, this would leave the Council faced with taking on these risks and potentially significant future maintenance costs. In addition, it could be seen as setting a precedent and lead to similar requests from other Statutory Undertakers.

Derbyshire County Council's current position is that the footways are in a serviceable condition prior to VM works. When any Utility carries out works within adopted highway, they should be undertaken in accordance with NRSWA 1991 and the SROH. Such works should not place the highway in a worse condition than prior to them being carried out.

It is therefore not considered appropriate to enter into a local agreement and it is recommended that an Improvement Notice is issued to Virgin Media within the 28 day notice period.

(3) Financial Considerations County Council officers will continue to monitor quality and performance of the works. Under the conditions of NRSWA 1991, the costs of reinstatement will be met by VM and not the County Council.

(4) Legal Considerations As stated in the body of the report, undertakers are required, under the NRSWA 1991, to comply with the Code of Practice on Specification for Reinstatement of Highways. Failure to comply with the Code is evidence of failure to comply with the undertaker's duties in respect of reinstatement and may lead to prosecution.

(5) Social Value Considerations High speed broadband is essential for businesses to flourish and grow and for householders to complete everyday tasks much more easily. It therefore forms an important part of Derbyshire's infrastructure network. However, fibre optic cables are usually laid in footways, and the reinstatement of these assets to a serviceable standard is important to the safety and security of pedestrians across the County. It is therefore imperative that footways remain fit for purpose after the cabling works are completed.

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, environmental, health, property and transport considerations.

(6) **Key Decision** No.

(7) **Call-In** No.

(8) **Background Papers** Held on file within the Economy, Transport and Communities Department. Officer contact details Alan Tulloch, extension 38556.

(9) **OFFICER'S RECOMMENDATIONS** That the Cabinet Member:

9.1 Notes the action taken to protect the highways asset and to improve performance in relation to Virgin Media Fibre Broadband utility work.

9.2 Authorises the issue of an Improvement Notice in respect of Virgin Media Fibre Broadband utility works.

Mike Ashworth
Strategic Director – Economy, Transport and Communities