

## **Written evidence submitted by Shropshire Council (MIS0057)**

### **Summary:**

Highway authorities have a statutory duty under Section 59 of the New Roads and Street Works Act 1991 (NRSWA) to co-ordinate all street and road works on their networks and a Network Management Duty under Section 16 of the Traffic Management Act 2004 to manage roads effectively to keep traffic moving.

Shropshire Council was the first rural authority to adopt a permit scheme, as it was felt that operating a permit scheme is a more comprehensive way to manage works and gives more control over the activities taking place on our network. The West and Shires Permit Scheme, otherwise known as WaSP came into force in April 2014. The scheme was designed to be a 'common' or regional multi-authority scheme, which essentially provides a common framework for the permit rules across a wider geographical area. There are now 7 other authorities in the region that operate the WaSP scheme: Warwickshire, Coventry, Cheshire East, Worcestershire, Telford & Wrekin, Staffordshire and Stoke on Trent. We work closely with these authorities to adopt a consistent WaSP approach to the permit scheme and ensure that we operate in a fair and equitable way. Unfortunately, despite having more control over utility works via the permit scheme, poor planning communication, quality of workmanship and disregard for disruption caused has resulted in poor performance across all utilities. In fact, in 2023-2024 Shropshire Council prosecuted 5 different utility companies for various offences ranging from breach of permit conditions, working without a permit, Section 65 safety and Section 60 failure to co-operate. Unfortunately, despite this, little improvement has been seen and the same issues are still being encountered on a regular basis, and therefore Shropshire Council felt it imperative to respond to this call for evidence.

The public highway network underpins the national economy and is an integral part of aiding economic prosperity. Any activity on the public highway can cause disruption to that network and where excavation is undertaken it reduces the design life expectancy of the highway's infrastructure. This results in an often hidden economic impact on Authorities and members of the public, incurred by increased maintenance costs and delayed journeys. In addition, failure to comply with the Specification for the Reinstatement of Openings in Highways (SROH) adds further pressure on the design life and increased disruption to the network

in repeat visits to carry out remedial works. These also inevitably have a negative effect on the drive to reach a carbon neutral society as well as reputational damage and public perception at a time when public sector scrutiny is so heightened.

Shropshire Council agree with the view of JAG UK that there are areas where the government could go much further, such as:

- extending the guarantee period for works to fall in line with Scotland (6 years),
- reducing the timescale in which a reinstatement can be left in an interim state before being made permanent (currently 6 months),
- enhancing the rules around when immediate and emergency works apply and better defining works which fall into these categories which would allow less opportunity for these types of works to be mis-used,
- changing the timeframes for dealing with defective apparatus, and
- building stronger requirements around communication with road users and the public

**Responses to the call for Evidence Questions:**

**a) The effect of utility works on road and pavement surface quality and on maintenance needs and costs, and how local authorities can manage this.**

The table below details the make-up of Shropshire Council’s maintainable highway network.

<b>Road Type</b>	<b>Length (m)</b>	<b>% of Network</b>
A	452,105	9%
B	561,402	11%
C	1,765,160	34%
U	2,385,138	46%
F	52,678	1%
R	4,587	0.1%
<b>TOTAL</b>	<b>5,221,070</b>	

The table below shows the number of granted utility permits in financial years 2022-23, 2023-24 and 2024-25 (up to the end of December), the number of

reinstatement inspections carried out and the number of defects identified.  
 Note, this is all inspection types, not just sample inspections.

	<b>Number of Granted Utility Permits</b>	<b>Number of Reinstatement Inspections Carried out</b>	<b>% Reinstatement Inspections</b>	<b>Number of Defective Reinstatements</b>	<b>% Defect</b>
2022-23	19279	4111	21%	625	15%
2023-24	18111	5173	29%	680	13%
2024-25 (up to end Dec 24)	15083	4411	29%	569	13%

Utility companies submit thousands of permits on our network each year and we simply do not have the resource to inspect the reinstatements on all of them. The table shows that our rate of inspection on reinstatements has increased from 21% to 29% since the implementation of performance-based inspections (PBIs) in April 2023. It can also be seen that the % of defects identified has reduced from 15% to 13% since the commencement of PBIs, this indicates a small improvement in the standard of reinstatements. However, concern remains over the quality of the public highway, as less than a third of granted permits have actually had a reinstatement inspection on them. In reality there will be many more defective reinstatements on our highway network that may not be identified within the current 2 year guarantee period, these will inevitably then fall to the Highway Authority to put right, at public expense. Shropshire Council agree with the JAG UK view that the guarantee period in England should be increased to 6 years to align with that in Scotland. This would assist in prolonging the life of the highway beyond 2 years, which currently seems to be viewed as the target by utilities, rather than the absolute minimum expectation.

Using the above data, if we assume a 13% defect rate on all granted utility permits, this equates to 1,961 potential defects in financial year 2024 up to the end of December 2024. When looking at the total length of our highway network, 1961 potential defects represents 3 defects in every kilometer, which is a grim insight.

The below table shows the average monthly numbers of defects outstanding and rectified.

	<b>2022-2023</b>	<b>2023-2024</b>	<b>2024-2025 (up to end Dec 24)</b>
Average Monthly Outstanding defects	425	337	386
Average Monthly Defects Rectified	55	54	64

The average number of defects rectified each month does appear to have increased since the implementation of PBIs in April 2023, this is more likely a direct correlation to the increased number of defects rather than a more concerted effort being put into rectifying them. Unfortunately, no reliable data exists regarding the average length of time it takes for defects to be repaired, however initial analysis has indicated that approximately 40% of defects are not fixed within 2 cycles of the inspections process as required by the Code of Practice for Street Works Inspections. This is backed up by the fact that currently Shropshire Council have 347 outstanding defects, 208 (60%) of these are over 6 months old and 124 (36%) are over a year old. This clearly demonstrates the problems we are having getting the defects repaired in a reasonable timeframe. There is also an issue with the quality of remedial work, our analysis has shown that up to 10% of defects are not repaired to a satisfactory standard even after remedial works have taken place, resulting in further time spent on the inspection and escalation process and more disruption on the highway network when they return to repair it a second time.

The new inspection Code of Practice has effectively increased the burden on authorities both in terms of finance and resource for the following reasons:

- Increased officer time being spent on carrying out the escalation process, which as the numbers above show, often gets ignored as defects remain outstanding beyond the two cycles.
- The limit of two cycles with a maximum charge of £120 per cycle does not cover the costs incurred in administering the inspections process.
- Inferred reliance on the local authority taking over the reinstatement and carrying out the remedial works themselves and re-charging the utility, but no clarity around the implications of this, or recognition of the

severe constraints local authorities are working under. For many HAs this is simply not an option, and we are left with defects ongoing for months on end.

From the utilities there often seems to be a focus on either challenging the interpretation of the process or disputing the defect with spurious reasons rather than focusing on rectification. A lot of time is wasted on internal disputes rather than admitting overall ownership of the defect.

Shropshire Council agree with the JAG (UK) view that failure to respond to defect escalations needs a financial penalty applied to it. Where Shropshire Council differ from the JAG view is that we acknowledge defects can happen, but inaction from the utility to resolve the defect is less excusable. An excessive fee applied for each defect cycle would probably result in more challenges and not necessarily an improvement rectification timescales. A sufficient fee such as the £1000 suggested by JAG applied at escalation stage would in our opinion drive repair times to that prescribed in the code of practice. The previous inspection regime allowed for multiple revisits to ensure councils could legitimately charge for the revisit to check that the remedial work required to the defect had been completed, if this was reinstated with the £120 per visit we believe this would also act as sufficient deterrent to allow defects to remain unresolved.

In addition to defective reinstatements, utilities often fail to maintain their apparatus (eg manhole covers) to a good standard, this leads to frustration for councils and residents when faced with issues such as rocking frames and covers that remain unrectified for months on end. Section 81 of NRSWA needs to have timescales applied, to ensure that apparatus failures are responded to promptly. In Shropshire we currently have 113 section 81 defects, 43 (38%) of these are over 6 months and 22 (19%) are over a year old. Once the section 81 has been issued to the utility we are powerless and cannot charge to carry out monitoring inspections in order to satisfy our duty of care. Even when high risk Section 81s are reported, it is extremely rare that they are attended by the utility within the 2 hour time frame. Unfortunately, the process within Street Manager is also often mis-used by utilities, who update the section 81 record to say it has been fixed, when in reality it hasn't been. This leaves us with the

only option but to raise a new Section 81 which results in the data being manipulated to suggest that the S81 defects are not as old as in reality they are.

As a local authority we work to the standards within the Well Managed Highways Code of Practice which sets out the maintainable standard and response timescales that we must work to, however this is not adhered to by statutory undertakers, despite a recommendation within the Code of Practice for Street Works and Road Works. Therefore, S81 defects are often left for extensive periods of time with no action taken to resolve, or resolved under emergency permits when our records show that these were often reported months prior, and could have easily been planned, coordinated and communicated to the public rather than abusing the emergency permit process to enable them to carry out the work without any pre-planning.

**b) Whether local authorities have sufficient powers and resources to manage the effect of street works on congestion, travel disruption, pavement access and accessibility.**

The DfT issued an updated version of the Code of Practice for the Co-ordination of Street Works and Road Works in March 2023. This updated document fundamentally diminished local authorities' powers to manage the effects of street works by removing the requirement for works with active traffic management, but not involving excavation to have a mandatory permit application. Instead, these types of works are now only 'recommended' to be carried out under a permit. This is a backwards step in network management and undermines the ability of an authority to comply with its statutory duty under section 59 of NRSWA and Section 16 of the Traffic Management Act 2004. It is imperative that Highway Authorities are made aware of any activity with positive traffic control in order to fulfil our Statutory duty to manage the network, as we simply cannot effectively co-ordinate works if we do not know about them.

Another area in which authorities powers have been diminished is the fact that Section 66 of the New Roads and Street Works Act 1991 does not apply under permit schemes. This previously would have given us power to prosecute an undertaker if they were not carrying out works with such dispatch as reasonably practical, and would also allow a notice to be served on them to mitigate or discontinue the works if they have created an obstruction in a

street to a greater extent or for a longer period than is reasonably necessary. Permits have introduced the ability to revoke their permit, but not any power to prosecute.

The numbers of utility permits has been steadily increasing, however council resource has not increased to deal with these increased numbers. Increased permits also means increased numbers inspections. In addition, the Performance Based Inspection regime introduced in 2023 has allowed utilities with poor performance to have their sample inspections increased in 5% increments each quarter up to 100%. Whilst this is a good thing to drive improvements in performance, it has placed increased burden on HAs inspection Teams.

	<b>Number of Granted Utility Permits</b>	<b>Average per month</b>
2018-19	15036	1253
2019-20	13414	1117
2020-21	13669	1139
2021-22	16079	1339
2022-23	19279	1606
2023-24	18111	1509
2024-25 (up to end Dec 24)	15083	1675

Adherence to the Safety at Street Works and Road Works Code of Practice is another area that is of huge concern. Public safety is a key priority and forms part of our statutory section 59 duty, however utilities often seem to under value the importance of this. High risk live site defects are often not resolved within the 2 hour timescale, even when public safety is at risk. HAs can only charge a fee for a live site inspection if it forms part of the sample inspections process. The Code of Practice puts more onus on the local authority to make safe if the promoter fails to take action themselves within the necessary timescales. Subsequently we have seen a decline in site maintenance for works in progress. The ultimate sanction of prosecution under section 65 NRSWA is often not an option for many HAs due to wider resourcing, legal department

support/resource and financial constraints that most local authorities are currently under.

The table below provides some analysis of live site inspections over the last 4 years. Since the implementation of performance-based inspections in 2023, the number of live site inspections has increased, although still only a maximum of 20% of granted permits have had live site inspections on them, as it is simply impossible to inspect every set of works due to resourcing. Over a third of live site inspections have failed to comply with the Safety Code of Practice. This is a huge concern, bearing in mind that there are huge numbers of works that aren't inspected.

	Number of Granted Utility Permits	Number of Live Site Inspections Carried out	Live site inspections % of granted permits	Number Failed - High Risk	% High Risk	Number Failed - Low Risk	% Low Risk	Overall % Fail
2021-22	16079	1435	9%	231	16%	244	17%	33%
2022-23	19279	1421	7%	265	19%	251	18%	36%
2023-24	18111	3080	17%	467	15%	649	21%	36%
2024-25 (up to end Dec)	15083	3001	20%	483	16%	641	21%	37%

Using the above data, if we assume a 37% live site non compliance rate on all granted utility permits, this equates to 5,581 safety non compliances in financial year 2024 up to the end of December 2024.

Many of the live site non compliances attract complaints from members of the public. However, the new code of practice removed fee for third party inspections (i.e inspections resulting from complaints). This should be reinstated as HAs have to deal with a large number of complaints for utility works. This should be included as part of the nationally reported KPIs and this should be shared with their individual regulators.

- c) **The effectiveness of processes for notification of works and obtaining permits, including the classification of emergency works and opportunities for coordinated works, and what makes for a good working relationship between utility companies and highway authorities.**

Currently some poorly planned works are leading to the misuse of emergency and urgent works permits. This again causes authority's difficulty in fulfilling their obligations under section 59 of NRSWA. It is almost impossible to stop works once started, "unplanned" works popping up on the network leads to unavoidable congestion, this is extremely frustrating when issues (such as Section 81 defects or even minor leaks) have been known about for weeks or months in advance and could have easily been planned and communicated properly in order to reduce inconvenience and disruption to the public. No one objects to genuine urgent or emergency situations, for example when a customer is off supply, but this is abused and is used to negate road closure procedures and in extreme cases can be used to reduce the costs of obtaining the correct permissions. Councils have powers to grant early starts, but this must be combined with the correct and timely information to enable the request to be given fair consideration.

Very rarely are emergency/urgent works not known about in advance. There needs to be a middle ground whereby the promoter is required to liaise with the local authority in reasonable timescales without undermining its ability to attend as defined emergency/urgent works.

Burden of proof (section 52.3 NRSWA) needs to be reinstated into the Code of Practice and should apply to urgent works as well as emergency. If a HA asks proof of the emergency/urgent issue, the utility must respond, failure to do so should be its own offence under section 60 failure to co-operate. Current lack of legislation to support authorities in this situation is allowing utilities to undertake works in which ever manner they see fit as the onus is on the authorities to prove the offence without the tools to do so. It should be a mandatory requirement that evidence of the emergency/urgent issue is provided/attached to any immediate permit application within Street Manager.

On a largely rural network like Shropshire, any immediate works are likely to result in an immediate road closure. Rural diversion routes are often significant in length or require use of roads to a lesser standard that are prone to flooding or unsuitable for certain traffic categories. What the current legislation does not define clearly is the balance between the severity of risk and the impact caused by the works. For example, we have seen key routes closed without

notice for a long running 'trickle' as described by the utility themselves, which meets the immediate urgent definition, but in reality could have easily been planned to reduce disruption.

Good relationships would be better developed through more transparency and more upfront notification of works (eg well communicated works programmes). The change to the definition of Major works to no longer include works included on a programme has downgraded these to Standard works meaning that we often have no prior information before the permit application arrives. The requirement in the Code of Practice to hold quarterly co-ordination meetings should be reviewed - often little or no data is provided, and either there is no representation or attendees are unable to contribute effectively to the meeting due to lack of local knowledge or lack of their own works programme. The requirement to provide an excel spreadsheet is outdated, and shape files would be an more beneficial addition. Currently the onus is on the HA to present all the information at the co-ordination meeting, when it would be more prudent for the promoter to present their own annual programme with quarterly updates.

Use of conditions has become a contentious issue, whilst HAs are applying conditions to minimize disruption, recognize local concerns and often pre-empt likely complaints through better management of the works, promoters often see the use of conditions as unnecessary obstructions. The utility influence over what is considered the correct use of conditions seems to undermine not just the duties of the HA, but its reputation with the public.

**d) Whether fines are a sufficient deterrent to poor practice, whether other enforcement mechanisms would work better, and whether the inspections regime introduced in 2023 has improved the quality of reinstatement works.**

We welcome the recently announced increase in FPN levels. FPNs are totally avoidable, so utilities should put more effort into ensuring compliance, and would therefore benefit from not having to pay the associated fines. With public transport now a priority, timely and accurate data is key.

It would be prudent to review the offences for which an FPN applies, to improve the quality of data we hold, some specific examples of improvements are:

- Allowing an FPN to apply when permits aren't cancelled in a timely manner, these used to apply under noticing, but this power was taken away from us with permitting. The result is large numbers of 'zombie' permits, i.e. permits that have been granted, but no works carried out. It would also encourage better planning by the utilities if there was a penalty applicable if they don't carry out the works on the dates granted, and would save a huge amount of wasted time for network coordinators having to reassess permits that they have already granted previously.
- The prescribed information for Section 70 registrations of reinstatement should be reviewed. Currently, as long as the grid references are correct, the utility can provide totally inaccurate location description text, which is ridiculous as both fields need to be accurate.
- FPNs are often issued for inaccurate information (for example S70 registrations). The FPNs are accepted and paid, however the utility never corrects the information. So our Street Works registers are full of incorrect information. Our power to prosecute in this situation has gone because they have discharged their liability by accepting and paying the FPN. All we can do is ask them to update it, which never happens. This needs to be addressed so that there is an additional enforcement mechanism available for them to incur additional fines and force them to correct the information.

We also welcome the 7 day working changes and the ability to attract Section 74 charges for overrunning works at weekends. The prescribed period also needs to be reviewed to ensure charges can be applied for "one day" planned works, as well as ensuring that the prescribed period can also include weekends. We often see works planned for Sundays in highly traffic sensitive areas because that is the least disruptive day, but when these overrun into the Monday and Tuesday, currently they cannot incur overrun charges because the prescribed period does not include weekends, and so day 1 of the permit is classed as the Monday, even though they worked all day on the Sunday.

In addition, we find that utilities often attempt to deceive us to avoid Section 74 overrun charges by closing the permit and raising a new one for the same

works on a different date. This practice needs to be stopped as it is putting additional pressure on the coordinators to be alert to the issue but shows little regard for the disruption these works cause. It is creating additional work for both HAs and Utilities dealing with duplicated permits unnecessarily. Any agreed duration should be based on how long it takes to do the job without significant influence by individual contractual arrangements. Lane rental is not necessarily the solution in a rural area, however a comparison of durations would give an indication as to how fast works can be completed when cost of overall duration is a factor. Currently works durations are based on mutual acceptance however this is not driving efficiencies.

The data provided in question a) above was based on all reinstatement inspection types, not just sample inspections. When filtered to include only Sample Inspections the data is as follows:

	<b>Number of Granted Utility Permits</b>	<b>Number of Sample Reinstatement Inspections Carried out</b>	<b>% Sample Reinstatement Inspections</b>	<b>Number of Sample Defective Reinstatements</b>	<b>% Defect</b>
2022-23	19279	2679	14%	419	16%
2023-24	18111	2266	13%	227	10%
2024-25 (up to end Dec 24)	15083	2289	15%	206	9%

This does appear to show a slight improvement since the implementation of performance-based inspections, however does not include Routine and Third Party inspections, so is not providing the full picture. As mentioned before the performance-based inspection regime has flaws with the escalation process, this needs urgent review.

It is also worth noting that our rigorous coring programme has shown an increase in poor performance over the same time period, which tells us that those reinstatements that pass a visual inspection, often go on to fail core testing.

**e) Whether lane rental is a successful model, the potential merits of making it available in more areas, and what other tools or best practices could be more widely adopted.**

Shropshire is not currently a Lane Rental authority, our network is largely rural so our focus is on how behaviour can be changed by the better use of fees and charges and perhaps we need to review how the legislative framework can be better linked rather than just increase regulation. Permit fees provide that opportunity but the regulation and fee structure at the moment is not fit for purpose in delivering real change. We believe our incentives such as reduced permits fees for collaboration are sufficient.

The sad fact is some utilities spend more time trying to avoid paying fines and fees instead of investing in improvements to the quality of their works. Quality works need to be rewarded, this is the principle of the performance based inspection system, but the failure of the escalation process and system limitations in managing inspections needs to be urgently addressed. The industry needs to be encouraged to improve and innovate. Incentives will play a big part in achieving that, if fines are to be the mechanism for improvement, these should be substantially increased and targeted at the point of escalation as this is more likely to have a greater impact on overall performance.

All too often works are not planned for the convenience of the public but more to meet the contractual need of the utility the cheapest option is all too often seen as the only option but if you take the wider cost view perhaps that's not the case. Net Zero, disruption the price of failure are all key. An updated QUADRO analysis tool would help to calculate the cost of disruption and perhaps these costs could be levied into all enforcement fees and charges.

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