

## **HIGH PEAK BOROUGH COUNCIL**

**Individual Executive Decision for comment by 29 September 2022 (please send all comments to [democratic.services@highpeak.gov.uk](mailto:democratic.services@highpeak.gov.uk))**

**30 September 2022**

<b>TITLE:</b>	<b>Highway Gully Cleansing</b>
<b>EXECUTIVE COUNCILLOR:</b>	<b>Councillor Anthony McKeown – Leader of the Council</b>
<b>CONTACT OFFICER:</b>	<b>Nicola Kemp – Head of Service Commissioning</b>
<b>WARDS INVOLVED:</b>	<b>Non specific</b>

### **1. Reason for the Report**

- 1.1 To inform the Council Leader of an ongoing issue in relation to gully cleansing services performed by HPBC on behalf of Derbyshire County Council (DCC) under the terms of the DCC Amenity Agreement and to seek approval to pass back the responsibility for such to DCC.

### **2. Recommendation**

- 2.1 That the Council Leader notes:

- The gully cleansing service is provided by a sub contractor, a subcontractor failure earlier this year highlighted the limited availability of alternative sub contractors to ensure those gully cleansing duties which HPBC undertake on behalf of DCC; and
- The issues which providing a gully cleansing service to DCC creates for HPBC, including:
  - a. No control over cleansing frequency and no control over remedial work ;
  - b. Confusion for residents and councillors over service responsibilities and control;
  - c. Impact on officer and AES resources along with potential financial implications for HPBC for a function which is not a borough council's statutory service.

- 2.2 That the Council Leader approves the recommendation to return gully cleansing responsibilities back to DCC as soon as is reasonably practicable.

### 3. Executive Summary

- 3.1 DCC are the Highway Authority in Derbyshire, with the exception of the Derby City council area. Section 41(1) of the Highways Act 1980 (HA 1980) provides that a highway authority is under a duty to maintain those highways in the area for which it is responsible, which are highways "maintainable at the public's expense" (public highways). Section 329 of the HA 1980 defines "maintenance" as including repair.
- 3.2 The Highways Act 1980 gives DCC certain powers and rights in relation to flooding and drainage. Statutory provisions under Section 100 of the HA 1980 gives the Highway Authority, for the purpose of draining or preventing surface water from flowing onto the highway the power to:
- a) construct or lay, in the highway or land adjoining or lying near to the Highway, such drains as they consider necessary;
  - b) erect barriers, in the highway or in land adjoining or lying near to the Highway, to divert surface water into or through any existing drain;
  - c) scour, cleanse and keep open all drains situated in the highway or land adjoining or lying near to the highway.
- N.B. "Drain" includes a ditch, gutter, watercourse, soak-away, bridge, culvert, tunnel and pipe.
- 3.3 DCC are therefore responsible for the installation, operation and maintenance of highway drainage infrastructure, which falls within the adopted highway curtilage. Section 41 of the HA 1980 includes a duty to provide an adequate drainage system and keep the highway free from flooding.
- 3.4 For approximately ten years HPBC has been employed by DCC Highways to undertake a range of duties under a service level agreement, which is referred to as the DCC Amenity Agreement. The functions we provide include:
- provision of footpath gritting in accordance with a priority list as supplied by DCC,
  - weed spraying of stipulated highway footpaths,
  - flail mowing of rural highway verges and visibility splays, mowing of urban highway verges,
  - cyclical and ad hoc cleansing/emptying of all highway gullies in the High Peak area to a frequency dictated by DCC and
  - inspection and maintenance of the highway tree network.
- 3.5 AES, our service provider for all operational service relating to street cleansing functions, employ a subcontractor to perform cyclical and ad hoc gully cleansing duties required under the DCC Amenity Agreement as they neither have the expertise, specialism, equipment nor capacity to directly perform this service. This was also the case when street cleansing duties were delivered in house.
- 3.6 The cleansing of highway gullies performed by AES's subcontractor has to be undertaken according to a cleansing frequency as directed by the County

Council. This dictates that gullies are cleansed either biennially, annually or bi-annually.

- 3.7 As the frequency of cleansing is dictated to AES's subcontractor, neither HPBC nor AES have any control over improvements to gully cleansing frequency. This is not as was initially perceived when the arrangement was entered into as it was hoped that we could make service improvements i.e. more frequent cleansing activity to address localised flooding issues resulting from blocked gullies. However even if we had this control, DCC would not necessarily be willing to cover the costs associated with any increase in cleansing activity.
- 3.8 Both DCC and AES have, in the last few weeks, been advised that their contractor went into administration and would cease trading immediately. As a result of this supplier failure DCC have enacted emergency powers and have employed a supplier to provide reactive gully cleansing services to the five local authority areas it was directly responsible for as well as for the High Peak area.
- 3.9 Conversations have been held between officers of both councils to consider a way forward. As the Highway Authority DCC has more specialism in the area of gully cleansing, it is also recognised that they dictate the frequency of cleansing activity and require any supplier we appoint to utilise their Confirm Connect system. AES unfortunately have limited expertise in this service area, which has historically always been subcontracted out. This means that HPBC cannot provide gully cleansing services without the appointment of a new supplier.
- 3.10 The annual payment permitted for gully cleansing services does not take into account any growth in the number of highway assets. It is inevitable that over time new housing estates and highways will be adopted by DCC resulting in an increase in gullies which come on line and which require cleansing. This could add a financial burden on to HPBC.
- 3.11 Agreement has been reached previously with DCC that an RPI uplift can be applied to the annual costs which HPBC can levy. This is based on the RPI rate in February each year. RPI in February 2021 was 1.4%, enabling the costs to be claimed by HPBC from DCC in 2021-22 to increase by only 1.4%, despite costs increasing at a higher rate.
- 3.12 AES undertook a procurement exercise to appoint a new gully cleansing contractor from July 2021. The appointed supplier (who was the previous incumbent) submitted the lowest tender costs. However, their tender detailed an average price uplift of 10%. As a result, when taking into account the permitted 1.4% RPI uplift that HPBC are allowed to charge DCC in 2021-22, a shortfall of 8.6% in costs was identified.
- 3.13 As a result of this HPBC officers entered into dialogue with DCC officers to ascertain whether DCC would cover the increasing costs. After some deliberation, it was confirmed that HPBC could pass on to DCC all costs

incurred for this service in 2021-22. This assurance was not confirmed for future years however.

- 3.14 On the basis of all the factors detailed in this report, it is proposed that HPBC pass back all highway gully cleansing responsibilities to DCC as soon as is practically possible.
- 3.15 This will provide direct control to DCC who can seek to employ a suitable contractor to service the HPBC area alongside the other five council areas which they are already responsible for. In appointing one contractor under one contractual arrangement, it would be hoped that DCC can obtain best value for services via economies of scale for the High Peak taxpayer. Transferring this function back will also enable AES and HPBC officers to focus on those services and functions we are directly responsible for or directly deliver.

#### 4. **How this report links to Corporate Priorities**

- 4.1 This report links to Aim 1 – Supporting our communities to create a healthier, safer, cleaner High Peak to be delivered via “Effective provision of high quality public amenities, clean streets and environmental health”.

#### 5. **Alternative Options**

- 5.1 The council has two options available to it:
  - 1. To pass back gully cleansing responsibilities for the reasons as detailed within this report, thus enabling DCC to procure reactive and cyclical gully cleansing for six local authorities in Derbyshire. (**Recommended**)
  - 2. To continue to provide gully cleansing services under the DCC Amenity Agreement, recognising the issues detailed within this report and requiring AES to appoint a new subcontractor as soon as is practicable. (Not Recommended)

Mark Trillo

**Executive Director (Governance & Commissioning)**

#### **Web Links and Background Papers**

#### **Contact details**

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#### 6. **Detail**

- 6.1 DCC are the Highway Authority in Derbyshire, with the exception of the Derby City council area. Section 41(1) of the Highways Act 1980 (HA 1980) provides that a highway authority is under a duty to maintain those highways in the area for which it is responsible, which are highways "maintainable at the public's

expense (public highways). Section 329 of the HA 1980 defines "maintenance" as including repair.

- 6.2 The Highways Act 1980 gives DCC certain powers and rights in relation to flooding and drainage. Statutory provisions under Section 100 of the HA 1980, gives the Highway Authority, for the purpose of draining or preventing surface water from flowing onto the highway the power to:
- a) construct or lay, in the highway or land adjoining or lying near to the Highway, such drains as they consider necessary;
  - b) erect barriers, in the highway or in land adjoining or lying near to the Highway, to divert surface water into or through any existing drain;
  - c) scour, cleanse and keep open all drains situated in the highway or land adjoining or lying near to the highway.
- N.B. "Drain" includes a ditch, gutter, watercourse, soak-away, bridge, culvert, tunnel and pipe.
- 6.3 DCC are therefore responsible for the installation, operation and maintenance of highway drainage infrastructure, which falls within the adopted highway curtilage. Section 41 of the HA 1980 includes a duty to provide an adequate drainage system and keep the highway free from flooding.

### *Flooding*

- 6.4 In accordance with legislation under the Flood and Water Management Act 2010, DCC and Derby City Council are designated Lead Local Flood Authorities (LLFA) for Derbyshire. It is the role of the LLFA to co-ordinate flood risk management with other agencies such as the district councils and water companies who are designated risk management authorities. DCC as the flood Authority produced the Multi Agency flood plan (MFAP) in November 2020.
- 6.5 This plan states that High Peak is deemed at high risk of fluvial flooding (flooding from breached rivers or other watercourses), pluvial flooding (flooding from surface water, excessive run-off) and flash flood risk.
- 6.6 Pluvial flooding predominantly occurs when intense rainfall either exceeds the holding capacity of land and drainage systems or is unable to be absorbed due to soil conditions, urbanisation or rainfall intensity. Sewer flooding can also be caused by the ingress of surface water overloading the sewer. Standing water then accumulates until it flows into another drain or watercourse. Surface water flooding can merge with flooding from other sources to become indistinguishable. Rapid development, an ageing drainage system and increased rainfall means surface water problems are increasing.
- 6.7 The Derbyshire MAFP states that DCC have a responsibility to:
- Arrange clearance of critical assets to water flow on county council owned land and highways.
  - Attend to highway flooding, carrying out flood alleviation measures such as issuing sandbags, clearance of blocked highway culverts, dealing with flooded roads and traffic diversions (a detailed list of highways actions is given under the Highways England role).

## **7. Amenity Agreement**

- 7.1 For approximately ten years HPBC has been employed by DCC Highways to undertake a range of duties under a service level agreement, which is referred to the DCC Amenity Agreement. The functions we provide include:
- provision of footpath gritting in accordance with a priority list as supplied by DCC,
  - weed spraying of stipulated highway footpaths,
  - flail mowing of rural highway verges and visibility splays, mowing of urban highway verges,
  - cyclical and ad hoc cleansing/emptying of all highway gullies in the High Peak area to a frequency dictated by DCC and
  - inspection and maintenance of the highway tree network.
- 7.2 A number of these duties are undertaken on HPBC's behalf by AES either directly or via subcontracted arrangements. Subcontractors would be used where they don't have the capacity, resources or equipment to perform the functions directly.
- 7.3 Services directly undertaken by AES include weed spraying of highway footpaths, mowing of urban highway verges and footpath gritting. Subcontractors are employed to undertake flail mowing of rural highway verges and cleansing of highway gullies. In addition the Council's Arboricultural officer undertakes inspection and maintenance of highways trees.
- 7.4 As our service provider for all operational service relating to street cleansing functions, AES employ a subcontractor to perform cyclical and ad hoc gully cleansing duties required under the DCC Amenity Agreement as they neither have the expertise, specialism, equipment nor capacity to directly perform this service. This was also the case when street cleansing duties were delivered in house.
- 7.5 Gully cleansing seeks to remove all silt, debris and detritus from the gully and any fitted grating, checking for free-flow and clearing obstructions in the connections to the mains sewer network. A suitably experienced supplier is employed to provide cleansing to highway gullies, this includes footway gullies.
- 7.6 The cleansing of highway gullies performed by AES's subcontractor has to be undertaken according to a cleansing frequency as directed by the County Council. This dictates that gullies are cleansed either; biennially, annually or bi-annually.
- 7.7 As the frequency of cleansing is dictated to AES's subcontractor, neither HPBC nor AES have any control over improvements to gully cleansing frequency. This is not as was initially perceived when the arrangement was entered into as it was hoped that we could make service improvements i.e.

more frequent cleansing activity to address localised flooding issues resulting from blocked gullies. However even if we had this control, DCC would not necessarily be willing to cover the costs associated with any increase in cleansing activity.

- 7.8 To perform gully cleansing the subcontractor is required to empty the entire contents of the gully via jetting and “dig out” any compacted, consolidated or any other material that cannot be lifted by the mechanical process. Gullies not able to be cleansed or dug out are reported back to DCC directly via the Confirm Connect system.
- 7.9 Confirm Connect has been in use by DCC since 2017-18, DCC configure the system to record known positions of highway gullies within the designated council area, therefore DCC is responsible for updating this system as new assets come on line i.e. highway adoptions occur. The software provides the ability to capture in the field data including functionality to update feature condition data, defect recording, and identification of new assets.
- 7.10 As this IT system is owned by DCC, neither HPBC nor AES have ever been given a licence to use or access the data held within it. Our subcontractor is issued by DCC the relevant mobile devices to enable them to use the system and they report back via the system all works completed and any issues such as blocked gullies that they are unable to unblock or damaged gullies that DCC would need to investigate and repair.
- 7.11 In providing gully cleansing services, whilst DCC are the statutory body responsible for such, they have historically upon receipt of enquiries from residents re-directed gully cleansing enquiries to HPBC/AES. This redirection of enquiries does not take recognition as to whether HPBC has already performed the cleansing services it is contracted to undertake. Therefore as DCC dictate to us how often gullies need to be cleansed we generally have to redirect enquiries back to them. This causes confusion for residents and councillors who are often unsure of the correct reporting route for gully issues and is not providing a good customer service.
- 7.12 In the case where remedial works are required ie in the case of blocked or damaged gullies, we can only refer such issues to the DCC and we have no control and limited information over when actions will be taken to complete the repair.
- 7.13 Inevitably with climate change and a warming climate we are seeing an increase in mild, wet and windy weather in the UK. This will led to increased pressure on the highway gully and drainage infrastructure with more flooding events likely as the network cannot cope with the deluges of rain and debris. Therefore in time it is expected that increasing enquiries will be received from the public in regards to gully cleansing and flooding which will place more pressure on AES and HPBC diverting officers from their core functions.

## **8. Subcontractor failure**

- 8.1 The contractor appointed by AES in summer 2021 have been employed previously by both HPBC and AES for a number of years. However they have not been performing well since their most recent contractual appointment. AES have reported that they have had numerous meetings with the contractor to try and address poor performance.
- 8.2 Monitoring performance is difficult when AES have no access to the information provided to DCC via the Confirm Connect system. Their contractor reported they were struggling to retain and recruit HGV drivers as a result of national HGV driver shortages and despite reassurances being provided to AES they were failing to catch up on outstanding works.
- 8.3 It should be noted that this same contractor was contracted by DCC highways to provide both reactive and cyclical gully cleansing services in five other LA areas in Derbyshire. DCC also report similar performance issues however despite this they had recently decided to extend the contract with them until 2023.
- 8.4 Issues with contractor failure inevitably means an increased receipt of enquiries relating to blocked gullies, which places added pressure on to AES for a service HPBC actually has no statutory function to provide. This detracts AES from utilising their capacity to deal with the issues which are affecting them directly when providing statutory functions for HPBC i.e. waste collection and street cleansing both of which have suffered from staffing shortages due to the covid pandemic, HGV driver shortages or supply chain failures. All of which affect AES's ability to provide high performing services to HPBC and its residents.
- 8.5 Earlier this year the current contractor ceased trading. As a result of this supplier failure DCC have enacted emergency powers and have employed a supplier to provide reactive gully cleansing services to the five local authority areas it was directly responsible for as well as for the High Peak area.
- 8.6 Conversations have been held between officers of both councils to consider a way forward. As the Highways Authority DCC has more specialism in the area of gully cleansing, it is also recognised that they dictate the frequency of cleansing activity and require any supplier we appoint to utilise their Confirm Connect system. AES unfortunately have limited expertise in this service area, which has historically always been subcontracted out. This means that HPBC cannot provide gully cleansing services without the appointment of a new supplier.

## **9. Financial implications**

- 9.1 In undertaking functions for DCC highways via the amenity agreement a payment mechanism is in place. As the amenity agreement is held between HPBC and DCC it is HPBC who undertake all invoicing to DCC for services provided. AES provide evidence to HPBC of costs incurred. These are built into the AES management fee.

- 9.2 Charges levied to DCC also include an 8% admin fee to cover the costs incurred by AES and HPBC in performing these services.
- 9.3 The annual payment permitted for gully cleansing services does not take into account any growth in the number of highway assets. It is inevitable that over time new housing estates and highways will be adopted by DCC resulting in an increase in gullies which come on line and which require cleansing. This could add a financial burden onto HPBC.
- 9.4 Agreement has been reached previously with DCC that an RPI uplift can be applied to the annual costs which HPBC can levy. This is based on the RPI rate in February each year. RPI in February 2021 was 1.4%, enabling the costs to be claimed by HPBC from DCC in 2021-22 to increase by only 1.4%, despite costs increasing at a higher rate.
- 9.5 The contract AES held with its gully cleansing contractor expired in July 2021. As a result they undertook a procurement exercise to identify a new supplier. The appointed supplier (who remained the same supplier as previously employed) submitted the lowest tender costs. However their tender detailed an average price uplift of 10%. As a result, when taking into account the permitted 1.4% RPI uplift that HPBC are allowed to charge DCC in 2021-22, a shortfall of 8.6% in costs was identified.
- 9.6 As a result of this HPBC officers entered into dialogue with DCC officers to ascertain whether DCC would cover the increasing costs. After some deliberation, it was confirmed that HPBC could pass onto DCC all costs incurred for this service in 2021-22. This assurance was not confirmed for future years however.
- 9.7 Charges levied to DCC for the amenity agreement in recent years is as detailed below:

	<b>2019-20</b>	<b>2020-21</b>	<b>Projected claim 2021-22</b>
<b>Total amenity claim</b>	<b>£305,413</b>	<b>£321,603</b>	<b>£347,079</b>
Gully cleansing costs	£130,646	£147,763	£169,774
8% admin charges levied on gully cleansing costs	£10,452	£11,821	£13,582

- 9.8 As the table above shows, c.50% of costs levied to DCC via the amenity agreement relate to gully cleansing (plus the 8% admin charges).
- 9.9 On the basis of all the factors detailed in this report, it is therefore proposed that HPBC pass back all highway gully cleansing responsibilities to DCC as soon as is reasonably practicable.
- 9.10 This will provide direct control to DCC who can seek to employ a suitable contractor to service the HPBC area alongside the other five council areas which they are already responsible for. In appointing one contractor under one contractual arrangement, it would be hoped that DCC can obtain best value for services via economies of scale for the High Peak taxpayer. Transferring this

function back will also enable AES and HPBC officers to focus on those services and functions we are directly responsible for or directly deliver.