

Ms Emma Neil
Clerk & RFO to the Burwash Parish Council

27 January 2022

Dear Emma,

Your recent enquiry 10262433

Thank you for your letter dated 7 December 2021 and I am sorry for the length of time it has taken to reply to you.

Having worked closely with members of the Place Scrutiny Committee and the Member Reference Group I can assure you that all the points raised within the previous reports that you have submitted have been taken into consideration throughout the planning and procurement of the new highway contract.

I have discussed your concerns with the officer team and I hope the following responses offer you the reassurance you are seeking:

1. *While we are pleased to see that the HSRP-RG reports are proposing to adopt a "get it right, first time" approach, a suggestion that was in our submitted report. Please can you indicate to us how this is going to be delivered? Why is this approach to be applied only to planned maintenance work and not to reactive repairs when it is the latter that are often done badly and require repeated attention?*

Response: The new contractor will be incentivised, through the contract performance framework, to carry out permanent repairs at the first visit for both planned works and reactive maintenance repairs.

2. *Exactly how will working practices change in order to ensure improvements in the quality of reactive repairs? Will there be a target for how many and what proportion of repairs have to be revisited in a fixed period of time? What will be the consequences for the contractor be if they fail to meet the target set?*

Response: The new contractor will be incentivised, through the contract performance framework, to carry out permanent repairs at the first visit. Dedicated measures in the performance framework are being developed to set clear targets. Where the new contractor fails to achieve the performance levels, appropriate performance measures and sanctions will be applied to improve service delivery.

3. *Both HSRP-RG reports place emphasis on better quality control and recognise the need for improvements particularly to the quality of work done by sub-contractors, but the approach proposed will continue to allow the contractor "self-governance". Please explain the logic behind this decision.*

Response: The form (terms and conditions) of contract proposed is the New Engineering Contract (NEC4) which is industry standard, and in which self-certification is standard practice. The new contractor will submit a contract quality plan and this plan will be monitored for compliance by my officer team. The contract management group will carry out sample inspections and audits of completed works to ensure the appropriate quality is achieved. All reports of poor quality will be investigated by the officer team, and action taken where required.

4. *What steps will be taken under the new contract to ensure that utility companies and other third parties working on both the roads and drains carry out work to the correct standard and are held to account if standards are not adhered to? There are a significant number of existing problems that have been caused by utility company repairs where the road surface sinks shortly after a poor repair because the sub-structure of the road has not been properly reinstated.*

Response: The work activities of utility companies are governed by legalisation and their responsibilities are very clear. Through the new contract we will continue to enforce and monitor utility company performance against this legalisation. Any complaints received regarding utility works will continue to be investigated by the Network Management Team and appropriate action taken and penalties applied. It should be noted that the legislation does allow utility companies to carry out temporary repairs / reinstatement, as long as they are safe, and to follow up within six months with permanent repairs.

5. *Moving the quality assurance (QA) function in-house has been ruled out as being too expensive, without sufficient explanation but no consideration appears to have been given to contracting out QA separately. Does ESCC have comparative pricing for all three options, and will it publish this information? How, exactly, will quality improvements be assured under the new contract if the QA process remains unchanged?*

Response: We do not have comparative pricing so will be unable to publish this information. However, the Council does not have the funding to provide the level of activity that you are suggesting. We employ civil engineering contractors such as currently Costain and our contract requirements are very clear on the quality of workmanship expected. In addition we will audit as described in our response to question 3 above.

6. *There is nothing in the HSRP-RG reports about the maintenance of drainage systems associated with highways. Are any changes planned to improve the maintenance of drainage systems, in particular to ensure that maintenance includes not only cleaning out all drains regularly, but also the linking pipes and sumps behind them and the discharge pipes which drain the sumps safely into the surrounding landscape?*

Response: The cyclical cleansing of drains is a basic requirement of the core contract provisions, however the frequency of cleaning varies from gulley to gulley depending on the situation, with some being cleaned every 6 months and others every 2 years. The frequency of cleansing is dependent on a number of factors, depending on the location and any known problem areas that may require more frequent visits. Drainage investigations and repairs are prioritised to alleviate flooding, and therefore the repairs to a broken link or damaged pipe may not be a priority if there is no impact. We are no different to other highway authorities, including National Highways, we only clean pipework on a planned basis where flooding is known to take place or a reoccurring problem.

7. *ESCC provided additional money for the maintenance of drainage systems (around £1m per year for 4 years) during the currency of the existing contract. Please could you explain where and on what the additional money has been spent?*

Response: The additional drainage funding of £1m per annum is used on a county-wide basis to support a programme of works to repair and maintain the highway drainage system on a priority basis. These works include:

- repairing damaged pipes;
- root cutting, where roots have penetrated the drainage system;
- repairing and replacing broken gullies;
- reinstating ditches;
- investigating and rectifying flooding issues;
- surveying and mapping historical systems where greater capacity is required; and
- undertaking major schemes where the existing system has reached the end of its life.

Our maintenance programmes are prioritised and focus those higher priority problems. This is something that was considered in detail by a previous Scrutiny Committee.

8. *The new contract plans to continue the current "gain share" arrangement whereby any savings on the contract price are split evenly between ESCC and the contractor. In our view this arrangement should be reconsidered as it provides an incentive to ESCC to minimise spending regardless of need and puts money into the pocket of the contractor for doing no work. Can ESCC provide examples where this arrangement has financially benefited the Council Taxpayer, whilst delivering high quality and long-lasting work?*

Response: Gainshare is an integral part of an NEC Option C contract, in which actual cost is judged against a predetermined target contract price. It shares risk between the local authority and the contractor and incentivises the contractor to meet performance and efficiency targets. Under Option C, the scope of works are fully detailed, enabling a target cost to be agreed in advance of works commencing. If the actual cost of the works are lower than the target cost, the savings are aggregated and offset against other Option C works that have been delivered over budget. At year end, if the contractor has achieved all of the contract performance targets, any aggregated surplus is distributed as gainshare. Similarly, the contractor would share the cost of any overspend.

The current Highways Contract commenced in May 2016 and the cost of works to date is approximately £220m. Through the incentive mechanism, ESCC and the Contractor have shared savings of £1.9m. The Contractor has received £950K and ESCC has been able to re-invest its £950K for additional works. It should be noted that Option C is rarely used with drainage works as the full scope of required works is not usually apparent before works commence.

9. *The reports raise the possibility of a continuation of arrangements whereby district and parish councils can contract their own highways improvement work, provided projects are approved by ESCC Highways. Under the current contract this can be done directly, with the council concerned providing all the funding, or through the "Community Match" scheme, which provides up to 50% of the funding from ESCC provided the council concerned meets the balance. We agree with the HSRP-RG that decisions on such projects are far too slow and would like to know what steps are going to be taken to speed up decisions?*

Response: Aside from the reprocurement project, the Council's Community Match Scheme and Volunteering on the Highway policies are set to be reviewed. This review is a direct response

to feedback from several parish councils and voluntary groups across the county. Other stakeholders who use the current scheme will be contacted to seek additional feedback.

10. *Is it the intention that, in future, Community Match projects, or their equivalent under the new contract, will be subject to competitive tender to ensure better value for money? If tender is not going to be part of the process, please can you explain why this has been ruled out as an option?*

Response: Please also see the answer above that also relates to this question. The contract does not have exclusivity rights for the contractor and therefore the Council maintains the right to step outside of the contractual arrangements where it is deemed beneficial. However, this approach will be the exception due to the amount of additional officer resource required to undertake a tender process and manage separate contractual arrangements. In procuring the future contract, value for money will be assessed as part of the tender process including typical works to deliver Community Match schemes.

11. *In the interests of transparency will ESCC put into the public domain the final contract for Highways? We understand that this will need to be suitably redacted to protect commercially sensitive information. Mr Merriman pointed out to us, the much larger, in terms of value, rail franchise contracts are published, so why not this one? In his response to Mr Merriman's letter Mr Taylor says that it is not the current practice to publish contracts but that we can all look at the standard template on which the contract will be based. In our view, this does not meet the need for increased transparency and openness.*

Response: During the procurement process it is not possible to publish the contract however, once the new contract is awarded, we will consider publication of a suitably redacted version.

I would hope that the clarification above provides you with reassurance that the new contract takes into consideration many of the issues you have raised previously and that the officer group are working proactively to provide the best possible highway services for the resources currently available.

On a slightly separate note, Councillor Kirby Green has also made me aware that you have some concerns on a more day to day basis with the service the Parish Council is receiving, and she has asked our Stakeholder and Engagement Manager Ruby Brittle to organise a meeting with the Parish Council so that these can be discussed in further detail. Ruby will be in contact shortly regarding this matter, but if you would like to make contact with her, please email ruby.brittle@eastsussex.gov.uk

I trust I have answered your concerns but please let me know if you have any further questions.

Yours sincerely



Councillor Claire Dowling
Lead Member for Transport and Environment