

# PERFORMANCE SCRUTINY COMMITTEE – 18 FEBRUARY 2016

## HEADINGTON PIPELINE

### Report by Director for Environment and Economy

#### Introduction

1. As part of a significant project to reduce energy costs, the Oxford University Hospital Trust (OUHT), are proposing to upgrade their heating and hot water systems at the John Radcliffe and Churchill Hospitals. This innovative scheme seeks to transfer heating via new pipelines along the public highway connecting the two sites.
2. Upon these works being made public, significant concern has been raised by both the Local County and City Councillors, and residents, about a number of issues. This report addresses the County Council role in allowing this work to commence.
3. This report sets out the powers available to and the responsibilities of the County Council, the chronology of events and suggests some changes to improve those processes.

#### Background

4. OUHT have developed the proposed Heat Transfer System in conjunction with their partners Vital Energi. Vital Energi will implement the proposal and retain responsibility for the first 25 years of its life and which responsibility will revert back to the OUHT.
5. The proposed solution is relatively new technology within the UK but has been commonplace in other parts of Europe for several decades. This is therefore one of the first instances of this technology being installed in the public highway in England. Notwithstanding this, the Council is aware of similar proposals, both in new build and existing developments that are actively being discussed.
6. Whilst statutory undertakers have a legal right to implement plant in streets, non statutory undertakers require authorisation from the street authority (for Oxfordshire this is the County Council).
7. The County Council deals with many such requests each year (62 in 2015), in a large majority of cases these are from developers seeking to connect utilities to new developments which typically would be subsequently adopted by one of the statutory undertakers. A scheme such as the proposed Heat Transfer System is an exceptional request within the County and indeed nationally.

## **County Council Powers**

8. The New Roads and Street Works Act 1991 (NRSWA) and associated regulations and codes of practice establish a legislative framework for the installation of apparatus in streets and associated works in particular the excavation of the street for this purpose. This ensures that consideration is given to balancing requirements to install apparatus and limiting disruption to traffic.
9. The County Council as the local Highway Authority is designated *the street authority* for all streets that are public highway and is therefore the lead co-ordinator for these works.
10. Whilst various public utility companies have statutory rights to install and maintain apparatus in and under streets, other organisations must obtain a licence from the street authority under Section 50 of NRSWA. It is an offence to install apparatus or undertake any works in a street for this purpose unless the organisation has a statutory right or Section 50 licence.
11. The sole purpose of a Section 50 licence is to grant a licence for the purposes of the statutory street works regime under NRSWA and does not dispense with the need for the licensee to obtain any other consent licence or permission which may be required. This is specifically stated within the licence that is issued by the County Council (Appendix 1).
12. The County Council is not able to grant any planning consents for such works and such authorisations would need to be considered by the Local Planning Authority (in this case Oxford City Council). The County Council would however be consulted as a statutory consultee.
13. Works promoters or their agents (contractors) are responsible for all communications with the Highway Authority and the residents of the areas affected by the proposed works. The works promotor is also responsible for the funding and organisation of any reasonable mitigation measures that may be deemed necessary to minimise disruption and inconvenience to residents and motorists affected by the works as directed/approved by the street authority.
14. The Code of Practice envisages meetings being held between the Highway Authority and the contractor to address a number of matters including advertisement of the works.

## **Headington Works**

15. The County Council was first contacted regarding this project in October 2013, A timeline of key milestones and contacts with the County Council is included within Appendix 2.
16. The promoters for the Headington Energy Pipe Link work are the Oxford University Hospitals NHS Trust while their contractors are Vital Energi who,

acting for the Trust, applied to the County Council for permission to undertake the work. Vital Energi are a licensee, not a statutory undertaker and so a Section 50 licence was required. The terms of the licence are directed at ensuring safety, minimising disruption to traffic and protecting the structure of the street and integrity of apparatus in it.

17. The County's role is to co-ordinate the proposed works with other activities on the highway network, ensure that all works are undertaken in a manner that does not cause danger to the public and ensure that the highway remains in a fit condition upon completion of the works.
18. Granting of a licence is a function delegated to officers, in most cases it would not be considered a "key" decision because the County's Constitution and the relevant Regulations define a 'key decision' as one which is likely to (a) involve the County in significant expenditure (which this does not) or (b): 'to be significant in terms of its effects on communities living or working in an area comprising two or more electoral divisions in the County'.
19. Whilst the total proposal covers a relatively large area, across two electoral divisions, a licence is granted on each individual street and not for the whole scheme to ensure that the specific needs of each street are considered within the terms of the licence. The term 'significant' is defined as 25% of the people living or working in the area. The proposal is limited to a small number of streets and works undertaken in approximately 100m lengths and as such it is not considered that these works would meet this threshold. It would be extremely difficult to ascertain whether 25% of people working in the area would be impacted. As such, the grant of the licences is not considered to be a key decision which requires a Cabinet/Executive decision.
20. In addition to a Section 50 licence, any promotor of works in the public highway, including the County Council, is required to give 3 months' notice from the date of the planned start of works to enable the highway authority to coordinate, and mitigate the impact of, works. Whilst Vital Energi provided notices within this timescale, in this case the County agreed to start dates earlier than the 3 month period due to coordination with other planned works in the area (Access to Headington project) and to start earlier was considered to be the least disruptive option for local communities.
21. A schedule of Vital Energi work indicated completion by early June 2016, while plans for Access to Headington showed June 2016 as a possibility for an earliest start. It was therefore the officers decision to allow Energy Pipe Link works to start as early as practicable so that completion can be achieved within indicated timelines and avoid impact on other planned works.

### **Financial and Staff Implications**

22. Responding to concerns about this scheme has taken an exceptional amount of officer time during a period when works across the county have increased significantly to meet the growth agenda.

23. Budget reductions over the last few years have reduced the staffing in the Councils NRSWA team meaning they are less able to react to exceptional circumstances.

## **Conclusions**

24. County Council officers acted in accordance with the existing legislative and constitutional framework.
25. From the County Council perspective the Energy Pipe Link work on the public highway began with very little advanced information nor any consultation with local residents from the area affected by the work.
26. County Council staff acted within their powers and remits. The exceptional nature of these works however and the level of disquiet expressed by Councillors and residents suggests that the working practices of issuing s50 notices should be reviewed, in order to ensure local representatives and senior management are aware of large scale works that require permission from the County Council as Highway Authority.
27. Whilst it was the responsibility of the University Hospital Trust or its agents to manage any formal consultation with residents and businesses, it is recognised that officers should inform the local councillor of schemes of an exceptional nature such as this in order that local considerations can be given adequate consideration at an earlier stage.
28. In future when the Council receives a section 50 application which will extend beyond 300m of the longitudinal length of the road and requires a full road closure then officers will make the Strategic Manager, Traffic Manager and the local County Councillor (s) for the affected area aware of the application.
29. When a section 50 notice will impact on more than one division or will significantly impact the strategic road network then the Strategic Manager will advise the Cabinet Member and Deputy Director of the application.

## **RECOMMENDATION**

30. **The Scrutiny Committee is RECOMMENDED to:**
  - (a) **Note the report and its conclusions;**
  - (b) **Recommend to the Director of Environment and Economy in conjunction with the Cabinet Member with responsibility for highways to action the proposed recommendations for changes to process in this report.**

SUE SCANE  
Director for Environment and Economy

Background papers: None

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January 2016

## Appendix 1 – Example Section 50 Licence – All Saints Road

- (c) if the authority consider the withdrawal of the licence is necessary for the purpose of the exercise of their functions as street authority.
- (2) The withdrawal takes effect at the end of such period beginning with the date of service as may be specified in the notice.
- The period shall not be less than 7 working days in the case of a withdrawal under sub-paragraph (1)(a) or (b), and shall not be less than three months in the case of a withdrawal under sub-paragraph (1)(c).

### *Removal of apparatus*

7. (1) Where a street works licence expires or is withdrawn or surrendered, the street authority may remove the apparatus to which the licence relates or alter it in such manner as they think fit and reinstate the street, and may recover from the former licensee the expenses incurred by them in doing so.
- (2) If they are satisfied that the former licensee can, within such reasonable time as they may specify, remove the apparatus or alter it in such manner as they may require and reinstate the street, they may authorise him to do so at his own expense.
- (3) Before executing any works under this paragraph the street authority or the former licensee, as the case may be, shall give not less than 7 working days' notice to any person whose apparatus is likely to be affected and shall satisfy their requirements as to the method of executing the works and as to the supervision of the works by them.
- (4) in this paragraph and paragraph 8 below "the former licensee" means the person who immediately before the expiry, withdrawal or surrender of a street works licence was the licensee or, if that person has died, his personal representatives.

### *Obligation of licensee to indemnify street authority*

8. (1) The licensee under a street works licence shall indemnify the street authority against any claim in respect of injury, damage or loss arising out of—
- (a) the placing or presence in the street of apparatus to which the licence relates, or
- (b) the execution by any person of any works authorised by the licence;
- and the former licensee shall indemnify the street authority against any claim in respect of injury, damage or loss arising out of the execution by the authority or the licensee of any works under paragraph 7.
- (2) The liability of a licensee or former licensee under this paragraph arises—
- (a) whether or not the damage or loss is attributable to negligence on their part or on the part of any person for whom they are responsible, and
- (b) notwithstanding that they are acting in pursuance of a statutory duty.
- (3) However, their liability does not extend to damage or loss which is attributable to misconduct or negligence on the part of—
- (a) the street authority or a person for whom the authority are responsible, or
- (b) a third party, that is, a person for whom neither the licensee or former licensee nor the authority are responsible.
- (4) For the purposes of this paragraph the persons for whom a person is responsible are his contractors and any person in his employ or that of his contractors.
- Appeal against decision of local highway authority*
9. (1) Where the apparatus in respect of which an application for a street works licence is made to a local highway authority is to be placed or retained on a line crossing the street, and not along the line of the street, a person aggrieved by—
- (a) the refusal of the authority to grant him a licence, (b) their refusal to grant a licence on terms prohibiting its assignment, or
- (c) any terms or conditions of the licence granted to him, may appeal to the Secretary of State.
- (2) The procedure on an appeal shall be such as may be prescribed.
- (3) Where on an appeal the Secretary of State reverses or varies the decision of the local highway authority, it is the duty of that authority to give effect to his decision.



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New Roads and Street Works Act 1991  
Section 50 and Schedule 3

### STREET WORKS LICENCE

Oxfordshire County Council as Street Authority (Section 49) under New Roads and Street Works Act 1991, hereby assign a Street Works Licence (subject to the conditions in schedule 'A')

To **Aviva Investors**

Of **No.1 Poultry, London, EC2R 8EJ**

to place and / or retain apparatus in the street known as **All Saints Road, Headington, Oxford** and thereafter to inspect, maintain, adjust, repair or renew the apparatus, change its position or remove it, and to execute for those purposes any works required for or incidental to such works (including, in particular, breaking up or opening the street, or any sewer, drain or tunnel under it, or tunnelling or boring under the street).

This licence authorises the licensee to execute the works permitted by the licence without obtaining any consent which would otherwise be required to be given -

- (a) by any other relevant authority in its capacity as such, or
- (b) by any person in his capacity as the owner of the apparatus affected by the works;

but without prejudice to the provisions of Part III of the New Roads and Street Works Act 1991 as to the making of requirements by any such authority or person as to the settlement of a plan and section and the execution of the works in accordance with them.

This licence does not dispense the licensee from obtaining any other consent, licence or permission which may be required; and it does not authorise the installation of apparatus for the use of which the licence of the Secretary of State is required, unless and until that licence has been granted.

Schedule 3 to the New Roads and Street Works Act 1991 is attached to this licence and the licensee is referred to the contents of said schedule.

This licence may not be assigned.

A commuted fee of £650 is payable in respect of this licence.

Licence granted by the Street Authority on 4<sup>th</sup> January 2016

Signed.....*[Signature]*....., Street Works Manager

Date...*26th December 2015*...

**SCHEDULE A**  
Conditions subject to which licence granted]

1. Oxfordshire County Council accepts no responsibility for damage to installations except for damage or loss which is attributable to misconduct or negligence on the part of the Council as Highway Authority or a person for whom the Council is responsible or a third party, that is, a person for whom neither the Licensee nor the Council as Highway Authority are responsible.
2. Oxfordshire County Council accepts no responsibility for damage to third parties however caused and requires to be indemnified against any third-party claim in this respect.
3. The Licensee shall comply with the requirements of the New Roads and Street Works Act 1991.
4. The Licensee shall indemnify and keep indemnified the County Council in respect of any third-party claims or demands which may arise from the placing or presence in the street of the apparatus or the executing of any works to or in connection with the apparatus.
5. The Licensee shall effect insurance indemnifying the Licensee and the County Council in the terms of the indemnity set out in condition 4 hereof and shall, when required by the County Council or its agents, produce evidence of such insurance to the satisfaction of the County Council or its agents. Such insurance shall afford indemnity of not less than £10 million in respect of each and every claim save that a minimum figure of £2 million shall be substituted where works have been completed and such works have not been along, across, over, or under a carriageway or within one metre of a carriageway provided always that if further works are undertaken then the requirement to ensure the higher level shall be reinstated for the duration of the works.
6. The Licensee shall inform the County Council of the removal or relocation of any apparatus installed under this licence.
7. The Licensee shall undertake to reimburse the County Council for the cost of any inspections occasioned by the works carried out under this licence and shall liaise with the Street Works Manager on this matter.
8. The Licensee shall liaise with the Street Works Manager at Speedwell House on 01865 815342 and the Network Supervisor for this location on (07774) 221159 as to the timing and execution of the works and shall comply with all notification, co-ordination, reinstatement and safety requirements of the New Roads and Street Works Act 1991.
9. The Licensee shall, upon completion of the work supply the County Council with a plan showing the as-constructed position and depth of the apparatus installed in the highway under this licence.
10. The Licensee shall refer to and comply with the requirements of NJUG Publication Number 7, "The Identification of Small Buried Mains and Services".
11. The Licensee shall pay to the County Council all Licence, Records and Administration fees associated with this licence.
12. The Licensee shall liaise with any Sewer Authority, Bridge Authority, Transport Authority, Planning Authority or other Undertaker which may be affected by the works proposed under this licence and shall obtain any consents required from these authorities or bodies prior to the commencement of any work under this licence.
13. The Licensee shall ensure that the contractor for the works shall use the relevant accredited personnel and comply with the indemnity requirements outlined in conditions 4 and 5 above.
14. The Licensee shall comply with the requirements of NJUG Publication Number 10 when working near trees.
15. The Licensee shall ensure that they contact the relevant County Councils NRSWA Street Works Inspector to book road space and discuss any Noticing requirement.
16. The Licensee shall ensure that a Traffic Management Plan is supplied to the relevant County Councils NRSWA Street Works Inspector to include dates, times, method of traffic management and reinstatement.

*New Roads and Street Works Act 1991*

**SCHEDULE 3**  
**STREET WORKS LICENCES**  
*Grant of licence*

1. Before granting a street works licence the street authority shall give not less than 10 working days' notice to each of the following—
  - (a) where the works are likely to affect a public sewer, to the sewer authority,
  - (b) where the works are to be executed in a part of a street which is carried or crossed by a bridge vested in a transport authority, or crosses or is crossed by any other property held or used for the purposes of a transport authority, to that authority,
  - (c) where in any other case the part of the street in which the works are to be executed is carried or crossed by a bridge, to the bridge authority,
  - (d) to any person who has given notice under section 54 (advance notice of certain works) of his intention to execute street works which are likely to be affected by the works to which the licence relates, and
  - (e) to any other person having apparatus in the street which is likely to be affected by the works; but a failure to do so does not affect the validity of the licence.
2. The street authority may require the payment of—
  - (a) a reasonable fee in respect of legal or other expenses incurred in connection with the grant of a street works licence, and
  - (b) an annual fee of a reasonable amount for administering the licence; and any such fee is recoverable from the licensee.

This shall not be construed as affecting any right of the authority where they own the land on which the street is situated to grant for such consideration as they think fit the right to place anything in, under or over the land.

*Conditions attached to licence*

3. A street authority may attach to a street works licence such conditions as they consider appropriate—
  - (a) in the interests of safety,
  - (b) to minimise the inconvenience to persons using the street (having regard, in particular, to the needs of people with a disability), or
  - (c) to protect the structure of the street and the integrity of apparatus in it.

*Notice of change of ownership, &c.*

5. (1) Where the licensee under a street works licence proposes-
  - (a) to cease using or abandon the apparatus, or
  - (b) to part with his interest in the apparatus,

he shall give the street authority at least six weeks' notice before doing so.
- (2) Where the licensee under a street works licence granted to the owner of land and his successors in title proposes to part with his interest in the land, he shall before doing so give notice to the street authority stating to whom the benefit of the licence is to be transferred.
- (3) A person who fails to comply with an obligation under this paragraph commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

*Withdrawal of licence*

6. (1) The street authority may by notice in writing served on the licensee withdraw a street works licence-
  - (a) if the licensee fails to comply with any provision of this Part or any condition of the licence,
  - (b) if the authority become aware that the licensee-
    - (i) has ceased to use or has abandoned the apparatus, or intends to do so, or
    - (ii) has parted with or intends to part with his interest in the apparatus in a case where assignment of the licence is prohibited, or

## Appendix 2 – Chronology of Events

Date	
22 October 2013	Vital Energi first contacted the Oxfordshire County Council NRSWA office regarding the project requesting a meeting to discuss <i>“proposed works which we are hoping to commence from March 2014. The works are in relation to an Energy Link (comprising of a district heating link, a HV cable link and a fibre optic link) between The John Radcliffe Hospital and The Churchill Hospital.”</i>
16 January 2014	Following a number of email exchanges between OCC officers and Vital Energi regarding correct contact details and documentation required a meeting took place between the two parties held in OCC offices. Additional information regarding the type of work was received: <i>“...the scheme and associated trenches are fairly extensive and involve the crossing of and working in some busy and sensitive areas”</i> . Also OCC officers expressed concerns regarding the proposed routing and timelines of the works as other already scheduled work was going to take place in Headington area. Vital Energi were therefore asked to reconsider the proposals and therefore NRSWA a Section 50 licence application was not progressed at this stage. Vital Energi followed the outcome of this meeting with an enquiry regarding possibility of starting the work around Christmas 2014 and were informed of the County’s Christmas Highway Works Embargo restrictions.
3 February 2015	No further communication was exchanged until this date when Vital Energi contacted OCC NRSWA officers informing them that <i>“The project has been resurrected and the funding is well on the way to being approved”</i> and that they wished to restart discussions on scheduling the work with the proposed start in September 2015 pending the award of the contract from the Hospital Trust.
6 March 2015	As more information on the type of work and its extent started to be forthcoming from Vital Energi OCC NRSWA officers became concerned that the proposals were more substantial than typical utility works and therefore sought colleagues from the Asset Management team for advice to ensure that the impact of the highway infrastructure was minimised.
13 March 2015	OCC received an email message from Vital Energi stating: <i>“we have yet to agree the order with the NHS trust. This issue will almost certainly mean that we will miss the boat with regards to the time frames ... Unfortunately again I can’t give a timescale which obviously doesn’t help. As soon as I have any further news I will be in touch”</i> .

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31 March 2015	An Asset Management officer met with Vital Energi to understand their proposal and the technical aspects of the installation and expressed concerns over the reinstatement details and the methodology proposed.
2 July 2015	Communication between Asset Management and Vital Energi regarding construction technical details of the work. As a result a few restrictions were imposed on working practices. These included minimising the length of excavation at any one time to minimise the displacement of parking, ensuring that the crossing of London Road was such that it minimised the length of time required to disrupt traffic and impact the fabric of the highway, and requiring the full width of carriageway surfacing in cases when the reinstatement would exceed a third of the width of the highway to retain the integrity of the highway.
21 October 2015	Vital Energi sends information on the proposed road closures and are reminded that they need to apply for Section 50 licence.
28 October 2015	<p>Meeting held between OCC NRSWA officers and Vital Energi to discuss the project (extent of the work, starting dates, duration and coordination with other works). Vital Energi reminded of their obligation under NRSWA guidelines to inform local residents of the proposed work. Vital Energi informed that they were in touch with the local member (Cllr Ruth Wilkinson – Oxford City Council), and that the Hospital Trust wished to take the lead on communication.</p> <p>Details of Section 50 licence agreed in principle and as a result Vital Energi formally applies for NRSWA Section 50 licence and for Temporary Traffic Regulation Orders (TTRO) for road closures on the 28 October 2015).</p>
5 November 2015	Streetworks notice for the works processed and published on Roadworks.org.
30 November 2015	Hospital Trust's press launch of the scheme.
9 December 2015	Local residents' public meeting organised by Cllrs Ruth Wilkinson, Roz Smith and Altaf Khan with representatives of Hospital Trust and Vital Energi.
16 December 2015	Meeting organised by OCC NRSWA officers with Hospital Trust and Vital Energi to discuss access arrangements during works. Number of possible solutions discussed and a way forward agreed – residents to be issued with neighbouring zones visitors parking permits and Vital Energi to employ welfare officers to help residents with mobility difficulties.

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17 December 2015	TTROs advertised. Two responses were received one from Cllr Wilkinson requesting a correction of date in the order (advertised date Tuesday 22 April 2016 does not exist) and one from a resident suggesting that more needed to be done to ensure that the hospital accommodated displaced parking in its own car parks to reduce the impact on surrounding roads. The order was amended to reflect Cllr Wilkinsons feedback and an agreement was established with the hospital to utilise some of its off street parking for displaced residents.
17 December 2015	Copies of proposed Vital Energi letters to local residents.
22 December 2015	Section 50 licences issued.
29 December 2015	TTROs sealed. Notice of making inserted in Oxford Times 31 December.
4 January 2016	Work starts in All Saints Road.
6 January 2016	Following the Local Planning Authority (Oxford City Council) writing to the OUHT suggesting that planning permission may be required works are suspended.
8 January 2016	Opening in All Saints Road filled in and road surface reinstated following an instruction from the County Council.