

PERMIT SCHEME FORMAL CONSULTATION REPORT

Proposed Herefordshire Council Streetworks Permit Scheme (HCSPS) formal consultation responses and report

1 Introduction

The formal consultation regarding the proposed Herefordshire Council Streetworks Permit Scheme (HCSPS) was open from Tuesday 14th April to Tuesday 9th June 2020, this was an 8 week period.

The consultation was to seek views on the implementation of a permit scheme which will, if introduced, manage works within the highway. A series of questions were asked to focus the responses on key areas.

The consultation was primarily aimed at highway works promoters, utility companies operating in the area, any regulators to those organisations and anyone interested in how we manage and operate within the highway network.

The following documents were available to review:

- Herefordshire Council Streetworks Permit Scheme (Draft)
- Herefordshire Council Streetworks Permit Scheme fees table
- Herefordshire Council Streetworks Permit Scheme Dft permit Scheme cost matrix
- Herefordshire Council Streetworks Permit Scheme cost benefit analysis.

A link to the Government guidance on permit schemes was provided.

It was stated in the consultation covering email that 'all responses received before the closing date will be taken into consideration and, if Herefordshire Council consider it to be appropriate, amendments will be made to the draft Permit Scheme.

The draft scheme document and accompanying covering letter was issued to key stakeholder organisations and individuals, including local neighbouring Highway Authorities, Utilities, road user representative groups, current suppliers and non-government organisations. The consultation was also open to everyone via the Council's website.

A total of 9 individual comments on the proposed Permit Scheme were received by the deadline.

A list of comments received, and potential response or amendments are provided in this document.

1.1 List of Consultees who responded by the deadline

1. Virgin Media (VM)
2. Welsh Water (WW)
3. Openreach (O)
4. Anonymous Public Sector Organisation (APSO)
5. Anonymous Utility Company (AUC)
6. Worcestershire County Council (WCC)
7. Western Power Distribution (WPD)
8. Shropshire Council (SC)
9. Cadent Gas Ltd – response via email – no issues to raise.

1.2 Consultees who responded after the deadline

No responses were received after the deadline.

2 Outcome of the consultation

The consultation identified minor changes which have been incorporated in the permit scheme, No responses raised any concerns to the proposed permit scheme.

3 General Comments

Org	Suggested amendment / clarification / comment / question	Response / action / recommendation
VM, WW, O, APSO, AUC, WCC, WPD, SC	<p>1. <u>Do you believe that the Permit Scheme reflects the statutory guidance for permitting?</u></p> <p>Yes</p>	<p>Thank you for your response.</p>
VM	<p>2. <u>Do you have any comments on the Permit Scheme objectives?</u></p> <p>Virgin Media agrees with the key factors highlighted regarding better planning, scheduling and management of activities to minimise disruption to any road user or pavement user. Virgin Media agrees that an overall drive to further improve the timing and duration of works to minimise disruption, where safe and practical to do so is a good thing however believe the current co-ordination process allows for this without the need for a Permit Scheme. How will a safer environment be promoted as a Permit Scheme does not relate to section 65 of NRSWA?</p>	<p>Thank you for your comment in implementing a Permit Scheme Herefordshire Council are following government advice to do so. Herefordshire Council acknowledge and follow all advice and guidance offered within legislation and will use the extra powers and resources afforded through permit scheme operation to the benefit of highway users and works promoters with safety considerations taking the highest priority in all actions we undertake.</p>

O	<p>Openreach appreciate that you recognise the economic benefits of developing the fibre infrastructure and you don't want any detrimental impact on this as a result of introducing a permit scheme. This doesn't align with your permit fees, by setting them at the maximum level, our cost per connection has increased which influences where we decide to provide our fibre infrastructure.</p>	<p>Herefordshire Council have to consider many factors such as operational costs and benefits to the wider community and we acknowledge that there are costs to Utilities in applying for permits. Government reports have shown that the wider impact of a permit scheme to the overall management and function of the highway network far outweighs any costs of operation and have set applicable fees for authorities to charge when carrying out the permit scheme efforts. Herefordshire Council will only charge fees as necessary to meet the running costs of our permit scheme and these charges will be within that fee structure. We are mindful of the impact our scheme will have on all matters Network Management and we look forward to having greater resources to offer any and all appropriate assistance we can where you are developing your fibre infrastructure. We are sure that any financial impact to you will be more than offset by the network management benefit as shown in the Government reports.</p>
AUC	No	Thank you for your response.

WCC	Supportive of these	Thank you for your response.
WPD	Please ensure your objectives are able to measured in the required Permit Evaluation Reports.	Herefordshire Council will work with other councils and IT software suppliers to ensure all necessary reports are available but we do acknowledge that due to the current changes to the electronic systems support permitting and street works nationally there may be some more and ongoing work for the whole industry necessary here.
SC	All valid objectives and achievable via operation	Thank you for your response.
VM, WW, O, APSO, AUC, WCC, WPD, SC	<p>3. <u>Do you understand what conditions may be applied in granting a permit?</u></p> <p>Yes</p>	Thank you for your response.
VM	Virgin Media would like to make reference to the sector agreed HAUC advice and Statutory Guidance of Permit conditions as being the only conditions which may be applied.	Thank you for noting the HAUC advice and Statutory Guidance Herefordshire Council is aware of these documents and will work with all to ensure compliance with statutory guidance.

<p>WW, O, APSO, AUC, WCC, WPD, SC</p>	<p>4. <u>Are the penalties for not correctly applying for a permit clearly identified?</u></p> <p>Yes</p>	<p>Thank you for your response.</p>
<p>VM</p>	<p>No</p> <p>Virgin Media would like clarification on what conditions would be placed on an immediate Permit as works could have started out of hours and been completed prior to notifying the Herefordshire Council Street Works department. Virgin Media would like further clarification if works have already been completed before applying for a Permit.</p> <p>Virgin Media would like clarification of what other offences this would be.</p> <p>Virgin Media acknowledges Fixed Penalty Notices (FPN's) will be suspended for the first month of operation of the new Scheme.</p>	<p>Herefordshire Council will follow all relevant legislation and use permit conditions to the benefit of highway users and works promoters as they are an integral part of the permitting process. Herefordshire Council acknowledges that for the rare example where all necessary works have been completed prior to a permit application being submitted the application of conditions after the event is not possible. But we must note that most immediate works undertaken on the Public Highway require return visits to complete the works and in these instances the application of appropriate conditions should be expected and is warranted. Herefordshire will consider all permit applications on their own merits and offer full details of any offences it believes may have been committed at the time it identifies said offence to the works promoter. We will use existing legislation to identify and offer FPN's, prosecutions as appropriate at the time of the offence.</p> <p>Thank you for your comment.</p>

VM, WW, O, APSO, AUC, WCC, WPD, SC	<p>5. <u>Are the penalties for not complying with the permit conditions clear set out?</u></p> <p>Yes</p>	Thank you for your response.
VM	<p>6. <u>Do you have any comments on the way in which the fees generated should be reinvested, for example increased face to face meetings with contractors, etc?</u></p> <p>Fee income must be applied towards the costs of operating the permit scheme which are prescribed costs. This is defined in regulation 29 as the costs of the scheme relating to the activities of statutory undertakers. In the event that there is a surplus in a given year, the money should be applied towards the costs of the scheme in the next year and the fee levels adjusted accordingly. A scheme's staff costs should only include staff costs over and above those costs incurred running an effective noticing system. The income from fees shall not exceed the total allowable costs prescribed in the permit regulations.</p>	Herefordshire Council will monitor and report on our permit scheme operation including income from permit fees and will follow all statutory guidance and regulations in relation to how and why permit fees are recovered and spent.
WW	Innovative coordination tools utilising technology above that of paper documents.	Thank you for your comment. Herefordshire Council will endeavour to make use of any and all appropriate technology that offers benefit to our Network Management operation and support of highway users.
O	We would like more meetings with you. We also would find it beneficial if there was increased focus on collaboration.	Noted. Herefordshire Council agree that collaboration is to be encouraged wherever possible and will support works promoters to work collaboratively.

AUC	No	Thank you for your response.
WCC	Increased resources in co-ordinating the Network. Of benefit to Worcestershire when more time is available for cross-boundary schemes/diversions.	Thank you for your response.
WPD	The fees should meet the running cost of assessing utility permit applications (above the cost of managing noticing currently in place), therefore we hope that Herefordshire will use these funds to manage permit assessments in the most effective way for all, and should there be surplus revenue then the permit fees should be adjusted accordingly.	Thank you for your comments. Herefordshire Council will monitor and report on our permit scheme operation to ensure we maximise the network management benefits available to us from permit scheme operation. Monitoring will also be undertaken on income from permit fees and we will follow all statutory guidance and regulations in relation to how and why permit fees are charged, recovered, accounted for and spent.
SC	From experience of running the WaSP scheme in Shropshire for 6 years, the importance of continued, early and timely engagement with works promoters and contractors - in tandem with the permit scheme cannot be overstated.	Thank you for your response.

VM	<p>7. <u>Do you have any comments on the dispute resolution sections of the draft permit scheme?</u></p> <p>Virgin Media acknowledges that any dispute of a Permit should be resolved locally. As Virgin Media works often have tight deadlines waiting for review from HAUC can often cause customer led time scales to be missed.</p>	<p>Herefordshire Council always endeavour to support works promoters to resolve any matters locally if at all possible and following industry agreed procedures such as the HAUC arbitration process where this is not possible.</p>
O	<p>No</p>	<p>Thank you for your response.</p>
AUC	<p>No</p>	<p>Thank you for your response.</p>
WPD	<p>No, this is clear.</p>	<p>Thank you for your response.</p>
SC	<p>Looks to broadly adhere to HAUC guidelines</p>	<p>Thank you for your response.</p>

VM	<p>8. <u>Do you have any comments relating to the monitoring of the permit scheme?</u></p> <p>Will Herefordshire Council be running shadow permits and FPN's on their own works and sharing these results?</p>	<p>Herefordshire Council will operate our permit scheme in parity across all works promoters monitoring and reporting scheme operation including permitting data and FPN's offered.</p>
O	<p>No</p>	<p>Thank you for your response.</p>
AUC	<p>No</p>	<p>Thank you for your response.</p>
WPD	<p>No further comment.</p>	<p>Thank you for your response.</p>
SC	<p>Recognising and acting on emerging trends is crucial to continued successful operation. Monthly reports, shared transparently with works promoters greatly assist in identifying improvements and emerging trends</p>	<p>Noted and thank you for your response.</p>
VM	<p>9. <u>Do you have any other general comments on the permit scheme?</u></p> <p>2.2 Virgin Media acknowledge that Herefordshire Council recognises the local economic benefits of infrastructure projects including the roll out of superfast broadband within their area.</p>	<p>Thank you for your comment.</p>

VM	<p>2.2</p> <p>Virgin Media acknowledge that the proposed start date of the new Permit Scheme will be 1st September 2020 however this date might be reviewed due to the current Covid-19 situation.</p>	Noted thank you.
VM	<p>2.5</p> <p>VM recommend as per the DfT that only CAT1&2 or traffic sensitive streets have fees attached.</p>	<p>The Herefordshire Council Permit Scheme will be operated to ensure we maximise network management benefits available to all highway users. The charging of permit fees on all roads supports our ability to do this and we have followed all statutory guidance and regulations in relation to how and why the proposed permit fees are charged, recovered, accounted for and spent.</p>
VM	<p>3</p> <p>Virgin Media already promote improvements to timing and duration of works and there are many examples of innovation in working practices that have resulted in reduced occupation of the highway - advanced planning, use of minimum-dig technology and shared or sequential occupation of the carriageway etc.</p>	Thank you for your comment.
VM	<p>6.1</p> <p>Virgin Media acknowledge that when lifting or replacing manhole or chamber covers Virgin Media do not need to apply for a Permit. This will speed up fault finding and survey work on the highway network.</p>	Thank you for your comment.

VM	7.3 Clarity of phases on application may not always be possible. VM recommend revising the word 'must' to 'should'.	This is required to ensure the works are programmed and the public are informed the activity is appropriately managed.
VM	7.5 Virgin Media would not be expected to pay for another Permit if Herefordshire Council directs Virgin Media to close down works and reinstate if Virgin Media are not at fault.	Noted
VM	7.6 Virgin Media believe that this is not a legislative requirement under permit schemes.	Noted
VM	7.7 Virgin Media acknowledges reduction of fees when working collaboratively.	Thank you for your comment.
VM	7.10 Virgin Media would like clarification regarding this paragraph as you can apply for an early start on a PA, but there is no requirement to submit a variation if agreed in advance.	Agreed there is no requirement to submit a variation if it is agreed in advance.
VM	7.12 Virgin Media believe that this should be raised as Unattributable works with site photographs being issued to support investigation. An FPN cannot be issued if no permit has been raised.	The wording of the paragraph is correct.

VM	<p>12.4 & 14.11</p> <p>Virgin Media believe that a Permit should only be revoked for significant safety breaches or in the event of an incident beyond Virgin Media control.</p>	<p>Herefordshire Council agree revocation of permits is an option of last resort and we will afford works promoters every opportunity to resolve disputes, condition breaches and safety concerns in the best way possible for all concerned but we must also be committed to running our permit scheme in accordance with statutory guidance and legislation.</p>
VM	<p>16.3</p> <p>Virgin Media acknowledge the lower fees and discount of 30%.</p>	<p>Thank you for your comment.</p>
VM	<p>16.7</p> <p>Common practice is that draft invoices get raised usually a month in arrears, sent to the promotor for clarification, and then the invoice gets raised based on the agreed charges.</p>	<p>Noted</p>
VM	<p>Note</p> <p>Virgin Media are disappointed that Herefordshire Council are charging maximum fees on all roads within their proposed permit Scheme and would prefer no charges on category 3 and 4 roads.</p>	<p>Thank you for your comments and please refer to our earlier response to 2.5 above.</p>

WW	Interrupted Activities - will there be a clear process on what and who will determine this if the new activity is not allowed keeping the site open?	Herefordshire Council will endeavour to support all works promoters with their necessary activities on the Public Highway offering clarity and direction as appropriate.
WW	Permit Classes - where is states 'Major activities split into 3 sections' should this read detailed in 9.2 instead of detailed in 9.1?	Agreed text to be amended.
O	<p>2.1 Background</p> <p>The issuing and receipt of these notices is governed by legislation called the Electronic Transfer of Notices (EToN), which is soon to be repealed. The Noticing system has been widely replaced across the country by a new system called 'Permits.' - wording could be improved.</p>	Thank you for your comment.
O	<p>5.1</p> <p>Other activities that may be introduced under future regulations - these are already required under existing regulations.</p>	Noted thank you
O	<p>6.1</p> <p>Non Registerable activities - 'Other activities that do not require a Permit, if they are not on a Traffic Sensitive Street at a Traffic Sensitive Time, and of a duration that would impact on the network' - duration of the works aren't mentioned in legislation, works would only become registerable if they also fall into any of the categories listed in the registerable activities section.</p>	Noted thank you

<p>O</p>	<p>10.4 Notification to interested parties - 'Promoters are required to check whether any parties have registered such an interest prior to submitting an application for a Permit or PAA.' - Could be worded better, clarification required as to whether this means we need to check the NSG or whether we need to do more than that.</p>	<p>Thank you for your comment. Your interpretation of the paragraph is correct.</p>
<p>O</p>	<p>16.2 Put a line break between v. and Lower fees or discounted fees may be given in the following circumstances.</p> <p>We have reviewed your cost benefit analysis and there are inconsistencies between that and your cost matrix. We have calculated your expected income next year based on the quoted fees and your expected number of permits. Depending on which category major works fall into (Under 3, 4-10 or 10+ days), you will generate between 330,585 and 379,585. You've said that your estimated costs for permits for Statutory Undertakers is 313,418 which is significantly less than what you're predicting to recoup in fees. Please can you review your fees.</p>	<p>Agreed thank you.</p> <p>Thank you for considering and checking the CBA and the fees matrix. As you state these documents offer estimated costs and estimated income recovered from fees based on the best information, we have to hand from previous years noticing volumes. We are aware that the numbers of permits received will be less than the volume of notices received based on other authorities' experiences so the current data can only be considered as a best endeavors guide to permit operational income recovery.</p> <p>The current Covid-19 scenario has shown that any and all plans can be thrown out over night so Herefordshire is committed to reviewing fees charged in relation to monies spent once we have a full year of charges recovered as statutory guidance/legislation requires that we do so.</p>

WPD	<p>We are pleased to see a clear and concise permit scheme document.</p> <p>We have concerns around the level of permit fees, for all works, as this will increase costs directly for new connections customers, and indirectly for all.</p> <p>There may need to be some amendments in line with the latest regulation changes (e.g. definition of major works), but the way the scheme is written makes it easier to do this.</p>	<p>Thank you.</p> <p>The Herefordshire Council Permit Scheme will be operated to ensure we maximise network management benefits available to all highway users. The charging of permit fees on all roads supports our ability to do this and we have followed all statutory guidance and regulations in relation to how and why the proposed permit fees are charged, recovered, accounted for and spent. We are sure that any financial impact to you will be more than offset by the network management benefit to all.</p> <p>Noted</p>
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