

Legal Perspectives on Manual for Streets 2

Presented by

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Raising the Bar
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Introduction

- Government policy on land use planning
- Consequences for highways design

Policy

Objective – make better use of land (especially urban land)

- PPG 13
- PPS 3 (2010)
- Manual for Streets (1)
- Manual for Streets 2

Policy – PPS3

Not just more efficient use of land

- Importance of public realm

PPS 3 – para 16

Note language used

“accessible”... “well laid out”... “efficient”...

“design led”.... “high quality public realm”...

Evolution of highway design policy

- Standards – DMRB, DB32, Highway Authority “standards”
- MfS - residential streets
- MfS2 – other non-trunk roads

Manual for Streets

Suggested greater flexibility

Moved away from a “standards” based approach

Encouraged innovation

Manual for Streets 2

Takes approach forward

Guidance and design judgement rather than
“standards” based approach

Continues to encourage innovation

Evolution of highway design policy

- Focus on principles
- Focus on wider objectives
- Avoiding unnecessary prescription
- Wider discretion

What are Designers/HA Seeking to Do?

- Provide a means for safe movement
- Recognise profound role of highways in the public realm in making normal life possible in its full breadth and diversity
- A tension with the Law?

Some observations on the Law

- Statute and case law imposes certain restrictions on innovation
- Concerns for authorities and designers: civil (or even criminal) liability for damage, injury or death due to highway design
- How real are these risks?

Some observations on the Law

Much of the law is codified in statute law (including):

- Highways Act 1980
- Road Traffic Act 1988
- Road Traffic Regulation Act 1984

Some Observations on the Law

- These statutes give a variety of powers to highway authorities and impose some duties (such as to maintain and repair)
- However, many of these duties are not necessarily quite as extensive as they are perceived to be.

Cases

- Distinguish between design & maintenance and repair
- No duty on highway authorities under the Highways Act to give warnings of obvious dangers. Road users are not entitled to be forewarned of ordinary hazards of highway use
- BUT Highway Authorities are responsible for preventing entrapment of users into damage

Gorringe v Calderdale

Facts

Law – a number of principles clarified

- Duty on a highway authority to put and keep the highway in repair did not include providing warning signs.
- The duty to ‘maintain the highway’ did not include a duty to take reasonable care to secure that the highway was not dangerous to traffic.

Gorringe v Calderdale

- The accident had not been caused by any defect in the state of repair of the road or by any failure of the authority to maintain the road
- It was in the public interest that local authorities should take steps to promote road safety, but that did not require a private law duty to a careless driver or to any other road user.

Gorringe – a case on entrapment

Gorringe v Calderdale Metropolitan Borough Council [2004] UKHL 15

- “Although motorists are not entitled to be forewarned of the ordinary hazards of highway use, plainly they must not be entrapped into danger. If, for example, an authority were to signal a one way street but omit to put “no entry” signs at the other end... such cases, however, may be expected to be few and far between...”
Lord Brown of Eaton – under Heywood at para 102

Interaction with other Common Law Principles

Bird v Pearce [1979]

Murray v Nichols [1983]

- The missing white lines
- Conflict?
- Where does it leave us?

Design Defects & Liability

There have been very few cases relating to alleged defects & design

The ruling that motorists are responsible for their own safety still applies

Cases on Design Defects

- **King v DETR [2003] EWCA 730**
- **Kane v New Forest DC [2001] 3 All ER 914**
- **Levine v Morris 1969**

Kane v New Forest DC

Facts

Law

- Where an authority had created the source of a danger on the highway, it was not entitled thereafter to wash its hands of the danger and simply leave it to others to cure. In the instant case, the LPA had created the source of danger since it had required the footpath to be constructed.

Kane v New Forest DC

Some points arising

- LPA (not HA) but principle could apply
- Problem of doing something rather than not doing something
- Not really a question of standards (question of obvious danger)
- Does not suggest that innovation or flexibility in highway design is unacceptable
- However, begs question on highway safety and design

Dilemma Policy –v- the Law?

Some questions to debate

- Innovation (and achieving better urban development) are desirable but not at expense of highway safety
- Distinction between “Do nothing” and “Do something”
- Is the “standards” and “safety audit” based approach adequate?
- Does compliance with standards ensure a safe highway design?

Dilemma: Policy –v- the Law?

- Are there other techniques that may be equally (or more) satisfactory?
- How helpful is Manual for Streets?
- Are highway authorities and designers over cautious?
- How practical is an approach based on “properly documented design audit and sign off systems”?

Dilemma: Policy –v- the Law?

- How flexible can a designer be?
- Is one man's "design flexibility" another's "creating a source of danger in the highway"?
- Is "Do Nothing" now really an option?
- How do we go forward with confidence?

Dilemma: Policy –v- the Law?

- What has been the experience since MfS1?
- Has there been an increase in design related accidents?

Approach to Novel Schemes

What do HAs need to consider?

Look at from approach of defending potential later liability claims

Risk and Design Principles

1. Road users are responsible for their own safety and have a duty to take the road as they find it. The design is not required to take independence of judgement out of the hands of road users.
2. HA should avoid creating a trap for road users.
3. HA should not act irrationally.
4. Public interest principles.

Approach to Novel Schemes

1. New works are safe and properly designed and do not inadvertently trap road users into danger
2. Compliance with appropriate standards/ design guidance or according to principles that have been properly applied.

NB Liability may not be escaped simply by copying guidance or design

Approach to Novel Schemes

Where a scheme is entirely novel (and to demonstrate that it had not acted irrationally) it would seem advisable for a Highway Authority to have some specific and/or scientific justification for the proposed measures

Public Interest Principles

See comments of Lord Hoffmann in
O'Rourke v Campden LBC [1998] AC 188
(not a highway case)

Risk and Design - Approach

- Appropriate procedural system
- Not prescriptive but the following may be a useful starting point:-
 1. Set clear scheme objectives
 2. Design against objectives
 3. Expert review including safety audit
 4. Sign off in the light of consideration of the above

Risk and Design Approach

Safety Audits – Modified Approach?

- Seek to identify risks
- Quantify risks
- Evidence and justification e.g. TRL or other guidance

Conclusions

- Where do we go from her?
- Where do we not go from here?

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