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Non-Passive Longitudinal Private Apparatus (Section 50 of the New Roads and Street Works Act 1991)

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**New Roads and Street Works Act 1991 Section 50 - Street Works licence
West Sussex County Council Street Works Department Policy**

With effect from the 1st of February 2023 West Sussex County Council, for the reasons set out below, will not issue a Street Works Licence pursuant to section 50 of the New Roads and Street Works Act 1991 for apparatus that runs along the line of the road, unless certain conditions set out below are met.

The conditions which must apply for a licence to be considered:

1. Satisfactory evidence is supplied confirming that the installation is to be adopted by the relevant statutory undertaker. **OR**
2. It is a passive installation where the responsibility will be vested by title deed with a third party (examples of Passive installations being, non-pressurised foul or surface water drainage and non-fibre optic telecommunications cabling), and there is no impediment to highway use – (a private service supply to a private dwelling may not directly cause an impediment to highway use but may cause an impediment to utilities and contractors excavating the public highway and so would be regarded as causing an impediment to highway use).

There is no guarantee that a licence will be granted if either condition is met as other factors may apply, but no licence will be granted where neither is met.

Section 50 of the New Roads and Street Works Act 1991 provides:

- (1) The street authority may grant a licence (a "street works licence") permitting a person—
 - (a) To place, or to retain, apparatus in the street; and
 - (b) Thereafter to inspect, maintain, adjust, repair, alter 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).

Section 50 of The Act also states:

- (4) The provisions of Schedule 3 have effect with respect to the grant of street works licences, the attachment of conditions and other matters.

Schedule 3 amongst other items includes the following:

Appeal against decision of local highway authority

- (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 except on terms prohibiting its assignment, or
- (c) Any terms or conditions of the licence granted to him, may appeal to the Secretary of State.

This shows that the Street Authority may refuse an application for a Section 50 Street Works Licence.

If the Licence is for the installation of apparatus that crosses the road, the applicant may appeal a refusal to the Secretary of State.

If the application is for a Licence that installs apparatus along the line of the road, i.e. longitudinally along the street, there is no right of appeal.

A Court Ruling, Case No: CO/3161/2018, date 18/02/2019, between the Claimant, Calor Gas Limited and the Defendant, Norfolk County Council, in judgement supported Norfolk County Councils policy not to permit applications for Street Works section 50 Licences for apparatus that run along the line of the road.

Extracts from this court decision set out below contain the reasons West Sussex County Council adopts the approach to the consideration of applications for licences under s.50 which relate to issues of public safety and the risks associated with installations of equipment and access to records identifying such equipment or those responsible for it.

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Supporting extracts taken from the Court Judgement:

Longitudinal private apparatus in the highway causes administrative and safety issues. Statutory undertakers and others with powers to open the road cannot know by visual inspection that such apparatus is in the highway and may damage it, which in the case of gas is clearly dangerous. There is no effective mechanism for those opening the road to be notified of private apparatus. The Council may look more favourably on private apparatus which crosses the highway since its entry and exit points either side of the road are more likely to be evident by inspection.

...

Schedule 3 of the 1991 Act provides a right of appeal against the refusal of permission for crossing apparatus, but not for longitudinal apparatus. The inherent problems arising from longitudinal apparatus are therefore recognised in the legislation.

A witness statement on behalf of the Defendant (the Street Authority) explaining that although the Defendant maintains a record of private apparatus installed within the highway, the accuracy of that record is dependent upon the Defendant being notified of the presence of the apparatus by those who have installed it.

One of the factors taken into account is whether the proposed installation is passive or non-passive. Passive installations are those networks which involve apparatus such as potable or waste water. If this type of passive pipe is excavated in error then there is little risk of danger to the operatives. Non-passive installations are those networks such as 11KV electric cables and gas pipes. If this type of non-passive pipe is excavated, then there is a very real danger of injury or death to the operatives.

Before commencing work, each promoter should complete plant enquiry searches on the owners of apparatus in that highway. This is achieved largely by the works promoter contacting the statutory undertakers direct or by contacting companies like 'Linesearch' who help identify which statutory undertakers may have placed their apparatus in the street in question. There is, though, no effective mechanism in place for section 50 private apparatus to be included in these searches. Generally, that does not cause a problem when the apparatus crosses the highway because it is usual for chambers or valves to be provided at each end of the crossing point. These covers would be apparent by promoters intending to excavate at that location. It is not so straightforward with longitudinal apparatus which can run for hundreds of metres but with no chambers or valves provided. It therefore can be difficult for promoters to know the presence of longitudinal apparatus before commencing work.

The Council balances the risk of not knowing the presence of buried apparatus against the risk of danger if that apparatus were to be accidentally damaged during the excavation work. Consequently, depending on the circumstances the Council may allow passive apparatus to run longitudinally in the highway, but ideally the apparatus would be

adopted by a statutory undertaker. The Council considers the risk too great for non-passive apparatus, such as LPG pipes, to be laid along the highway if they were still to be privately owned once commissioned (i.e. made live).” Placing private apparatus in the street longitudinally brings with it the risk that it will not be readily discoverable, both as a consequence of the manner in which searches for such apparatus are commonly undertaken and also as a consequence of the absence of physical features in the highway disclosing the presence of the apparatus.

When that risk is combined with the additional risk of danger from disturbance of non-passive apparatus the safety case for the policy is reinforced.

