

Key Statutory Duties, Common Law Duties and Current Guidance

The legislation, policies and guidance listed below apply to England. There are similar provisions in other nations. Differences include in Wales the Active Travel (Wales) Act 2013 and the Well-being of Future Generations (Wales) Act 2015. In Scotland “Designing Streets” is adopted policy of the Scottish Government.

Attractive, Healthy Places

Each local authority **must** take such steps as it considers appropriate for improving the health of the people in its area.¹ Each council **should** consider the available research evidence on health and wellbeing and use the full range of their powers in all the services it provides, to make improvements. It **should** consider practical measures such as tree planting, urban greening, provision of parks, play areas and public spaces, and pedestrian and cycling routes. It **should** consider how changes to operation of core functions such as highways, waste collection, education, social care and corporate services can contribute to healthy places.

Good leadership and management

Councils, in all decisions made, **must** act reasonably, taking into account those things that should be taken into consideration and not taking into account those things that should not be taken into consideration.²

Councils **should** ensure that commitments in the council’s corporate plan to health and wellbeing are observed by front-line services, including planning, highways, waste management, parks and environment.

In procuring services or projects Councils **must** consider:

- (a) how what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area,
- (b) how, in conducting the process of procurement, it might act with a view to securing that improvement.³

Fairness for all

Councils, in the exercise of their functions (and private companies providing public services), **must** have due regard to the need to advance equality of opportunity of people with protected characteristics under the Equality Act⁴, including elderly people, disabled people, and people of different gender. “Due regard” means a vigorous and open-minded inquiry before settling upon a course of action.⁵ Councils **must** safeguard and promote the welfare of children in their area who are in need.⁶

Safe streets and highways

In creating, modifying or maintaining highways, councils have a **duty** to both careful and negligent road users⁷. They **must** have regard to the abilities of children to judge moving vehicles. They **must** have regard to the relationship between vehicle speed and accident causation and severity of injury. They **must** have due regard to people covered by the Equality Act⁴, including disabled and elderly people. They **must** prepare and carry out a programme of measures designed to promote road safety.⁸ They **must** inspect and repair footways and carriageways to a reasonable standard.⁹

Clean streets and public spaces

Councils **must** observe the Code of Practice on Litter and Refuse, keeping streets, highways and areas of public land clean in accordance with the standards set out in the code.¹⁰

Councils **should** use their powers to tackle land and buildings that are adversely affecting the amenity of an area, issuing Untidy Land Notices requiring land owners to abate the nuisance.¹¹

Clean air

Local authorities **must** undertake reviews of air quality and where air quality standards and objectives are not being achieved, must designate air quality management areas, and prepare an action plan¹² which **must** have regard to the statutory guidance.¹³

Well planned ¹⁴

Local planning authorities **must** take design into consideration and **should** refuse permission for development of poor design¹⁴.

Planning **should**:

- promote safe, connected and efficient streets
- promote a network of greenspaces (including parks) and public places
- promote access and inclusion
- address crime prevention
- promote cohesive and vibrant neighbourhoods

The following transport user hierarchy **should** be applied within all aspects of street design: – consider the needs of the most vulnerable users first: pedestrians, then cyclists, then public transport users, specialist vehicles like ambulances and finally other motor vehicles.¹⁴

Local planning authorities **should** have local design review arrangements in place to provide assessment of proposals and to support high standards of design.¹⁴

Street layout and design in new development **should** reflect Manual for Streets¹⁵ or any more recent Government guidance. New development that is designed using council standards based on Design Bulletin 32¹⁶ (withdrawn by Government in 2007) may not comply with the Equality Act, current Government and best practice guidance or the “transport user hierarchy” in the Planning Practice Guidance. Such development will constitute poor design and **should** be refused planning permission.

Access to healthy food

Planning controls **may** be used to restrict fast food takeaways and promote areas for community food growing through policies in development plan documents and supplementary planning documents. Article 4 directions **may** be used to remove permitted development rights to restrict unhealthy food outlets¹⁷.

Public liability claims and insurance

Public liability insurance policies **require** the insured party to take reasonable steps to avoid a claim. Highway authorities **should** adopt current best practice, including national guidance such as Manual for Streets¹⁵ and the Planning Practice Guidance¹⁴, and have due regard to all relevant statutory duties and the common law duty of care to both careful and negligent road users.

Competence of staff and contractors

Councils, in the interest of serving the public, guarding against actions in negligence or gross negligence, and complying with the terms of public liability insurance policies, **must** ensure that the professionals who work for them directly, or through private companies, are competent to do the work being required of them, up to date, and adhere to their professional codes of conduct.¹⁸

¹ Health and Social Care Act 2012

² Wednesbury Test, Associated Provincial Picture Houses Ltd. v Wednesbury Corporation [1948] 1 KB 223

³ Public Services (Social Value) Act 2012

⁴ Equality Act 2010 Protected Characteristics and Public Sector Equality Duty

⁵ Ali vs Newham 2012 EWHC 2970

⁶ Children Act 1989

⁷ Yetkin vs Newham 2010, EWCA Civ 776

⁸ Road Traffic Act 1988 S.39 (2)

⁹ Highways Act 1980 Section 41 and Common Law

¹⁰ Code of Practice on Litter and Refuse, Environmental Protection Act 1990

¹¹ Section 215, Town and Country Planning Act 1990

¹² Environment Act 1995 Part IV

¹³ Local Air Quality Management Policy Guidance (PG16) DEFRA 2016

¹⁴ Planning Practice Guidance, DCLG

¹⁵ Manual for Streets, Department for Transport 2007

¹⁶ Design Bulletin 32 Residential Roads and Footpaths, HMSO 2nd edition 1992

¹⁷ Using the planning system to control hot food takeaways, NHS 2013

¹⁸ Common law, & professional codes of conduct