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Dear East Riding of Yorkshire Council

East Riding of Yorkshire Live Labs 2 Project

Background

ADEPT Live Labs 2 (LL2) is a £30 million, three-year, UK-wide research project funded by the Department for Transport that is aimed at decarbonising the local highway network. The project will run until March 2026 followed by a five-year subsequent, extended monitoring and evaluation period.

East Riding of Yorkshire Council (ERYC) are one of the local authorities involved and their focus is on decarbonising the visual environment of the highway, namely streetlights, sign illumination, associated structures, together with the on-going maintenance.

There are currently 7.2 million streetlights across the country. The aim is to reduce this number by giving highway authorities viable carbon neutral alternatives which they can use instead, with electrically powered lighting being a last resort.

ERYC have replaced streetlights and lit signage with lower carbon options over two test routes totalling over 30km of road. The project is focusing heavily on locations that the British Standards say must be sufficiently lit, outside of the urban setting, such as roundabouts and junctions. These are potential 'zones of conflict' for road users and road safety is a major consideration for the project. A key measure for the project is that the highway will be no less safe with the new infrastructure elements than it was with the conventional street lighting.

Driver behaviour has been monitored both before and after the changes to evaluate the success of the changes and to make alterations if needed.

Scope of this report

ERYC have asked Weightmans to consider the Council's legal liability if removing streetlights from the highway.

This report should be read in conjunction with the Zurich report dated 24 October 2025 which considers the robustness of the operational risk management process and whether the project may have implications for insurance claims.

This report is based on the information that has been provided to Weightmans at the date of this report and may need to be amended following the LL2 project and once the extended monitoring has come to an end.

We recommend the highway authority consider the impact this has on any current highway policies and whether any amendments are required as a result.

With regards to rolling out this scheme to the wider highway network, we would expect the highway authority to undertake a similar risk assessment process to that undertaken for the two test routes. That risk assessment should consider the British Standards, together with the Council's knowledge of the local area, the available accident data and road usage to then determine if it is appropriate to remove streetlights.

Legal position

There are roads all over the UK which are not lit by streetlights. For a motorist or pedestrian to pursue a civil claim for property damage or personal injury which they allege was caused by lack of streetlighting they would either need to show there is a provision within statute that gives rise to an entitlement to damages or that the highway authority owed them a duty of care, which was breached and the breach caused the alleged damage.

Statutory powers

To provide background and context, highway authorities' have a duty to assess and promote road safety. Certain areas of road are lit where road safety is a concern and that arises from Section 39(2) and (3) of the Road Traffic Act 1988 which states:

"(2) Each local authority must prepare and carry out a programme of measures designed to promote road safety. ...

(3) Without prejudice to the generality of sub-section (2) above, in pursuance of their duty under that sub-section each local authority —

(a) must carry out studies into accidents arising out of the use of vehicles on roads ... within their area,
(b) must, in the light of those studies, take such measures as appear to the authority to be appropriate to prevent such accidents, including the dissemination of information and advice relating to the use of roads, the giving of practical training to road users or any class or description of road users, the construction, improvement, maintenance or repair of roads for which they are the highway authority ... and other measures taken in the exercise of their powers for controlling, protecting or assisting the movement of traffic on roads ...”

The Court of Appeal in Larner v Solihull Metropolitan Borough Council [2001] RTR 469 found that section 39 neither gave rise to an action for breach of statutory duty nor generated a duty of care. The Court of Appeal also held that there had been no breach of any duty which might conceivably exist and that if there had been, it would not have been the cause of the accident.

It is Section 97 of the Highways Act 1980 which provides the highway authority with the power to provide streetlighting, which states:

(1)[F1 A] highway authority may provide lighting for the purposes of any highway or proposed highway for which they are or will be the highway authority, and may for that purpose—

(a)contract with any persons for the supply of gas, electricity or other means of lighting; and

(b)construct and maintain such lamps, posts and other works as they consider necessary.

(2)A highway authority may alter or remove any works constructed by them under this section or vested in them under Part III of the M1Local Government Act 1966 or section 270 below.

(3)A highway authority shall pay compensation to any person who sustains damage by reason of the execution of works under this section.

(4)Section 45 of the M2Public Health Act 1961 (attachment of street lamps to buildings) and section 81 of that Act (summary recovery of damages for negligence) apply to a highway authority who are not a council of a kind therein mentioned as they apply to such a council.

S.97 makes it clear that the highway authority **may** (not must or shall) provide streetlights, it is a discretionary power. The House of Lords case of Stovin v Wise [1996] AC 923 precludes a finding that there was a duty of care where there was an omission by a highway authority to perform a statutory power.

Further, the House of Lords unanimously concluded in Gorringe (by her litigation friend June Elizabeth Todd) (FC) v Calderdale Metropolitan Borough Council [2004] UKHL 15, 2004 WL 960935 that the Council did not owe the claimant a common law duty of care. In this case, the court emphasized that

the statutory power to place road signs under the Road Traffic Act 1988 did not automatically create a private law duty to exercise that power. The ruling clarified that for a duty of care to arise from a statutory power, there must be exceptional circumstances, such as a clear public law duty to act and a specific policy in the statute that supports compensation for individuals affected by the failure to act.

McCabe v Cheshire West & Chester Council and BAM Nuttall Ltd (2014): In this case the local authority was not liable for the failure to maintain a streetlamp positioned so as to light a set of steps forming part of the maintained highway. The judge found that liability could only be established against the highway authority if it had performed a positive act that created a danger. The defendants had done nothing to create a danger; indeed they had attempted to reduce the danger by providing street lighting. The court held that "There could be no doubt that if the local authority had taken a conscious decision to switch the light off or even to remove it, it would not have been liable. It would merely have been exercising its discretion under the statutory power."

It is important to note that s.97(3) of the HA 1980 requires a highway authority to pay compensation to any person who sustains damage by reason of the execution of works under that section. To avoid any confusion, this sub section was considered in the case of *McCabe* and the Court explained that this subsection was designed to protect those who are directly affected by the carrying out of works to provide streetlights, for example somebody whose drive is blocked by a trench in which an electricity cable is to be laid to provide power to a streetlight.

Claims under s.41 Highways Act 1980

Section 41 of the Highways Act 1980 imposes a duty on a Highway Authority to maintain the highway itself. Not lighting the highway with streetlights would not be caught by this section and this is confirmed in the case of *McCabe*.

However, if the removal or installation of the streetlights, cat's eyes, signage etc caused a defect in the fabric of the highway which caused damage there may be a claim under s.41. Any such claim could be defended in full if the highway authority can successfully raise a s.58 defence.

Common Law Negligence

It is clear the statutory powers do not create a duty of care and further, if the highway authority did not perform a positive act that created a danger there is no liability in tort.

However, if the highway authority created the danger and it was reasonable to expect that the claimant would be directly affected, and the damage was foreseeable there may be a civil claim. To provide some context we have outlined two cases below:

The case of *Yetkin v London Borough of Newham [2010] EWCA Civ 776* a local authority had planted shrubs near a pedestrian crossing and had allowed them to grow to the extent that they obstructed the view pedestrians had of oncoming traffic. This resulted in an accident, and the authority was held

liable in negligence because they had themselves created the hazard. This is a clear example of misfeasance in that there was positive action which caused the danger and gave rise to liability in the normal way.

In the case of McClelland v Manchester Corporation [1911-13] AER Reprint 562 there were obvious active steps contributing to the danger. A street (Sunderland Street) had been dedicated as a public highway, and it terminated in a deep ravine which was and always had been unfenced. The local authority made up the street using the street works code. They provided kerbs, pavements, road surface, streetlights and sewers. They did nothing to fence off the edge of the ravine or to warn motorists of its presence. Beyond the ravine was another public street in the control of the same local authority (Windsor Road) which also had a streetlight. The recital of the facts in the judgement reads as follows:

"...the effect of this system of lighting to anyone passing down Sunderland Street was that this street and Windsor Road appeared to be one continuous lighted street and there was nothing to indicate that the two streets were separated by a ravine...The Defendants had been warned by their own officials some time before the accident to the plaintiff ...that the street was dangerous owing to the unfenced ravine. Reports with regard to it and the steps then sought to be taken for the safety of the public were made to the corporation but nothing was done by way of fencing or additional lighting or otherwise."

The Claimant was a passenger in a car which, driven without negligence, fell into the ravine. Liability was found against the authority. Towards the end of the judgment in the report is a section which reads as follows:

"Counsel contended that if the Defendants undertook to light and did light a street which they knew to be dangerous they would be liable for an accident caused by insufficient and improper lighting, and he cited Lamley v East Redford Corporation as authority for this contention. I think that the principle of that case applies and that as the defendants negligently and inadequately lighted the street, having regard to its condition, they are liable on that ground."

It is important to caveat this report and note that whilst we can reach generalised conclusions based on existing case law, if a claim were to be made we could need to consider it on its own facts and whether there was any liability.

Documents/evidence

We consider it will be important to retain the original and any updated versions of the following:

- Risk assessments
- Method statements

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- Road layouts/plans pre and post switch off
- Minutes of meetings where changes discussed
- CCTV video footage
- Complaints regarding any changes to streetlighting or what has been installed to replace the streetlights
- Road safety audits
- Traffic counts
- Collision data/history for site
- AI Data collated throughout Project
- Street lighting/furniture inspection policy/criteria
- Communications with general public regarding changes/switch off

Should a claim be made then witness evidence would need to cover:

- Explain purpose, what doing and why
- What considered
- Parties engaged with as part of the process
- Why these sites were chosen
- How many sites
- Base line assessments
- Explain risk assessment process, testing undertaken, period of testing, changes in conditions, factors considered
- Results of trial
- Lessons learnt along the way
- Consider if this aligns with any current policies or are any policies being varied?

Yours sincerely

Sarah Bradley, Principal Associate and Hannah Beddis, Partner

Weightmans LLP