

Internal Scrutiny Committee

Meeting to be held on Friday, 27 September 2019

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| Electoral Division affected: (All Divisions); |
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Highway Adoption and the Process Involved

(Appendices 'A - D' refers)

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Executive Summary

The aims of this report is to describe the process of the local highway authority in considering and adopting a road, having regard to typical issues and other influences that often occur, delaying adoption and who is responsible for un-adopted roads.

Recommendation

Whilst the timing of highway adoptions are outside the control of the highway authority there are a number of recommendations proposed, if supported, would provide greater certainty and understanding to all.

- 1 Suggest additional wording to the Local Planning Authority (LPA) and which can be used within a planning condition that is attached to any planning permission. The wording requires a timeline for adoption in line with development buildout.
- 2 Inform relevant Councillors at the time of a road being adopted.
- 3 Work more closely with Councillors (residents) in locations where housebuilders are slow in progressing the adoption process (where there are no issues that cannot be resolved).
- 4 Look at opportunities to strengthen the partnership approach between housebuilders, utilities (drainage), LPA and the highway authority in strategic development locations to assist where possible to unlock issues and speed up the adoption process.
- 5 Inform the relevant Councillor if a road is NOT suitable for adoption and reasons why.

Background and Advice

The most common method of achieving road adoption is under the Section 38 of the 1980 Highways Act. It is mostly used where roads are planned by developers on new residential or commercial developments. Agreements provide a seamless process to achieve road adoption and can only be finalised once all highway related

planning requirements are in place. It is good practice that the process commences during the planning phase and continues through design and construction phases.

Once roads are adopted into the highway they are then maintained at the public expense.

1 Adoption Process and common issues

Section 38 of the Highways Act 1980 enables LCC to take over and maintain at the public expense (adopt), roads, supporting structures, foot/cycle ways and verges constructed by a third party through a legal agreement within the highway authority.

Applications to enter into a Section 38 (S38) Agreement should be started by the developer as soon as practicable during the planning process; ideally at the application stage.

General Issue: *Unfortunately few housebuilders take up this opportunity as it requires them to resource/fund this and would be undertaken without certainty of planning permission. Unfortunately the planning system does not require a developer to progress a proactive approach.*

Large development sites are often divided in to a number of phases and each phase requires a completed Agreement before highway construction works commence. The process can be divided into 4 stages:

Note: Typical Issues referenced below are further explained in Section 3.

i. Planning Phase (tasks)

Pre-application engagement, understand the housebuilders intentions (with regard to roads to be adopted and those to remain private), joint working on layout understanding site related limitations and risks, this process is an iterative process.

There are occasions when plans approved by the LPA as part of a planning permission some elements do not satisfy the highway authority (**Typical Issue 1**).

ii. Design Phase post planning decision (tasks)

Housebuilder makes technical submission and the highway authority provides approval when satisfied (it is usual for this to be an iterative process). Technical approval must be in line with that approved at planning committee. Legal agreements are also drafted at this stage and bond and inspection fees paid.

Note: Prior to a S38 Agreement being signed, the Developer must provide written proof that they are the client for the highway works. Proof of land ownership is required to ensure that all parties with freehold or leasehold interests in the land enter into the S38 Agreement and consent to its terms.

iii. Construction Phase (tasks)

Relevant planning conditions attached to a permission need to be discharged; highway construction commences with works inspected by the highway authority at various stages; works completed (safety audit undertaken, if required). Post maintenance period of a completed phase (minimum of 12 months) works are inspected with any additional/remedial works undertaken, to satisfy safety audit or as a result of poor workmanship, damage, defective products etc.

iv. Adoption Phase (tasks)

On completion of all remedial works with obligations satisfied, commuted sums paid and all other agreements and certificates in place such as drainage (**Typical Issue 2**), documentation (and plans) are provided by the housebuilder (**Typical Issue 3**) to the highway authority. On the highway authority being satisfied the highway can be adopted and maintained at public expense.

*Note: It is for the housebuilder to request that a highway is considered for adoption and his responsibility to submit all information, when he is ready (**Typical Issues 4 and 5**).*

For further information on the agreement, see Appendix A for a process flow chart and Appendix B for contents of a legal agreement.

2 Other necessary Highway Works required within existing highway boundary or adjoining it

It may be necessary in some instances to alter the existing adopted highway. Where this is required, the works will be subject to either:

- (a) a separate agreement under the provisions of Section 278 of the Highways Act 1980, or
- (b) a combined agreement

Works associated with the development will not be allowed to commence on any publicly maintained highway until either the S278 Agreement or S38/S278 Combined Agreement is signed by both parties and a Bond of Surety is in place.

When any work is undertaken on the existing adopted highway or to support adoption, there are a number of additional agreements required relating to working within the highway, or connecting to existing drainage system, see Appendix C for a list and further information.

See Appendix D for the number of active S38's that the highway authority has.

3 Summary of Typical issues that impact on what will be adopted and its timing

This section describes the issue in further detail as highlighted above.

General Issue 1: Developers are recommended to enter into S38 discussions with the local highway authority as soon as practicable during the planning process; ideally at the application stage.

Response: A proactive approach is supported by the highway authority. However it is not a requirement of the planning process, therefore developers are usually reluctant to undertake additional work at their cost, with no certainty of a planning permission being granted. Full or hybrid planning applications do include additional layout information which is often suitable to give additional certainty on principles of adoptions, reducing the scale of any issue.

Typical Issue 1: There are occasions when plans approved as part of a planning permission do not satisfy the highway authority usually on layout detail, for example:

- road widths not suitable to allow vehicles to pass (safety issue)
- insufficient size of turning head to allow a refuge vehicle to manoeuvre within the road (operational and safety issue)
- driveways of an insufficient length to satisfy parking standards resulting in footway being obstructed (safety issue)
- layout not satisfying general design criteria such as visibility or stopping requirements (safety issue) or specific detail design at junctions or on highway links
- unacceptable materials used within the highway

Response: Developers are fully aware of requirements and design standards and what can/will be adopted (all issues uncovered are highlighted to the developer and his consultants at the pre-applications stage or during the planning process). Lancashire's requirements are broadly consistent to other highway authorities. The main reasons for layout issues are:

- pressure from the applicants urban designers or the LPA from a design perspective or
- a housebuilder is maximising the number of dwellings within the site and the LPA is accepting greater levels of density, delivered at the expense of acceptable highway infrastructure
- a housebuilder not requesting roads within a development to be adopted i.e. a gated community, or lengths of cul-de-sac and are therefore designed/build to a different specification/standard
- a housebuilder is unable to satisfy requirements i.e. outside his control

Typical Issue 2: External influences impacting on both the housebuilder and the highway authority, such as the requirement to have an agreement to discharge into an existing sewer. This needs to be completed with the drainage statutory undertaker prior to the completion of the S38.

Response: The housebuilder is fully aware of his requirements and what the risks are prior to commencement on site and that he must demonstrate a right to discharge surface water from the highway, either by way of a Sustainable Drainage System (SUDS) or an existing or proposed public sewer. Unfortunately, where there are situations where multiple housebuilders all linking into one system and being delivered in series it can take time to reach agreement on required sewer improvements **with the statutory undertaker**. If the first housebuilder is in no rush to reach agreement with the undertaker this can impact on the next. Legal agreements need to be in place with statutory undertakers prior to a highway being considered for adoption. An example of this issue is Buckshaw (Chorley) and the time for utilities to be satisfied.

Typical Issue 3: A housebuilder is in no rush to provide all supporting documentation (and plans).

Response: Housebuilders are generally keen to have roads adopted as soon as is possible, as it removes their liability. However housebuilders and their delivery teams are also keen to progress with the next development site, constructing and selling houses. Unfortunately this can impact on housebuilders progressing with the adoption process and the supply of necessary documentation to the highway authority (on a site which is completed). This delays adoption.

Typical Issue 4: It is for the housebuilder to request that a highway is considered for adoption and the housebuilder submits supporting information when he is ready.

Response: Unfortunately the highway authority cannot:

- require a housebuilder to have a highway adopted or
- adopt a highway without support of the owner of the private road (land owner)

Typical Issue 5: Adoption of a new road can only be considered where it connects into an existing adopted road providing a continuous corridor. This can be an issue for large sites where one developer requires access into the roads/infrastructure of another developer.

Response: The highway authority should not have a disjointed network of adopted roads with isolated sections where access (its use) cannot be controlled. This issue only applies to large sites with numerous house builders all delivering infrastructure at different rates. This issue is generally short term.

4 Existing private roads (including footways) not adopted

Across Lancashire there are a number of existing historic roads that are not adopted. Unfortunately, many of these roads are not constructed to current adoptable standards or in line with a satisfactory layout supporting current needs. Therefore these roads cannot be considered suitable for adoption. For these roads to be considered, it is for the owners/residents/users of the road in question to fund all

necessary changes to the satisfaction of the highway authority in line with standards, following a suitable process. They must provide evidence that all other necessary agreements such as drainage rights into the public system or into a water course/pond are in place.

Whilst highway officers are happy to assist local communities in the process, it is the responsibility of the communities (promoters) to progress matters on private roads making them suitable for adoption with all costs and risks being borne by the owners. This usually results in the private road remaining private, as necessary changes are cost prohibitive or undeliverable.

Note: There can also be a further complication. This can occur in a scenario when there is an unknown owner of a section of private road which is required to provide a continuous and suitable route and the owner cannot be determined by land registry checks. A process can be progressed by the promotor(s)/land owners at their risk by undertaking necessary changes to the road, with LCC then progressing an approach to flush out the unknown land owner prior to adoption. This approach is not used often as can be considered aggressive. Again the approach is very costly to the promotor (and comes with additional risks).

4.1 Maintenance of Existing private Roads

Maintenance of private roads is the responsibility of the residents who use those roads, it is often through informal agreements. If it is a rural road/lane it is typical for the land owner who borders the lane to maintain it to the centre, including existing hedges and verges.

Consultations

N/A

Implications:

This item has the following implications, as indicated:

Risk management

The process followed by LCC with regard to delivery of new highway infrastructure and its adoption is in line with the planning process which the LPA control and also satisfies the Highways Act 1980.

The benefits of supporting the recommendations presented is that residents which require direct/indirect access to a new road yet to be adopted will be better informed on adoption matters and the likelihood of a road being adopted. They also maximises opportunity between all influencing parties to speed up the adoption process and unlocking issues (with the support from Councillors and their residents).

The risks associated with not following the recommendations highlighted in the report is that the timing for adoption will continue to be protracted especially for large sites, with residents not having a clear understanding of timing or progress made.

**Local Government (Access to Information) Act 1985
List of Background Papers**

| Paper | Date | Contact/Tel |
|-------|------|-------------|
| N/A | | |