



Overview and Scrutiny Task Group - Adoption of Estates

Agenda and Reports

For consideration on

**Wednesday, 19th September
2012**

In Committee Room 1, Town Hall, Chorley

At 6.00 pm

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10 September 2012

Dear Colleague

**OVERVIEW AND SCRUTINY TASK GROUP - ADOPTION OF ESTATES -
WEDNESDAY, 19TH SEPTEMBER 2012**

You are invited to attend a meeting of the Overview and Scrutiny Task Group - Adoption of Estates to be held in Committee Room 1, Town Hall, Chorley on Wednesday, 19th September 2012 commencing at 6.00 pm.

AGENDA

1 **Apologies for absence**

2 **Declarations of Any Interests**

Members are reminded of their responsibility to declare any pecuniary interest in respect of matters contained in this agenda.

If you have a pecuniary interest you must withdraw from the meeting. Normally you should leave the room before the business starts to be discussed. You do, however, have the same right to speak as a member of the public and may remain in the room to enable you to exercise that right and then leave immediately. In either case you must not seek to improperly influence a decision on the matter.

3 **Background information (Pages 1 - 20)**

A copy of the presentation and summary documentation from Lancashire County Council that was presented at the recent Member Learning Hour have been enclosed for your information.

4 **Scoping of the Adoption of Housing Estates Task Group (Pages 21 - 22)**

The Group will consider the scoping of the review.

5 **Planning the Review and future meetings**

6 **Any other item(s) that the Chair decides is/are urgent**

Yours sincerely



Gary Hall
Chief Executive

Dianne Scambler
Democratic and Member Services Officer
E-mail: dianne.scambler@chorley.gov.uk
Tel: (01257) 515034
Fax: (01257) 515150

Distribution

1. Agenda and reports to all Members of the Overview and Scrutiny Task Group - Adoption of Estates (Matthew Crow (Chair) and Julia Berry, Marion Lowe, June Molyneaux, Joyce Snape, Kim Snape and Ralph Snape for attendance.
2. Agenda and reports to Jamie Carson (Director of People and Places), Jamie Dixon (Head of Streetscene & Leisure Contracts), Jennifer Moore (Head of Planning), Carol Russell (Democratic Services Manager) and Dianne Scambler (Democratic and Member Services Officer) for attendance.

This information can be made available to you in larger print or on audio tape, or translated into your own language. Please telephone 01257 515118 to access this service.

આ માહિતીનો અનુવાદ આપની પોતાની ભાષામાં કરી શકાય છે. આ સેવા સરળતાથી મેળવવા માટે કૃપા કરી, આ નંબર પર ફોન કરો: 01257 515822

ان معلومات کا ترجمہ آپ کی اپنی زبان میں بھی کیا جاسکتا ہے۔ یہ خدمت استعمال کرنے کیلئے براہ مہربانی اس نمبر پر ٹیلیفون

01257 515823

کیجئے:

Member Learning Hour

ADOPTIONS

Jennifer Moore
Head of Planning
August 2012



ADOPTIONS

Scope – Processes used for adoption

- Roads
- Highway Improvements
- Drainage - Foul & Surface Water
- Open Space & Streetscene

Typical Elements for adoption

- Roads
- Drainage – foul
- Drainage – surface water
- Public open space
- Street Furniture
- Bus stops
- Highway verges
- Trees on the highway

Roads

Adopted Roads

- Maintained at the expense of the public purse

Unadopted Roads

- Roads constructed under s38 agreements that are not adopted yet

Private Roads

- Roads intended to remain private ownership

How do Roads get adopted?

- Nothing in law to make a developer build to an adoptable standard, or to require the developer to seek adoption
- Developer does not have to have roads adopted i.e. they can be private
- If developer wishes to adopt - County can/will adopt if constructed to adoptable standard, developer pays legal & inspection fees
- This is done through a section 38 agreement (Highways Act 1980) – a formal agreement between LCC Highways & Developer

Section 38 – Road Adoptions

Highways Act 1980

- Includes an insurance bond – LCC completes if developer fails to do so
- Roads inspected by LCC during construction, then maintained by developer for a period after completion – usually 12 months, and finally adopted as public highway, after final inspection
- Can seek a s38 agreement after construction, but developer/owner pays to prove accuracy of construction

Section 278 – Design & Build

Highways Act 1980

- Works necessary to the highway to make development acceptable
- Typically crossings, islands etc
- Highway Authority has right to design & build
- Highway Authority can allow Developer (or indeed district Council) to do so, subject to usual controls on specification, inspection, sign off

Section 104/102 – Sewers & Drains

Water Industry Act 1991

- Only accept underground structures for adoption – not balancing ponds etc, but will be concerned with capacity etc of other structures, with Environment Agency
- Sewerage undertaker (United Utilities) not required to accept SW drainage from highway to the existing public sewerage system (viable alternatives) – must be addressed with Highways in s38
- Work can begin if detailed plans are agreed, but before final agreement is signed = Interim Approval, but not if scheme involves diverting existing sewers
- Internal Inspections before adoption e.g. CCTV, light line

Adoption Problems

- No fixed timescale set by s38 agreement (depends on development economics, progress, scale, phasing)
- Sewer/drainage systems - incomplete, unauthorised pumping stations, lack of access rights across 3rd party land – will affect s38 too!
- Insufficient standard of works – visibility splays, kerbstones, grids, pipelines, insufficient layers/tarmac, sub-standard street lighting etc
- Poor Timing of surveys to check standards
- Poor Maintenance prior to adoption – delays

Adoption Problems

- Changes in phasing / cash flow
- Developer goes bust/liquidates – no bond liability?
- New Property purchases - search can show if a new road is unadopted/s38
- If no s38 - no guarantee that road finished/adopted, and road maintenance usually reverts to residents

Public Open Space

- Section 106 agreement (Town & Country Planning Act 1990, as amended)
- Can be broad or specific e.g. scheme to be agreed, or exact specifications etc

- Over to Jamie....

Adoptions Briefing

Jamie Dixon
August 2012



Public open space (POS) & Streetscene

- **POS**
 - Play areas
 - Green space / trees / woodland
 - Sports pitches
 - Wildlife areas / ponds
 - Footpaths - gates, fencing, parking
- **Streetscene**
 - Bus shelters, litter bins, highway verges

POS - Process 1

1. Site design stage

- Informal discussion adoption / retention
- Comment on proposals
- Commuted sum

2. Outline / Detailed planning application

- Formal feedback
- Agree commuted sum

POS - Process 2

3. Developer work completed

- 12 month maintenance period
- Undertake site visits
- Identify problem areas

4. Final adoption

- Final site meeting
- Agree outstanding works
- Formally adopt

Challenges

- Developers not completing work / sites to standard
 - Ownership changes / multiple developers
- Sites without agreement / Historic un-adopted sites
- Developers preferring retention
- Engaging with some developers
- Partial adoptions
- Other adoption elements (Sect. 38)
- Public expectation

Any questions?

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Adoption of New Roads Summary from Lancashire County Council

Introduction

Members will understand that it is part of the County Council's role to adopt new roads as part of the public highway network, as long as they are built to suitable standards. The process is often long-drawn out and in some disappointing cases is not completed. This note is intended to help people understand the process.

If the developer wants the road to be adopted at some time in the future, he can enter a formal agreement with the County Council made under Section 38 of the Highways Act 1980 (called a Section 38 Agreement), which provides for an insurance bond so the County Council can afford to complete the highways if the developer fails to do so. It includes for the roads to be inspected by the County Council during construction, then maintained by the developer for a period after completion (usually 12 months), and finally adopted as public highways.

The following advice relates to industrial access roads as well as residential roads.

Potential pitfalls

The Agreement cannot set a fixed timescale on the process. The timescale generally depends on the progress the developer makes with selling the property (typically houses) along the road, as this is his main project cash-flow consideration. If houses don't sell quickly, the developer may not be able to afford to complete all aspects of the highway work to the agreed standard as quickly as he had originally planned.

If a further Phase of building is added at a later date leading off the original new road, the developer is unlikely to finish the original new road until he has stopped taking heavy delivery wagons and construction traffic over it, to reduce the risk of accidental damage.

Neither the planning authority, nor the County Council, can force the developer into entering a Section 38 Agreement. The developer has to want it and be prepared to pay the required inspection and legal fees, provide the necessary construction records etc.

If the developer fails to enter a Section 38 Agreement at the beginning of the development process, but decides he wants to do so later on, he is responsible for proving the accuracy of the construction (for example, taking cores from the road to demonstrate the correct depth and compaction of stone and tarmac, carrying out surveys of buried pipes to prove they are in working order), and correcting any failings that would prevent adoption (including any inappropriate use by the new householders of the service verges that often lie at the bottom of their front lawns).

The Section 38 requirements include the need to see that surface water drainage is collected and disposed of by a responsible authority, generally the local water company. If there is a problem with the drainage being adopted by the local water company (for example, due to an incomplete drainage system, an unauthorised pumping station, or lack of access rights across 3rd party land), then it will not generally be possible to complete the highway adoption process.

The same problems can arise if the new highway relies on an unauthorised structure, leading to delays whilst structural stability is checked and confirmed or corrected as necessary.

If the developer goes out of business before a Section 38 Agreement is in place with appropriate insurances, there is no funding available to complete the highway works and adopt the roads unless the residents have held back sufficient monies from their house purchase.

Strategies to limit risk

If a new road is to serve 5 or more new homes, the County Council will generally ask the local planning authority to apply a planning condition that the road should be laid out and constructed to 'an adoptable standard', to ensure it is fundamentally safe to use (for example, forward visibility appropriate to the likely speeds) and strong enough for the likely use (for example, sufficient stone and tarmac layers, sound drainage, street lighting to current standards). In this way, even if the roads are not adopted in the future, we have given users the best chance of having a responsible road network to use.

Under certain rare circumstances it is possible to serve notice on the developer as he starts work on site, obliging him to take out appropriate insurances in advance of any Section 38 Agreement. This Advance Payments Code process, as it is called, depends on the District Council being the Building Regulations approver for a development, and giving the County Council sufficient notice that Building Regulations approval has been given for the County Council to serve notice on the developer within a 6 week total timescale from the granting of that approval.

The County Council no longer carries out any inspections in advance of the Section 38 Agreement being in force. Whilst this has been done historically as an aid to the developer, it is now recognised that it can undermine the urgency with which the Agreement needs to be set up.

As various milestones of the highway construction are reached, the insurance bonds underpinning the Agreement can be reduced as the risk reduces of the County Council having to carry out completion works. This encourages the developer to complete all the necessary works as quickly as possible.

If all other aspects of highway adoption are progressing fairly, the County Council may take on the completed street lighting, to reassure residents that these important features will be properly maintained at the earliest possible opportunity.

Scrutiny Inquiry Project Outline Template

OVERVIEW AND SCRUTINY INQUIRY PROJECT OUTLINE

Review Topic: Allotments

Objectives:

Desired Outcomes:

Terms of Reference:

Equality and diversity implications:

Risks:

Venue(s):

Timescale:

Start:

Finish:

Information Requirements and Sources:

Documents/evidence: (what/why?)

Witnesses: (who, why?)

Consultation/Research: (what, why, who?)

Site Visits: (where, why, when?)

Officer Support:

Lead Officer:

Democratic &
Member Services Officer:

Likely Budget Requirements:

Purpose

£

Total

Target Body¹ for Findings/Recommendations

(Eg Executive Cabinet, Council, partner)

¹ All project outcomes require the approval of Overview and Scrutiny Committee before progressing