

Overview and Scrutiny Task Group - Adoption of Estates

Thursday, 8 November 2012

Present: Councillor Matthew Crow (Chair) and Jean Cronshaw, Julia Berry, June Molyneaux, Dave Rogerson and County Councillor Mike Devaney

Also in attendance

External Officer: Chris Bond (Northamptonshire County Council)

Officers: Jamie Carson (Director of People and Places), Jennifer Moore (Head of Planning), Alex Jackson (Senior Lawyer) and Dianne Scambler (Democratic and Member Services Officer)

07.CCS.13 APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Steve Holgate and Kim Snape.

07.CCS.14 DECLARATIONS OF ANY INTERESTS

Councillor Julia Berry – Resident of Kittiwake, Heapey

07.CCS.15 MINUTES

RESOLVED – That the minutes of the Overview and Scrutiny Task Group – Adoption of Estates meeting held on 17 October 2012 be confirmed as a correct record for signing by the Chair.

07.CCS.16 NORTHAMPTONSHIRE SCRUTINY REVIEW - ADOPTION OF NEW ROADS

Chris Bond, Development Control and Road Adoptions Manager from Northamptonshire County Council attended the meeting to talk to the Group about a scrutiny review that his authority had undertaken on the adoption of new roads in their county area.

Whilst carrying out this review it had become apparent that this was a national issue that was currently faced by many highways authorities, as had been reflected in debates in the House of Commons led by Phillip Hollobone MP.

There were a range of specific challenges concerning the operation of the road adoption process, one of which related to the issue of drainage services that were located under a new road and could affect the adoption process.

Another important issue that had to be addressed was the part played by district and borough councils in the adoption process and the need for them to be involved from the very start on a partnership basis.

Evidence had been sought on the operation of the roads adoptions process and challenges experienced by the other highways authorities; they also considered the conclusion of previous scrutiny reviews on this topic that had been carried out by other authorities.

They also noted a case that had been dealt with by the Local Government Ombudsman in 2007 concerning the construction of a road on a new housing development in Northamptonshire. The ombudsman found that East Northamptonshire Council and Northamptonshire County Council had failed to ensure that residents were properly protected against having to pay the cost of works

required in the event that the developer failed to do so. This further illustrated the involvement of both the County Council and district/borough councils in matters relating to the adoption of new roads and the need for effective communication and co-operation between different authorities.

Finally the Working Group had commissioned a study of the Section 38 'caseload' in the county to provide a full picture of completed and partially completed Section 38 Agreement's, providing a record in each case of the milestones in the adoption process that had been passed, and any outstanding issues that needed to be addressed for further progress to be made.

It had been considered extremely important to understand the current position in Northamptonshire and information collected formed an important part of the evidence base for the scrutiny review and assisted the Group when considering possible action to address the associated challenges.

Members of the Group were informed that Chorley Council had already done a piece of work that had pulled together all the Section 106 Agreements and County Councillor Mike Devaney reported that Lancashire County Council was looking at its own adoption records. However, it was agreed that the Council should consider a resource provision to commission a piece of work that would pull together a comprehensive database.

The findings of the Northamptonshire County Council Working Group had resulted in specific recommendations under two main headings:

- a) Increasing the future effectiveness of the roads adoptions process
 - o Limits on highway authority powers
 - o The role of the partnership working
 - o Raising awareness of the road adoptions process
- b) Addressing current un-adopted roads in the County

Chis Bond explained that the biggest single issue affecting the road adoptions process that needed to be addressed was the voluntary element of the process.

The local authority had no power to compel a developer to enter a Section 38 Agreement or do anything more than encourage a developer to negotiate a draft agreement. At the same time, various factors could discourage a developer from seeking an agreement and in turn stop them from constructing roads to an adequate standard.

It was not in the developers' interest to complete a Section 38 Agreement at an early stage of work as it was binding and not desirable for the performance bonds to exceed the value of the company. In the case of large housing estates, developers would not want to construct the spine roads beyond the base course level (leaving the iron works exposed) too early as they could then be damaged by construction traffic to the remaining roads.

This created a problem for the highways authority as completed residential roads could not be adopted until the relevant spine road had been completed to an adoptable standard, due to the need for a road to be linked with the adopted network before it could be adopted itself. It was also thought that the current recession was likely to increase the developer's willingness to progress completed Section 38 Agreements to adoption in order to remove large performance bonds from their accounts.

Consideration was given to whether there were other ways in which the County Council could compel developers to complete Section 38 Agreements or that could give developers a greater incentive to do so. It was not currently possible to set a planning condition that a developer must enter into an agreement. This reflected the

fact that Section 38 Agreements were based on highway rather than planning legislation.

Planning conditions also had to meet the relevant tests e.g. necessary, relevant to planning, enforceable, precise and reasonable. It was noted that house purchasers could give a financial incentive for developers to complete agreements in some cases, if the prospective buyer made a provision to withhold part of the purchase price of a property until completion. However the sums involved were considered insufficient to provide an incentive to developers to complete a Section 38 Agreement.

It was considered that changes to planning legislation to permit more robust planning conditions concerning the adoption of roads and more control over construction work could provide an alternative means of achieving its intended outcome.

The Working Group recommended that the Cabinet agreed to make representations to the Local Government Association and Parliamentary Under-Secretary of State for Transport urging that it is made a mandatory requirement for developers to enter into a Section 38 Agreements with highways authorities prior to the commencement of work on-site. This approach needed to be backed up by efforts to engage developers in discussion about the mutual advantages of making Section 38 Agreements a mandatory requirement.

A representative from the development industry who had met with the Working Group highlighted that the ideal situation for a developer was for new roads to be taken into maintenance by the highway authority as soon as the last house on the development concerned is occupied. Otherwise the longer it takes before a road is adopted the greater the financial cost to the developer of keeping it at an adoptable standard.

Northamptonshire County Council's position on the requirement for the adoption of roads

The County Council would not generally adopt a road with an un-adopted sewer crossing underneath. A Section 38 Agreement would be completed where a Section 104 Agreement was in place between the developer and the water authority, committing the water authority to adopt the sewer works. If the road was adopted it may leave the County Council liable for any problems affecting the road that were attributable to the related sewer that subsequently occur.

It was appreciated that this approach was designed to minimise the County Council exposure to the risk that could ultimately represent a charge on the local taxpayer. However a view was taken to consider a more flexible, case specific approach to retain the current protection of the current standard approach without the disadvantage of acting as a brake on the adoption process. The risk to the County Council of adopting a road prior to sewer adoption would not be uniform across all cases, but would depend on the amount of time that each sewer had been in place.

In some cases the County Council was prepared to issue a Section 50 Street Works Licence to the developer, making it liable for any subsequent problems and proceed with the adoption of the roads in light of the fact that the sewers had already been in place for some time and so the likelihood of defects were commensurably reduced.

A case specific approach to the question of sewer adoption would rely on a good assessment of the potential risks involved in each case. This would require communication and co-operation with the water authorities operating in the county and the Group recommended their Cabinet adopt a flexible approach to the question of whether sewers relating to a road must be adopted by a water authority before the road would be adopted by the County Council, supported by discussion with the relevant water authority.

The Working Group also proposed that the County Council considered adopting a more flexible approach to setting the value of bonds that developers were required to put in place to complete a Section 38 Agreement. The existing requirement was that the County Council set its bonds based on a nominal cross section on a per linear metre basis that represented 100 per cent of the theoretical cost of constructing the road(s) in question to an adoptable standard.

It was considered that it would be more effective for the bond to reflect more closely the likely cost of construction in the actual case concerned, based on the constructional details that had been approved. This approach had been used by other highways authorities. It also addressed cases where higher quality materials were used, such as in a public realm area, which would cost the Council more to complete if the developer defaulted and the bond had to be called in.

The value of bonds could be reduced when key milestones were reached, such as when the roads were put onto a maintenance schedule. It was however important that the bonds were not reduced too far, or too soon, or to a level where completing a Section 38 Agreement in order to clear bonds seemed unimportant. Instead, this was seen as a major incentive to developers.

Chris Bond explained that Northamptonshire County Council's Cabinet had agreed to adopt this approach and by working with the developers, they were able to set the bonds before the Section 38 Agreement was made, enabling the level of bond to be set on a site-by-site basis to reflect the actual cost of completing the road concerned to the standard required for adoption. He had been given clear delegated authority in this matter. This approach was working really well and had made a major difference by freeing up monies by the developers to invest on subsequent bonds needed to ensure that the whole of the estates were adopted to the required standard in a timely fashion.

The role of partnership working

At an early stage in the review it had been identified that there was a need to consider the relationship between the planning process and the adoption of new roads. The view taken was that there should be a significant opportunity for the local authority to exert leverage over developers at the point where they are looking to secure planning permission.

It was felt that there were various actions that could be taken at the planning stage to support the road adoption process. Highways authorities were able to request a planning condition requiring roads to be built to an adoptable standard. Planning conditions could also be used to require a developer to produce a construction management plan that had to be agreed by the local planning authority. As the authority would usually take advice on the proposals from relevant bodies, this gave the highway authority an opportunity to work with it. Developers would not be able to start work until the plan had been agreed and any technical work required to produce the plan then made it easier for a Section 38 Agreement to be put into place.

It was not considered reasonable for district/borough councils to see their concern in a new development purely in planning terms, given that they receive Council Tax payments from residents and are responsible for amenities such as refuse collection. Instead it is recognised that both the County Council and the local district/borough councils need to have a clearly understood approach for dealing with new developments that ran right from the planning stage to the adoption of new roads. This would provide a basis for action to help ensure that the design and construction of a new development supported the adoption of the roads involved.

It was also noted that a phased approach to construction – involving the completion of the infrastructure in one part of the development before work started on the next phase had been adopted previously. This approach seems to have the potential to

alleviate the problems that could result from different parts of a large development proceeding at different speeds. Similarly there was recognition that the first residential traffic on a new development being required to use the same access routes had led to residents becoming unhappy with the state of the roads, whilst developers were unwilling to carry out the work required to bring them up to an adoptable standard when still being used by construction traffic.

Northamptonshire County Council agreed to build on the existing work with local planning authorities to put in place arrangements ensuring consideration of road adoption issues that commenced at the planning application stage of the planning process, including:

- Designing developments to provide separate access routes for residential and construction traffic,
- Phasing implementation of larger developments
- Laying out and constructing roads to acceptable standards

A draft set of planning conditions had been published in late September 2012 by Norman Baker, Minister for the Department of Transport. The minister was requesting local planning authorities to test these conditions in practice and report back by April 2014. It was considered that the feedback from those authorities applying the conditions could be used to make the case for legislative change.

Planning Officers at Chorley Council were currently evaluating the draft conditions, with a view to trialling them.

Raising Awareness

Consideration was given as to whether the difficulties and frustrations that could be experienced by members of the public were a question of how well the roads adoptions process was understood, rather than an indication that it was not operating effectively.

The requirements of the road adoption process and respective responsibilities of the local authorities and developers would not be readily apparent to members of the public. When a Section 38 Agreement was in place on a road, it did not mean that the road had been adopted or invariably would be.

Different ideas had been sought to identify ways of supporting greater understanding of the road adoptions process and its implications for residents. The County Council had since produced a set of simple guides to the road adoptions process as a straightforward but beneficial step and suggested that an information portal could be developed on their website that would enable the public to access information about the status of particular roads.

Even with these measures the Group recognised that it was not realistic to expect prospective home buyers to be experts in highways and planning law and its implication for them. They therefore went on to look at the level of advice on road adoption issues provided by legal professionals involved in the conveyance process.

It was considered that assisting prospective home buyers to become more informed about how the roads adoptions process affected them might in the long term generate and incentive for developers to complete Section 38 Agreements, if the alternative was to risk the loss of a sale.

The Chair of the Group, together with the Director of People and Places, Jamie Carson and Head of Planning, Jennifer Moore at Chorley Council thanked Mr Bond for attending the meeting and Members of the Group agreed that work that had been undertaken by Northamptonshire County Council in their review, mirrored the work that was currently being undertaken by this authority.

RESOLVED – That the following recommendations will form part of the Task Groups Final Report:

- 1. That the Executive Cabinet be requested to commission a study of the Section 38 ‘caseload’ in the borough to provide a full picture of completed and partially completed Section 38 Agreements and to consider if this was a piece of work that could be undertaken jointly with Lancashire County Council.**
- 2. That the panel recommends that the draft set of planning conditions be trialled by our planning service.**
- 3. That the Executive Cabinet request Lancashire County Council to consider relaxing their procedures when setting Bonds on developments.**

07.CCS.17 LOCAL HIGHWAY AUTHORITY SUB GROUP DISCUSSION PAPER

Chris Bond also explained that in response to the House of Commons debates, Phillip Hammond MP, Secretary of State for Transport commissioned the Department of Transport (DfT) and the Department of Communities and Local Government (DCLG) to meet with Local Highway and Planning Authorities to discuss options and opportunities to improve the existing systems associated with the adoption of new streets in developments and any legislative amendments that would assist.

The resultant Policy and Legislation Review Working Party commissioned a sub group of Local Highways authorities, led by Northamptonshire Council, to consider the matter in greater detail and prepare a paper for discussion.

The sub group investigated many of the concerns that the Northamptonshire County Council review had looked into along with other neighbouring authorities.

They considered that the success of the highway adoption process relied on supporting the programme of a developer as much as possible whilst reducing the potential for abortive works. The aspiration should be a seamless transition from the planning arena to the construction phase. They considered a system that could work without reference to current legislation. This enabled a review of the system that identified current shortcomings with existing practice of legislative constraints to such a system.

In summary such a system could include:

- Defining the functions of a street to ensure it is ‘Fit for Purpose’. A simple checklist approach may assist to avoid doubts.
- Pre Planning Application consideration of layout, practicality, drainage and whether the proposal would be ‘Fit for Purpose’. This would require far greater detail at the Pre Planning stage but would ensure that all matters that may affect future adoption are considered and explored before an application is submitted. This would also help Local Planning Authorities to fully appreciate and consider highway related matters and implications.
- Agreement at the Pre Planning stage regarding the future management and maintenance of public areas and infrastructure such as the streets, drainage systems and public open space and amenity areas.
- A standard Planning Application validation requirement to clearly identify areas of the public realm that would be offered for public adoption be they streets or areas of open space.
- A standard Planning Condition requiring the details of the management and maintenance of streets/public realm to be submitted. In order to discharge the condition a signed Section 38 agreement or an agreed Private Management Company agreement would be required. The Local Highways Authority Sub Group suggests the following condition:

Prior to the commencement of development hereby permitted details of the future management and maintenance of the proposed streets shall be submitted to and gain the written approval of the local planning authority. The streets thereafter be maintained in accordance with the approved management and maintenance details.

- Publication of advice and guidance for all parties in plain English to explain the system as it should work, determining and spreading best practice and ensuring that all parties within or affected by the system feel engaged and can understand the process, limitation, liabilities and obligations for themselves and others.
- It is recognised that legislative changes to the Sections 219 and 220 would be required to facilitate full implementation of the above approach.
- Other initiatives noted above would require only changes to working practice and improvements to communication between Local Highway's Authorities and Local Planning Authorities even within some Unitary Authorities and communication with all other parties associated with the development process from scheme inception to construction and residential occupation.

In addition to the unconstrained review, other options and opportunities in terms of changes to current practice have also been considered and in summary included:

- Make Section 38 Agreements mandatory for all new developments.
- Amendments to Section 219(1)(a) Highways Act 1980 (as amended) to transfer the link from Building Regulation Approvals to Planning Approvals.
- Amendments to Section 220(1) Highways Act 1980 (As Amended) to extend the period for serving Advance Payment Codes (APCs).
- Amendments to Section 104 Water Industries Act 1991
- Government Statements and Guidance
- Changes to Building Regulations
- Drainage System Indemnities

Of the above, some dovetail into the unconstrained approach but could have merits as stand-alone changes rather than being part of a more fundamental review or change. However with the context of a legislative opportunity presented by the Private Members Bill and time constraints associated with them it was felt that the change to Section 219(1)(a) serving the link to Building Regulation approval had the greatest merit as a 'stand-alone' proposal within the constraints considered.

Chair