



Overview and Scrutiny Task Group - Adoption of Estates

Agenda and Reports

For consideration on

**Thursday, 8th November
2012**

In Committee Room 1, Town Hall, Chorley

At 4.00 pm

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31 October 2012

Dear Colleague

**OVERVIEW AND SCRUTINY TASK GROUP - ADOPTION OF ESTATES -
THURSDAY, 8TH NOVEMBER 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 Thursday, 8th November 2012 commencing at 4.00 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 **Minutes (Pages 1 - 6)**

To confirm the minutes of the Overview and Scrutiny Task Group – Adoption of Estates meeting held on 17 October 2012 (enclosed)

4 **National Review on the Adoption of New Roads**

In response to a House of Commons debate, the Department for Transport, (DfT) and Department for Communities and Local Government, (DCLG) met 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 County Council, to consider the matter in greater detail and prepare a paper for further discussion.

Chris Bond, the Development Control and Road Adoptions Manager from Northamptonshire County Council is attending the meeting to talk to the Group about their work and findings in relation to adoption issues.

The attached are background papers that have been provided by Chris Bond that Members may find useful for this meeting.

a Local Highway Authority Sub Group discussion paper (Pages 7 - 24)

A copy of a discussion paper that was prepared as part of the Local Highway Authority Sub Group is enclosed for information.

The paper includes the Sub Groups considerations and proposals that were submitted to the Parliamentary Policy and Legislation Review Working Party for the Adoption of New Roads

b Draft versions of briefing guides (Pages 25 - 48)

A number of draft briefing guides that have helped both their Customer Contact Centre and Members to deal with queries and issues.

Local Planning Authorities have also welcomed them as an aid for their officers and have been asked to provide feedback on their use.

The draft guides are enclosed for background information:

- Private Streets Guide
- Development Management Guide
- Highway Adoption Guide

c Northamptonshire Scrutiny Review - Adoption of New Roads (Pages 49 - 76)

A report of the Adoption of New Roads Scrutiny Review that was undertaken by Northamptonshire County Council prior to the work commissioned by the Parliamentary Policy and Legislation Review Working Party is enclosed for information.

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

Yours sincerely



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Chief Executive

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Distribution

1. Agenda and reports to all Members of the Overview and Scrutiny Task Group - Adoption of Estates (Matthew Crow (Chair) and Jean Cronshaw, Julia Berry, June Molyneaux, Dave Rogerson, Kim Snape and County Councillor Mike Devaney (Lancashire County Council) for attendance.
2. Agenda and reports to Jamie Carson (Director of People and Places), Jennifer Moore (Head of Planning), Carol Russell (Democratic Services Manager) and Dianne Scambler (Democratic and Member Services Officer) for attendance.
3. Agenda and reports to Councillor Steve Holgate for attendance.

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

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Overview and Scrutiny Task Group - Adoption of Estates

Wednesday, 17 October 2012

Present: Councillor Matthew Crow (Chair) and Jean Cronshaw, Julia Berry, June Molyneaux, Joyce Snape, Kim Snape, Ralph Snape and County Councillor Mike Devaney

Also in attendance

Councillors: Councillor Steve Holgate

Officers: Jamie Carson (Director of People and Places), Jennifer Moore (Head of Planning), Carol Russell (Democratic Services Manager) and Dianne Scambler (Democratic and Member Services Officer)

07.CCS.06 WELCOME

The Chair, welcomed County Councillor Michael Devaney, who was attending his first meeting as a member of the Group.

07.CCS.07 ADOPTION OF ESTATES - NATIONAL REVIEW

The Head of Planning advised the Group about a scrutiny review that had been undertaken between the Department of Transport, the Department for Communities and Local Authorities regarding adoptions on a national scale.

Problems associated with the status and safety of un-adopted new streets had been raised by a number of MP's in the Commons.

Concerns included:

- A lack of knowledge or understanding by some parties of the existing complex and extensive system and how it is intended to work.
- Poor advice to those purchasing properties in explaining the processes, roles, responsibilities and liabilities that they and others have.
- Inconsistent processes and procedures used by Local Highway Authorities, (LHAs).
- Such processes can vary considerably across the Country with further differences between Unitary and Two Tier authorities.

In response to the House of Commons debates, the Department for Transport, (DfT) and Department for Communities and Local Government, (DCLG) met 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 LHAs, led by Northamptonshire County Council, to consider the matter in greater detail and prepare a paper for further discussion.

Chris Bond, the Development Control and Road Adoptions Manager from Northamptonshire County Council had indicated that he would be willing to attend one of the Groups meeting to talk about their work and findings in relation to adoption issues.

RESOLVED – That Chris Bond be invited to a future meeting of the Group.

07.CCS.08 APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Roy Lees and Dave Rogerson.

07.CCS.09 MINUTES

RESOLVED – That the minutes of the Overview and Scrutiny Task Group – Adoption of Estates meeting held on 19 September 2012 be confirmed as a correct record for signing by the Chair.

07.CCS.10 DECLARATIONS OF ANY INTERESTS

Councillor Julia Berry – resident on Kittiwake, Chorley

07.CCS.11 SCOPING OF THE REVIEW

The completed scoping document was received by Members for information. Subsequent to the last meeting, the scoping of the review had been drafted in line with the Group's recommendations and had since been approved by the Overview and Scrutiny Committee on 3 October 2012.

The Chair also raised with the Group, arrangements for involving the public within the review. A representative from each of the chosen case study estates could be invited to talk to the Group about adoption issues on their estates and to establish if the issues that had been identified by the officers and Members were a true reflection of those that were faced by residents.

The Chair requested that Members of the Group submit suitable representatives from each of the four developments to Democratic Services so that the necessary arrangements could be put into place. Ward Councillors could also be approached to identify issues.

The Director of People and Places also suggested that the Council may be able to collate some information in relation to the issues on each of the developments from calls logged at the Councils Contact Centre.

It was important to manage public expectations about the impact of the review in making the necessary improvements to the process. The key was increasing public understanding and awareness of potential issues, as well as assisting them to better manage some of the issues themselves, for example, when purchasing a home on a new estate.

RESOLVED

- 1. That the scoping of the review be noted.**
- 2. That Members identify suitable representatives from each of the four housing estates.**

07.CCS.12 CASE STUDIES

At the last meeting, the Group had identified a mix of small and large existing unadopted housing estates across the Borough that could be used as case studies from which to identify the concerns and issues that existed.

The estates chosen were:
Kittiwake, Heapey
Fairview Farm, Adlington
Gillibrand Street, Chorley
Buckshaw, Buckshaw Village

A pack of relevant information had been collated for each housing estate that included information on:

- The planning background
- Various planning applications
- Section 106 Agreements
- Section 38 and 278 Agreements
- Highways information
- United Utilities information
- Any issues that had arisen
- Public Open Spaces and Leisure facilities
- Site plans
- Planning permissions that had been granted

Members were advised that the background information that had been provided for this meeting was to be used as a reference document throughout the review and should be retained and brought to the future meetings of the Group.

The Head of Planning took Members through the information contained within each of the packs.

Case Study	no of dev.	no of dwelling built	no of planning apps	no of Section 106	no of Section 38/278	no of un-adopt roads	drains adptd
Kittiwake, Heapey	4	147	7	3	-	0	No
Developers	Maunder's Homes (NW) Ltd, who became Westbury Homes, Beazer Homes (Stockport) Ltd, Hassall Homes (Cheshire) Ltd and Dorbcrest Homes						
Fairview, Adlington	2	205	7	5	-	11	No
Developers	Westbury Homes (NW) Ltd and Persimmon Homes Places for People – Affordable Housing						
Gillibrand, Chorley	4	661	29	6	6	37	No
Developers	Redrow Homes, Miller Homes, Taylor Woodrow (Wimpey), Wilson Conolly						
Buckshaw Village	6	1419 to present	108 to present	22	10	91	No
Developers	Redrow Homes, Barratts, Persimmon, Miller Homes, David Wilson Homes and Rowland Homes						

Members discussed the following issues that arose whilst reviewing the information that was presented:

1. Changes in property developer

The Group were advised that issues often became more complicated when developers went bankrupt and were taken over by other companies. The new developers often had differing ideas about what they want to build and amended

applications were submitted, which in turn generated amended Section 38 and 106 documents and planning permissions. This was a common occurrence and slowed the process down quite considerably.

In the case of the Fairview development the Group were informed that Westbury Homes (NW) Ltd had financial difficulties in the early 2000's and its property portfolio was taken over by Persimmon Homes. This led to lengthy negotiations to ensure the release to the Council of the commuted sums due under the Section 106 Agreement that were finally resolved in 2009.

The original Section 106 Agreement was dated 12 November 1999 with four further supplemental agreements on 22 August 2001, 7 September 2001, 5 December 2001 and 18 December 2009.

Members noted that the commuted sums of £377,335 that was allocated in the original Section 106 for the future maintenance of the Community Centre and £78,000 for maintenance of public open space was actually only received from the developer in February 2007, with a further £60,000 towards equipment at the Centre in December 2009.

2. Section 38 Agreements

If a developer wants a road to be adopted at some time in the future they can enter a formal agreement with County Council made under Section 38 of the Highways Act 1980 (called a Section 38 Agreement), which provides for an insurance bond so that 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 construction (usually 12 months), and finally adopted as public highways.

However, the agreement cannot set a fixed timescale on the process. The timescale generally depends on the progress the developer makes with selling property (typically houses) along the road.

Neither the planning authority, nor the County Council can force the developer into entering a Section 38 Agreement.

The Section 38 requirements include the need to see that the surface water drainage is collected and disposed by the responsible authority, generally the local water company. If there is a problem with the drainage being adopted by the local water company, then it will not generally be possible to complete the highway adoption process.

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 highways works and adopt the road unless the residents have held back sufficient monies from their house purchase.

In the case of the Fairview Estate in Adlington a large number of the roads remained unadopted because there was an absence of Section 38 Agreements.

3. Gillibrand Community building

There had been many longstanding issues relating to the siting of the Community building on the Gillibrand Estate and consequently it had still not been built. The play area itself had been adopted by the Council but the ground around it still belonged to the developer. Redrow Homes still own the retaining wall around the Gillibrand Hall part of the site and Members reported that it was often difficult to get repairs done in a timely fashion.

4. Multiple developers on large sites

It was also explained that on larger sites, the land was often sold in a piecemeal fashion, this generally resulted in there being more than one developer on site and differing ideas on design, not only in terms of housing builds but roads and infrastructure.

5. Drainage issues

Prior to October 2010 drainage lines on new development that were to be adopted by United Utilities were usually limited to those lines within the road or main service pipes. Since October 2010 all drainage that is not for the sole purpose of one property would become subject to adoption (Section 104)

- Drainage scheme is forwarded to UU by developer and by LA Building Control/AI on receipt of application
- On commencement of drainage works UU inspect major sewer lines (within road or main service lines)
- LA/AI inspect plot drainage (lateral drainage) for themselves under the Building Regulations and on behalf of UU
- LA/AI notify UU when each plots drainage is complete and satisfactory
- UU pursue formal adoption of sewers.

On each of the estates the above had yet to be implemented as the mandatory build standard (MBS) for drains had yet to be released from UU. This gives the minimum standards for construction of drainage subject to adoption. It does not however, affect the operation of the Advanced Payment Code.

6. Buckshaw – Role of the Officers Group

The Group did not get time to discuss the Buckshaw Village information in detail. However officers explained that this development offered a wide range of houses catering for all sectors of the community from retirement and care accommodation to a mix of affordable housing and had benefited from a phased Master Plan of development and by the establishment of the Buckshaw Officers Group, which has allowed stakeholders, developers and the offers from both local authorities to work together. They felt that this tailored management approach had been the key to the success and smooth implementation of the Section 106 Agreements on the site and thought that there were elements of this approach that could be used in smaller developments going forward.

RESOLVED – That the information be noted.

Chair

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**Adoption of New Roads
Policy and Legislation Review Working Party**

**Local Highway Authority Sub Group
Considerations and Proposals**

1. Executive Summary

- 1.1 Problems associated with the status and safety of un-adopted new streets was raised by Philip Hollobone MP, Ann Main MP and Justin Tomlinson MP during debates in the House of Commons.
- 1.2 These concerns have many origins including:-
- A simple lack of knowledge or understanding by some parties of the existing complex and extensive system and how it is intended to work.
 - Poor advice to those purchasing properties in explaining the processes, roles, responsibilities and liabilities that they and others have.
 - Inconsistent processes and procedures used by Local Highway Authorities, (LHAs). Such processes can vary considerably across the Country with further differences between Unitary and Two Tier authorities.
- 1.3 In response to the House of Commons debates, Philip Hammond MP, Secretary of State for Transport commissioned the Department for Transport, (DfT) and Department for 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.
- 1.4 The resultant Policy and Legislation Review Working Party commissioned a sub group of LHAs, lead by Northamptonshire County Council, to consider the matter in greater detail and prepare this paper for further discussion.
- 1.5 In summary the LHA Sub Group proposes that the Policy and Legislation Working Group consider:-
- Improvements to LHA planning and highway adoption working practices
 - A conditional approach lead by Planning Authorities to secure further details at the planning stage
 - Amendments to the Advanced Payment Code (APC) process within the Highways Act 1980 (as Amended) to transfer the trigger for serving APCs from Building Regulation approval to detailed planning consent.
 - Consideration of an explicit exemption from APCs for Private Streets that will remain private with associated protection for LHAs under Section 37 or by use.
 - The production of guidance notes for house buyers, conveyancing solicitors, highway authorities and planning authorities to improve communication, awareness and consistency across the system.

2 Background and Introduction

- 2.1 The process of new residential development from inception to occupation is highly complex involving multiple parties, agencies, authorities and disciplines with their own roles, responsibilities, interests and agendas.
- 2.2 As a result, those purchasing properties on new developments come up against this system, which can be bewildering, confusing and frustrating.
- 2.3 One key origin of these concerns results from some developers in some areas failing to enter into highway adoption agreements with LHAs under Section 38 of the Highways Act 1980 (as Amended).
- 2.4 In addition there are reported problems with the consistent implementation of the Advanced Payment Code (APC) process stipulated under sections 219 to 225 of the Highways Act 1980 (as Amended). These issues have created significant concerns for residents of new developments regarding the state and safety of un-adopted streets as well as confusion regarding what can and can not be done to resolve their concerns.
- 2.5 These concerns have many origins including:-
- A simple lack of knowledge or understanding by some parties of the existing complex and extensive system and how it is intended to work.
 - Poor advice to those purchasing properties in explaining the processes, roles, responsibilities and liabilities that they and others have.
 - Inconsistent processes and procedures used by LHAs. Such processes can vary considerably across the Country with further differences between Unitary and Two Tier authorities.
- 2.6 Questions and debates in the House of Commons by Philip Hollobone MP (Kettering) 11th November 2009 and 10th June 2010, Ann Main MP (St Albans) 23rd June 2010 and Justin Tomlinson MP (North Swindon) have raised the issues at a national level including the following Private Members Bills intended to address the problems raised:-
- Philip Hollobone MP has laid a Private Members Bill "Residential Roads (Adoption by Local Authorities) Bill 2010-11" 5th July 2010, the Second Reading is due November 2011.
 - Justin Tomlinson MP has laid a Private Members Bill "Planning (Developer Bonds) Bill 2010-11" 27th October 2010 with a Second Reading due 17th June 2011.
- 2.7 In response to the debates, Philip Hammond MP (Runnymede and Weighbridge) Secretary of State for Transport commissioned the Department for Transport, (DfT) and Department for Communities and Local Government, (DCLG) to meet with Officer Representatives of Local Highway and Planning Authorities to review current policy and legislation to consider what, if anything, can be done to resolve concerns expressed.
- 2.8 DfT and DCLG have set up a Policy Review Working Party along with representatives of :-
- Derby City Council
 - Hertfordshire County Council
 - Kettering Borough Council
 - Leicestershire County Council
 - Northamptonshire County Council
 - Peterborough City Council
 - St. Albans District Council.

- 2.9 The Working Party has considered the existing development system from scheme inception through the planning, construction and occupation processes and procedures to identify areas where improvements can be made to the existing system along with any amendments to legislation that would assist with the aim of addressing the concerns and issues that have been raised.
- 2.10 The Working Party commissioned a sub group of LHAs lead by Northamptonshire County Council to consider the matter in greater detail and report back.
- 2.11 This paper sets out and explains the proposals considered by the LHA Sub Group to improve the existing system along with potential changes to policy and legislation.

DISCUSSION DRAFT

3 Current System, Problems, Issues, Concerns and Perceptions

- 3.1 This section expands and explains some of the challenges associated with the existing system touching on matters raised during the debates in the House to enable a general understanding of the issues involved so that improvements proposed by the LHA Sub Group can be considered in context.
- 3.2 The Advance Payment Code (APC) (Highways Act Sections 219 – 225) is a statutory tool dating from 1959 which was designed to provide for the future making up of private streets in the event of a developer or house builder defaulting as a safeguard for residents to ensure that poor streets of substandard layouts and constructions were prevented.
- 3.3 The sections concerned originate from the Highways Act 1959, re-enacted in the Highways Act 1971 and again in the Highways Act 1980. At that time the link between Building Regulations, the commencement of development along with the planning regimes of the day was strong as the functions were all Council functions. The deregulation and decentralisation of functions has weakened such links. Strict enforcement is inconsistent and has contributed to some of the problems reported.
- 3.4 In practice the system can start to fall down at the Building Regulation Notification stage and in many cases the six week time limit for serving APCs (Section 220(1)) expires without them being served. (Note: some authorities have served APC notices outside the 6 week period without challenge). This can be less of an issue for some Unitaries with a strong in house relationship between Building Regulation, Planning and Highway functions.
- 3.5 There is also nothing legally preventing a developer from constructing their new streets to whatever constructional standard they wish as long as geometrically they comply with the planning approved layout.

Concerns and Issues

- 3.6 The following simple statements bring together criticisms of the current complex system reported by various authorities, politicians, members of the public and developers. It should be noted that a number of the matters listed may be resolvable with improvements to current practice within LHAs and their relationship with LPAs within Two Tier or Unitary authorities, while others may indicate a lack of understanding of the system that either publicity or educational approaches may address. There are also matters that could be addressed by changes to legislation, or where such legislative changes would significantly assist.
- 3.6.1 Developers in some areas are reluctant to enter into highway adoption agreements under Section 38 Highways Act 1980 (as Amended). The reasoning varies from the costs of securing the Agreement including fees and caps imposed by lenders on sureties or Bonds required for such agreements.
- 3.6.2 Many streets are not covered by any highway adoption agreement.
- 3.6.3 Residents purchase properties on new developments expecting their streets to be adopted.
- 3.6.4 Highways Act 1980 (as Amended) Section 219 and 220 the “Advanced Payment Code” (APC) process provides no exemptions for the construction of residential streets which are to remain private.

- 3.6.5 The APC process relies on LHAs being notified within tight timeframes by District / Borough Councils in Two Tier areas or by other departments within Unitaries that Building Regulation Approvals have been issued. However in many if not most cases such authorities do not issue such approvals as the Building Regulation Inspection and Approval system has been de-regulated.
- 3.6.6 Building Regulations can be approved without an extant planning permission. Calculation of accurate APCs can then be hampered as there is no approved layout to work with or clarity regarding the number of dwellings proposed. Reliance on sketches or indicative master plans can create a situation where the value of an APC can be challenged.
- 3.6.7 There are no timescales or triggers which can be used to ensure that streets are built to appropriate standards before residents move in. Whilst planning conditions can be imposed to control the phasing of development, without a Section 38 Highway Adoption Agreement, LHAs can find themselves powerless to step in if a developer still trades to encourage or force the completion of a street.
- 3.6.8 When notified of a Building Regulation approval the LHA is legally obliged to serve notice with some found guilty of Maladministration for not serving APCs even if the streets concerned are not to be offered for adoption and will remain private.
- 3.6.9 To deal with the lack of an explicit exemption for a Private Street, some LHAs have taken an approach of serving APCs when notified of Building Regulation Approval and when they are satisfied that Section 220(4)(e) has been satisfied returning the APC under Section 221. This can be a complicated and bureaucratic process but still suffers from the same issues with Building Regulation notifications.
- 3.6.10 It is reasonable for residents and developers to have the option and the choice to have a private street or private estate. This can be frustrated by having to put up APC Sureties even though they do not wish to have the street adopted. This can discourage investment and development of such streets unnecessarily.
- 3.6.11 Some Authorities have Acts of Parliament that stipulate that if they serve an APC they have to adopt the street giving them no option to use their discretion especially when developers make it clear they do not want the streets they are building to be adopted and have reasonable alternative provisions in place for the street's management and maintenance.
- 3.6.12 The adoption of surface water drainage by a third party water company can delay the adoption of a street by the LHA due to the potential liabilities of the failure of such infrastructure on the integrity of the streets, the public liability of any resultant flooding, or property damage etc.
- 3.6.13 Water companies stipulate that they will not adopt the drainage until a particular percentage of a development is completed or occupied. In many cases systems can remain unadopted by the water company for many years after completion of houses and streets. In addition, the percentage used by water companies varies across the country. This disadvantages residents on larger sites where substantial numbers of properties can be occupied before the percentage required by the water company is reached.

4 LHA Sub Group Considerations and Proposals

- 4.1 The success of the highway adoption process relies on supporting the programme of a developer as much as possible whilst reducing the potential of abortive works. The aspiration should be a seamless transition from the planning arena to the construction phase.
- 4.2 The LHA Sub Group has considered how a system could work without reference to current legislation. This enables a review of the system to identify current shortcomings with existing practice or legislative constraints to such a system.

Unconstrained System

- 4.3 The LHA Sub Group's suggestions on such an unconstrained system are contained in more detail in **Appendix A** of this paper. However in summary such a system could include: -
- 4.3.1 Defining the functions of a street to ensure it is "Fit for Purpose". A simple checklist approach may assist to avoid doubts.
- 4.3.2 Pre Planning Application consideration of layout, practicality, drainage and whether a proposal would be "Fit for Purpose". This would require far greater detail at the Pre-Planning stage but ensures that all matters that may affect future adoption are considered and explored before an application is submitted. This will also help Local Planning Authorities, (LPAs) to fully appreciate and consider highway related matters and implications.
- 4.3.3 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 or amenity areas.
- 4.3.4 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.
- 4.3.5 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 LHA Sub Group suggests the following condition: -

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

- 4.3.6 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.

Implementation

- 4.4 It is recognised that legislative changes to the Sections 219 and 220 would be required to facilitate full implementation of the above approach. Such changes are explained in more detail in **Appendix A** of this paper.

- 4.5 Other initiatives noted above require only changes to working practice and improvements to communication between LHAs and LPAs even within some Unitary authorities and communication with all other parties associated with the development process from scheme inception to construction and residential occupation.

Other Options Considered

- 4.6 In addition to the unconstrained review above, other options and opportunities in terms of changes to current practice have been considered. These are expanded upon within **Appendix B** of this paper but in summary they include: -
- 4.6.1 Make Section 38 Agreements mandatory for all new developments.
 - 4.6.2 Amendments to Section 219(1)(a) Highways Act 1980 (as Amended) to transfer the link from Building Regulation Approvals to Planning Approvals.
 - 4.6.3 Amendments to Section 220(1) Highways Act 1980 (As Amended) to extend the period for serving APCs
 - 4.6.4 Amendments to Section 104 Water Industries Act 1991
 - 4.6.5 Government Statements and Guidance
 - 4.6.6 Changes to Building Regulations
 - 4.6.7 Drainage System Indemnities
- 4.7 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 within the context of a legislative opportunity presented by the Private Members Bill and time constraints associated with them it is felt that the change to Section 219(1)(a) severing the link to Building Regulation approval has the greatest merit as a “stand alone” proposal within the constraints considered.
- 4.8 The LHA Sub group suggests that the above can be discussed in greater detail to see if they have support as stand alone initiatives or not.

5 Conclusion

- 5.1 The LHA Sub Group have considered the concerns, issues and problems that have been expressed by many parties on the current highway adoption system from scheme initiation, through the planning and construction phases to occupation of new houses. These issues are summarised in Section 3 of this paper above.
- 5.2 It has considered a potential system unconstrained by current legislation and practice to identify how a system could work to address the concerns expressed.
- 5.3 This approach has identified that changes to LHA and LPA working practice and relationships including improved communication can address many if not most of the problems reported. However, it has also identified that some changes to legislation would yield significant benefits. Primarily transferring the trigger for serving APCs in Section 219 of the Highways Act 1980 (as Amended) from Building Regulation approval to the issue of full or detailed planning consent. Suggestions for such changes are including in **Appendix A** of this paper.
- 5.4 The LHA Sub Group has considered the current lack of an explicit exemption from the APC process for streets that are intended to remain private if the LHA and LPA are content that the streets are “Fit for Purpose” with the private arrangements put in place by the developer to manage and maintain them.
- 5.5 The LHA Sub Group suggests that such an exemption would avoid the need to serve APCs and then return them later with the associated costs to the developer and the LHA with minimal, if any benefit to future residents who buy such properties on such streets in full knowledge and understanding of their liabilities.
- 5.6 However concern has been expressed that such an exemption would be exploited by developers and residents by using current rights to approach LHAs under Section 37 of the Highways Act 1980 (as Amended) to adopt streets at a later stage.
- 5.7 As such a concurrent amendment to Section 37 of the Highways Act 1980 (as Amended) to provide a defence against such an approach if the street is covered by an appropriate management and maintenance agreement approved by the LPA at the planning stage.
- 5.8 It has also considered changes to bring highway adoption issues forward in the process to the pre planning and planning stages that usually get left until far later.
- 5.9 It also considers that a conditional approach at the planning consent stage would ensure all parties know if a street or indeed any other public realm or open space area will be publically adopted and by who and how.
- 5.10 The LHA Sub Group recognises that such changes would have significant implications that require further more detailed consideration.
- 5.11 As legislative changes can take considerable time, the LHA Sub Group would, in the first place and in advance of any legislative changes promote other elements of its suggestions including: -
- The planning conditional approach,
 - The identification of areas to be publically adopted at the planning stage
 - Identification and promotion of best practice to make the existing system work better.
 - Wider publicity and education via the publication of guides to ensure that all parties know their roles, responsibilities, liabilities and obligations within the current system.

- 5.12 The LHA Sub Group recommends that the contents of this paper are considered and debated at a further meeting of the Policy and Legislation Working Party.

6 Acknowledgements

- 6.1 Working Party Members include (in alphabetical order): -
Department for Transport – Matt Tyler, Elizabeth Godden, Vida Browne-Campbell
Department for Communities and Local Government – Arthur Young, Julian Hastings
Derby City Council - Paul Chamberlain
Hertfordshire County Council - David Humby
Kettering Borough Council - Cath Bicknell and David Cook
Leicestershire County Council - Paul Sheard
Northamptonshire County Council - Chris Bond (LHA Sub Group Lead)
Peterborough City Council – Nicholas Harding
St. Albans District Council – Alan Moorhouse
- 6.2 Midlands Service Improvement Group – Development Management Task Group. This group of LHAs across the Midlands region considers and promotes best practice within Highway Development Control and highway Adoption functions.
- 6.3 East Midlands Development Control Forum – A focussed practitioner group of LHA engineers that consider technical issues and share experience and best practice across the East Midlands.
- 6.4 Southern and Eastern Joint Development Management Forum - A focussed practitioner group of LHAs that consider technical issues and share experience and best practice across the Eastern and Southern regional areas.

7 Unconstrained Considerations

- 7.1 This section considers how a system without reference to current legislative constraints could operate to enable consideration of non legislative improvements and opportunities as well as identifying areas of current legislation that could be amended to address the issues and concerns raised by all parties. Where appropriate reference to existing legislation is made to enable a comparison to be drawn.

Fit for Purpose

- 7.2 The overriding Principle / Policy should be that: -

New streets should be 'Fit for Purpose' considering the function they are required to fulfil and the use to which they are put by all modes.

- 7.3 "Fit for Purpose" would need to be formally defined but should be: -
- Safe for all users, of all abilities
 - Practical to use by all modes that may reasonably be expected to use the street
 - Conduits for public utilities and services
 - Have a sense of Place
 - Cost effective and efficient to maintain
 - Where streets are to be offered for public adoption be constructed to LHA adoptable standards.

- 7.4 It should be noted that Section 219(4)(e) includes terms which can be interpreted to reflect this potential definition. It cross references the Private Street Works Code but sets out that an APC can be returned if the street is properly laid out and constructed so as not to require the LHA to consider use of the Private Street Works Code. There is, therefore a consistency with current legislation. For reference, Section 219(4)(e) states: -

Where the street works authority, being satisfied that the whole of the street or such part thereof as aforesaid is not, and is not likely within a reasonable time to be, substantially built-up or in so unsatisfactory a condition as to justify the use of powers under the private street works code for securing the carrying out of street works in the street or part thereof, by notice exempt the building from this section;

- 7.5 Reference is also made to "Manual for Streets" March 2007 and its companion guide "Manual for Streets 2" October 2010 as well as LHA design guidance which set out and explain the roles and functions of streets.
- 7.6 The number of residential dwellings permissible without needing to prove they are "Fit for Purpose" should be determined locally and agreed between LPA and LHA.
- 7.7 In many cases the maximum number of dwellings without their own highway frontage should be five. Whilst historically this was more related to public utility limitations rather than highway safety or capacity, the following key modern considerations will influence the number of dwellings independent of their own highway frontage that LPAs and LHAs may wish to agree on: -
- Refuse collection, including recyclables
 - Place making qualities
 - Management and maintenance costs and implications
 - Public access and accessibility to local amenities and services

- 7.8 It would be noted that many of the above criteria are already defined in the Building Regulations or in Manual for Streets and Manual for Streets 2 and as such new definitions and guidance on such matters may be unnecessary.
- 7.9 A simple check list approach could be considered to enable all parties to consider if a proposal is “Fit for Purpose” or not.

Pre-Application Stage

- 7.10 Many problems with the adoption of new streets can be traced back to the pre-planning stage. As such, pre-application discussion is essential to an efficient planning system.
- 7.11 This is emphasised in Manual for Streets and Manual for Streets 2. An element of a “Quality Audit” should include practical considerations such as refuse vehicle and emergency vehicle access and accessibility, turning facilities for such vehicles and considerations regarding what will and what will not become part of the public realm.
- 7.12 To assist in determining if a proposed street(s) is “Fit for Purpose” constructional details including drainage, utility and SUDs details may also be required.
- 7.13 The above would require significant engagement at the pre-application stage and the close partnership working between the Developer, LPA and LHA is essential.
- 7.14 To assist in facilitating the provision of such advice and to ensure that LHAs are able to resource this, the opportunity to charge developers for such pre-application advice would be necessary.
- 7.15 The management and maintenance of areas of development can create significant problems for local residents, public authorities and developers. In the main the developer will seek to transfer as much as possible to third parties to ensure they do not carry the management and maintenance costs when the development is complete.
- 7.16 As such, it is suggested that prior to the submission of a Planning Application that the developer clarifies which areas will be subject to what sort of management and maintenance regime and seek to agree these with the relevant authority or body.

Planning Application Stage

- 7.17 It is suggested that at the Planning Application stage that a clear plan is required to confirm the areas of land that will be offered for public highway adoption / private management and maintenance, those areas that will be offered for Public Open Space and any other areas that the developer does not intend to retain. This will also give the developer the opportunity to be clear and open regarding any ransom strips so that such matters can be considered at the planning stage.
- 7.18 Either a standard colour system similar to the red and blue line plans identifying the application site and any other land owned by the developer could be stipulated centrally or such matters can be left to local determination as part of Application Validation processes and requirements.
- 7.19 At the Application stage the Developer should be required as part the Application Validation process to provide sufficient information to allow the LPA and LHA to be able to ensure that the proposed development is “Fit for Purpose” and will be appropriately constructed and how the street(s) shall be managed and maintained in future and by whom.

- 7.20 It is proposed that at the planning application stage a developer declares / confirms their intentions regarding the management and maintenance of the streets they are proposing.

Planning Conditions

- 7.21 It is suggested that the LPA would take a key role in this process by requiring through suitable condition that developers provided details and evidence of either a Public Highway Adoption Agreement or a Private Management and Maintenance Agreement.
- 7.22 It may be appropriate to ensure that the principles are established at the Outline stage of large planning Applications. However, such details should be secured when either a Full Planning Application or a Reserved Matters Application is submitted.
- 7.23 A suggested standard condition could run thus: -

Prior to the commencement of the 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 shall thereafter be maintained in accordance with the approved management and maintenance details.

- 7.24 In order to discharge the condition the developer then has two options provide a signed Highway Adoption Agreement or a properly constituted Private Management and Maintenance Agreement. Model Agreements should be made available.
- 7.25 An alternative or for Outline Applications is a Section 106 Planning Obligation approach where consent is not issued unless or until either a completed Public Highway Adoption Agreement or Private Management and Maintenance Agreement is submitted to the LPA.

Public Adoption

- 7.26 The Public Adoption route would be via an Agreement with the LHA following similar if not the same provisions as the current Section 38 of the Highways Act 1980 (as Amended).

Private Adoption

- 7.27 The Private Adoption route would require the creation of a "Management Company" to which the residents, land owner(s) if different and developer would be party.
- 7.28 To avoid this being seen as a cheap option by developers the tests for "Fit for Purpose" should extend to ensuring that the streets are actually constructed to an acceptable standard.
- 7.29 For this the LHA could be engaged to inspect, (as for the Public Adoption route) and "Certificate". Such certification would give residents the comfort that their street that they may become liable for has been constructed to a reasonable standard.
- 7.30 It is considered that the interests of future residents, the LHA and LPA would be protected if financial sureties or other such Bonding is in place in any event to ensure that any streets can be completed if the developer defaults or abandons the site, for whatever reason whilst the future management and maintenance would rest with the residents concerned.
- 7.31 The trigger for such an approach would be the granting of detailed planning consent. This would be similar to the current APC process and would further incentivise developers to enter Public Adoption Agreements.

- 7.32 The LHA Sub Group has also debated the issue of residents' current rights to petition LHAs under Section 37 of the Highways Act 1980 (as Amended). There is a case to suggest that, if a developer chooses the Private Adoption route and residents buy properties in full knowledge and understanding of that status and their obligations and responsibilities, then it should remain that way.
- 7.33 As such there is a case to suggest that there should be an exemption or a restriction on residents or future residents petitioning the LHA to adopt the streets at a later stage.

Drainage and Public Utilities

- 7.34 Details and confirmation of how surface water drainage and other utility provisions will be managed and maintained could also be determined / confirmed at the planning stage in a similar way with condition requiring confirmation of such details prior to commencement.
- 7.35 Indemnities for any utility or infrastructure failures could be required from developers to protect the interests of the public and other affected authorities.

Communication and Understanding

- 7.36 It is suggested that many of the problems identified with the current process stem either from a lack of understanding or knowledge of a very complicated multi disciplinary process.
- 7.37 Publication of clear national guidance on how the existing system should work in plain English for the benefit of all parties including applicants, local authorities and the general public.
- 7.38 Publication of clear local guidance to developers on what is expected of them. If they submit details compliant then responses will be quicker. Such guidance can include how the use of non standard areas or designs can be considered; clarity on the use of commuted sums for non standard materials etc can also be explained.
- 7.39 Determination and publication of best practice procedures which currently vary considerably across the Country would create clarity for all parties and improve efficiencies.

Conveyancing

- 7.40 It is common that problems only arise when properties on new developments are being purchased or re-sold. In some cases it would appear that additional information or advice notes would assist in ensuring that those purchasing new houses on new development and their advisers can make informed decisions.

Overall Benefits

- 7.41 Setting aside all current legislation it is possible that the above would: -
- Reduce bureaucracy
 - Speed up processes
 - Improve transparency for all
 - Create certainty for developers and future residents within the conveyancing system
 - Improve communication
 - Allow developers and residents to have the choice of having a Private Street

Dis-Benefits

- 7.42 This unconstrained approach would require changes to primary legislation. It is recognised that any changes, even minor may take a considerable time and is dependant on Government support.
- 7.43 The pre-application stage will be extended in terms of time with the need for developers to liaise and negotiate with a number of parties and authorities in significant detail earlier in the process than they would traditionally do.
- 7.44 Arguably the entire process from development inception to completion should not take any longer as the timing of existing steps is simply being moved forward in the process. However as a lot of work normally done after consent would be brought forward to pre consent developers may consider that risks of promoting a development in such detail without the comfort of a planning consent and the costs of potentially abortive work and costs are unacceptable.
- 7.45 The pre-application stage becomes far more detailed and as such developers and the Local Highway and Planning Authorities will need to devote greater resources to pre planning stages. The ability for authorities to charge for dealing with such matters will assist the public purse in meeting this challenge.

Implementation

- 7.46 The above process would require changes to legislation. However these could be limited to changes to Sections 219 and 220 of the Highways Act 1980 (as Amended).
- 7.47 As noted above, it is suggested that the existing link in Section 219(1)(a) between Building Regulation Approval and subsequent notification in Section 220(1) of the LHA to enable them to serve APCs should be changed. In its place link should be made to detailed planning consent, either as a full planning permission or reserved matters if an outline has been granted.
- 7.48 Section 219(1)(a) currently states: -
- 219.-(1) Subject to the provisions of this section where-*
(a) it is proposed to erect a building for which plans are required to be deposited with the local authority in accordance with building regulations, and

- 7.49 It is suggested this could be amended to run thus:-

219.-(1) Subject to the provisions of this section where-
*(a) it is proposed to erect a building for which **appropriate detailed planning consent under the Town and Country Planning Act 1990(as amended) has been issued,** and*

Note:The term “appropriate planning consent” would require definition but is intended to include full or reserved matters consent, (in the case of an outline) where a street serving more than a deminimus number of dwellings without their own highway frontage is proposed. This deminimus number would be determined locally by the LPAs in agreement with LHAs.

- 7.50 In parallel a minor revision to Section 220(1) would also be required. Section 220(1) currently states: -

220.-(1) In a case to which section 219 above applies the street works authority shall, within 6 weeks from the passing of any required plans relating to the erection of a building deposited with them or, in a case of subsection (2) below applies, with the district council serve notice on the person by or on whose behalf the plans were deposited requiring payment or securing under section 219 above a sum specified in the notice. In this subsection and subsection (2) below "required plans" means plans required to be deposited with the local authority in accordance with building regulations.

- 7.51 It is suggested that this could be amended to run thus: -

*220.-(1) In a case to which section 219 above applies the street works authority shall, within 6 weeks from the passing of any required plans relating to the erection of a building deposited with them or, in a case of subsection (2) below applies, with the district council serve notice on the person by or on whose behalf the plans were deposited requiring payment or securing under section 219 above a sum specified in the notice. In this subsection and subsection (2) below "required plans" means plans **that have gained appropriate planning consent under the Town and Country Planning Act 1990 (as amended).***

- 7.52 The above may create some issues with sums being required to be deposited by a developer when they either do not have all finances in place or where they wish to implement the development at a later stage. As such the above may need review to include a more explicit noticing process that triggers when the sums should be secured.

- 7.53 In addition it is suggested that Section 220 could be reviewed to explicitly exempt a Private Street if the LHA is satisfied with the street in terms of its layout and construction as being "Fit for Purpose" and that an acceptable Private Management and Maintenance Agreement is in place.

- 7.54 This would avoid the need to serve and secure APCs on roads that would remain private only to return them. Such practice puts undue burden on a developer at the start of a development and involves the LHA in extensive and bureaucratic practices with limited benefits to the future residents who would purchase properties in full, knowledge and understanding that it will remain private.

- 7.55 It is recognised that such a change may be exploited by developers and residents at a later stage by approaching the LHA at a later stage to adopt a street covered by such an exemption. As such other textural changes to sections which allow such approaches under Section 37 of the Highways Act 1980 (as Amended) would also be required.

- 7.56 Section 37(2) of the Highways Act 1980 (as Amended) currently states: -

37.-(2) If the council consider that the proposed highway will not be of sufficient utility to the public to justify its being maintained at the public expense, they may make a complaint to a magistrate's ' court for an order to that effect.

It is suggested that this could be amended to run thus: -

37.-(2) If the council consider that-

(a) the proposed highway will not be of sufficient utility to the public to justify its being maintained at the public expense,

*(b) **the proposed highway is covered by a Private Management and Maintenance Agreement approved by the council***

they may make a complaint to a magistrate's ' court for an order to that effect.

- 7.57 Other elements of the above would not require legislative changes but would require changes to working practices and consistent implementation of best practice. Simple guides or governmental statements would assist in this respect along with standardised planning conditions and agreements.

DISCUSSION DRAFT

8 Other Options and Opportunities Considered

- 8.1 This section considers other options and opportunities including those promoted by third parties. These options may be worthy of further discussion and could be considered on a stand alone basis.
- 8.2 This approach focuses on identifying and spreading best practice, improved communication and enhancing the role of the Local Planning Authority in the process.
- 8.3 *Make Section 38 Agreements mandatory for all new developments.*
- 8.3.1 Section 38 Agreements are currently voluntary and provide an exemption to the APC.
- 8.3.2 Making Section 38 Agreements mandatory would have significant impacts and is in line with some stated aims of Northamptonshire County Council, Philip Hollobone MP and Ann Main MP. The approach would remove uncertainty but would not address the situation of developers and residents wishing to have or live on a Private Street or estate.
- 8.3.3 The question of whether a “mandatory” agreement is allowable in law is raised.
- 8.3.4 The approach could be similar to that for Section 106 Planning Obligations where such agreements are required before a planning permission is issued. A planning condition route that would have the same effect could be considered.
- 8.3.5 In order to avoid local highway authorities being forced to adopt substandard streets, guidance will be required setting out that streets need to be of an adoptable standard as well. If so, some limit would need to be agreed where streets could remain private eg less than 6 dwellings, as an adoptable standard may not be appropriate or desirable in this case. In any event a street should be fit for its purpose considering its role and function.
- 8.4 *Amendments to Section 219(1)(a) Highways Act 1980 (as Amended) to transfer the link from Building Regulation Approvals to Planning Approvals.*
- 8.4.1 The change of the reference in Section 219(1)(a) of the Highways Act 1980 (as Amended) from Building Regulation Notification to the issue of detailed Planning permission. This is the option preferred and promoted by the LHA Sub Group and is covered in Section 4 of this Paper.
- 8.5 *Amendments to Section 220(1) Highways Act 1980 (As Amended) to extend the period for serving APCs*
- 8.5.1 It has been suggested that extending the opportunity to serve an APC from 6 weeks to 6 months would assist.
- 8.5.2 This has been considered by the LHA Sub Group. It is considered that whilst this would enable LHAs to serve APCs over a longer period this may create a situation whereby works could be well progressed on site including residential occupations but not subject to any form of technical approval.
- 8.6 In addition the removal of such a tight timescale may frustrate development if a start is made on site and the developer has an unknown sum to find late in the process that could, when it is defined, affect the viability of a development.

8.7 *Amendments to Section 104 Water Industries Act 1991*

8.7.1 Some amendments to Section 104 Agreements to enable agreements in principle at a planning stage may be required along with changes and rationalisation of current practice by water Companies who stipulate different completion rates or numbers of houses before they are prepared to sign Section 104 Agreements or adopt surface water drainage.

8.8 Some Local Highway Authorities are prepared to adopt streets provided there is a provisional certificate for the drainage sewers in place. This practice could be promoted with the issue of appropriate guidance notes.

8.9 *Government Statements and Guidance*

8.9.1 Ministerial or other official statement or guidance to reinforce the requirement for Building Regulation Inspectors to inform LHAs of approval of Building Regulations.

8.9.2 This is considered a simple way to clarify and address the roles and responsibilities which, over time have been weakened.

8.9.3 Publication of clear national guidance on how the existing system should work in plain English for the benefit of all parties including applicants, local authorities and the general public.

8.9.4 Publication of clear local guidance to developers on what is expected of them. If they submit details compliant then responses will be quicker. Such guidance can include how the use of non standard areas or designs can be considered; clarity on the use of commuted sums for non standard materials etc can also be explained.

8.9.5 Determination and publication of best practice procedures which currently vary considerably across the Country would create clarity for all parties and improve efficiencies.

8.9.6 More rigorous inclusion of specific time limits within Section 38 Agreements and enforcement of them with clausings to enable LHAs to step in easier and more efficiently in the event of default even if the developer still trades.

8.10 *Changes to Building Regulations*

8.10.1 Change Building regulation procedures to prohibit the approval of Building Regulation for developments that require planning permission without evidence of such permission for the development.

8.10.2 Whether this will require any legislative change would need to be considered. However it would at least remove a current loop hole.

8.11 *Drainage System Indemnities*

8.11.1 Indemnities for drainage systems that are yet to be adopted by a local water company would enable LHAs to adopt streets without final drainage certification.



Northamptonshire County Council

Private Streets – A Brief Guide

1. Scope and Introduction

- 1.1 Most roads in Northamptonshire are maintained at the public expense by the County Council in its capacity as “Local Highway Authority”. Those that are not, are known as “Private Streets”. The term “Private Street” is therefore related to the management and maintenance liability and should not be confused with the question of whether or not anyone has a right of way or access along a road (or street).
- 1.2 This guide relates to Private Streets that are not covered by an Agreement between a developer and the County Council under Section 38 of the Highways Act 1980. Please refer to **“Highway Adoption - A Brief Guide”**.
- 1.3 The legal and maintenance liabilities of Private Streets and determining who should pay for repairs to individual areas of a Private Street are often difficult to both establish and enforce. As a consequence, many Private Streets have deteriorated over time. However, the Highway Authority has the power to make up private streets under Part XI of the Highways Act 1980, generally at the request of the residents served by the private street and / or the owners of the street concerned.
- 1.4 Broadly speaking, Northamptonshire County Council will not make up a Private Street unless it is at least 80% developed on both sides and the majority of the fronting owners and the owners of the land over which the private street runs, (if different), have given their written consent to the street being made up and are prepared to fund all associated works and the County Council’s fees. However, experience has shown that it is extremely rare for all fronting owners to agree on all aspects of the making up of their private street and it is essential therefore that all those affected are approached and their views confirmed in writing.
- 1.5 This Guide is intended to provide general information to anyone who lives on or is affected by a private street. It does not provide full information on all aspects of the matter and it should not be regarded as a detailed or complete interpretation on either the legislation or the law relating to private streets.
- 1.6 This Guide has been compiled with the assistance and collaboration of the Development Management Task Group of the Midlands Service Improvement Group and the East Midlands Development Control Forum a collective of Midlands and North West English Local Highway Authorities from two tier and unitary authorities sharing Best Practice within the disciplines of Highways and Transportation.

2. The Legislative Framework - Highways Act 1980.

2.1 Section 205-(1) of the Highways Act 1980 States: -

Where a private street is not, to the satisfaction of the street works authority [Northamptonshire County Council acting as the Highway Authority], sewered, levelled, paved, metalled, flagged, channelled, made good and lighted, the authority may from time to time resolve with respect to the street to execute street works and subject to the private street works code, the expenses incurred by the authority in executing those works shall be apportioned between the premises fronting the street.

2.2 Under the code, the cost of the work has to be charged to each owner who has a frontage to the private street concerned based on apportioning the costs of the works between all parties according to the length of the street that they abut.

2.3 The phrase “fronting” includes property boundaries that abut or adjoin the private street and does not distinguish between front, side or rear boundaries. The County Council has powers to charge some of the costs to properties which, whilst not fronting directly on the street, have access to it and thus are likely to benefit from the works.

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3. Private Street Layout and Construction

- 3.1 Making up a Private Street can have significant legal, constructional, property and other significant cost implications. As such, the following *general* criteria should be considered by anyone wishing to promote or approach the County Council in writing to have their existing Private Street made up and adopted by the County Council to be maintained at public expense.
- 3.2 These general criteria include, (but not exclusively and in no specific order), the following: -
- 3.2.1 That the Private Street is laid out and constructed to an appropriate adoptable standard. This would include appropriate road widths, gradients, visibility, surfacing, service strips, turning heads, street lighting, drainage etc.
- 3.2.2 That the Private Street has sufficient “public utility”. That is to say that the wider general public who do not reside or need to access properties served from the Private Street would use it to access local amenities or facilities and use the Private Street concerned as a thoroughfare or through route. As such cul-de-sacs would have very limited wider “public utility” to the general public as the use of the Private Street is primarily only a benefit to the residents.
- 3.2.3 All parties that gain benefit / use / have rights over the Private Street and / or own land abutting the Private Street need to agree in writing that they want the Private Street to be adopted and are prepared to fund any works that may be required. Many people like their Private Street to be private and may resist a move to have it adopted. In addition as the costs of getting the Private Street adopted would fall to the residents and landowner, this can affect some resident’s views as to the benefits, when they realise the costs
- 3.2.4 The owner(s) of the land over which the Private Street and associated footways, verges etc run agree that they want the Private Street to be adopted. If the owner(s) refuse to agree this can be the end of the matter.
- 3.2.5 Confirmation with appropriate drawings / plans of the Private Street showing, its construction, services, (gas water electricity, telecoms etc) street lighting and drainage etc. Some utilities will welcome the adoption, others may require works to relocate their plant into the area to be adopted. Again costs fall to the residents / land owner(s).
- 3.2.6 That the Private Street serves more than five dwellings independent of their own highway frontage.

4. The Procedure For Making Up A Private Street.

Initial approach.

- 4.1 Following a request for the Private Street to be made up and adopted, the County Council may ask for a petition from all the frontagers involved, to demonstrate their commitment to the adoption process. The County Council will then arrange for a visual inspection of the Private Street to advise on the practicality of adoption and to indicate the nature and scale of works that may be necessary to bring the Private Street up to current adoption standards.
- 4.2 In certain circumstances, the County Council may only proceed if all those affected, including those with a frontage, those that own the land over which the Private Street runs and any with any private rights of access have been traced and informed and that the majority, (over 75%) agree that they support and will fund the works in principle.
- 4.3 Subject to the above, the County Council may then consider passing a resolution to make-up the Private Street.

Pre-works

- 4.4 Once the County Council has resolved to carry out the Private Street Works, a detailed survey is then carried out and the specifications, plans and estimates of the works are drawn up.

Provisional Apportionment

- 4.5 A Provisional Apportionment of the cost of making up the private street is then prepared and approved to show how it is intended to divide the cost between the various properties that are liable.
- 4.6 Each individual Provisional Apportionment is then sent to the owners who may object to the County Council's proposals and this has to be done within one month of the publication of the Provisional Apportionment. A notice of the County Council's intention to carry out the work will be published in the local press and displayed in or near the street once the majority of the owners have agreed in writing to the works being carried out.
- 4.7 Sometimes objections can be resolved by discussion between the owners and the County Council, but if the objections are not withdrawn, the County Council may, at their discretion, apply for them to be determined by a Magistrates' Court. The County Council will make the necessary arrangements for the Court hearing and the Magistrates have the power to quash or amend the County Council's resolution to make up the street and the Provisional Apportionment. The court can also decide whether the objectors or the County Council should pay any part or all of the costs of the Court proceedings. If altered, the apportionment will be re-circulated.

- 4.8 If less than 75% of those that have a frontage, own or have private access rights over the Private Street support the proposition after consideration of the apportionments they would need to fund, then the County Council will take no further action and rescind the resolution to make up the street.
- 4.9 If those in favour continue to support the proposition after the Provisional Apportionment and confirm this in writing, then tenders will be placed and the works will be carried out under the supervision of the County Council.

Payments

- 4.10 The County Council is prepared to consider payment in instalments and to take a flexible approach. Methods and timing of payments should be discussed with the County Council and agreed before the County Council commissions the works.

After the works have been completed.

- 4.11 The County Council will implement the procedure to adopt the Private Street as a highway maintained at public expense after completion of the works. This may take effect only when the contractor has satisfactorily completed a 12 month Maintenance Period for the works to ensure the materials and workmanship are robust.
- 4.12 The Final Apportionment is then prepared when all costs have been collated, which will show how the actual costs are divided. This is based on the same proportions as those used in the Provisional Apportionment and each individual Final Apportionment is then sent to the owners for payment.
- 4.13 Payment can then be made in accordance with the method and timing of payments agreed before the works commenced.

5. Frequently Asked Questions.**5.1 On what grounds can an owner object to the proposed works?**

There are six statutory grounds for objection:-

- 5.1.1 That it is not a Private Street. The County Council holds a list of maintainable highways that identify publicly maintainable streets and it will consult its legal department if there is any doubt.
- 5.1.2 That there is an error in the resolution, notice, plans, sections or estimate. The County Council must adhere to the requirements of the Highways Act.
- 5.1.3 That the proposed works are insufficient or unreasonable. All proposed works must be sufficient for its purpose and the specification and design of the works are based on national standards and guidelines that have been modified by the County Council to suit local conditions. If an objection on this ground is to be determined at a Magistrates' Court, the Court is confined to considering the condition of the street being made up and cannot review the policy of the Council.
- 5.1.4 That the estimate of the proposed works is excessive. The works estimate is based on rates extracted from similar work and is a guide of the likely cost involved, for information only. The County Council is entitled to add its administrative and supervision costs and VAT is charged at the standard rate.
- 5.1.5 That any premises should be excluded from or added to the provisional apportionment. Certain premises, such as places of religious worship, church yards or burial grounds (attached thereby), and certain railways and canals are exempted. Premises which do not front onto the street but have access onto it via a court, passage or otherwise and which will benefit by the works can be included in the apportionment.
- 5.1.6 That the Provisional Apportionment is wrong. The County Council has to consider if a property has a greater or less degree of benefit from the works. This degree of benefit is calculated by an approved system of allocating benefit points which takes into account type of access to the street, development of the plot, the shape of the plot, age of buildings, use of plot (private, residential, commercial) etc). Additionally, relief is given to flank frontages, for rear frontages and when an owner is liable to two sets of charges for adjacent private streets.

5.2 What can the Council include in its' scheme?

- 5.2.1 Any works considered necessary in order to bring the street into conformity with any other street whether maintainable at the public expense or not.

5.3 Can the Council ignore the wishes of the owners whether to proceed or not?

5.3.1 If more than 25% of the frontagers, owners of the land over which the Private Street runs or those that have any private rights indicate that they do not wish the Private Street to be made up, the County Council does not generally proceed. However, it does have the powers to make up the street and charge the owners if it considers there are special circumstances involved.

5.4 What if I cannot afford to pay for my apportionment of the cost of the works?

5.4.1 It is realised that the cost of paying for Private Street works may place a financial burden on residents and land owners. However, there are various ways in which payment can be made:

5.4.2 If payment is made in full within one month of the receipt of the Final Apportionment, no interest is charged. Otherwise, interest is payable from the date of the Final Apportionment, until such time as all the apportionment is paid, at a rate determined by the County Council Treasurer.

5.4.3 If it is not possible for the Final Apportionment (plus any interest) to be settled in one payment, payment by instalments over a mutually acceptable period may be arranged with the County Council Treasurer.

5.4.4 In cases of hardship, the County Council may agree to the debt being left as a charge on the property until the situation on that property changes, when the amount of the Final Apportionment would become payable in full. Interest, however, must be paid on a quarterly basis as it accrues.

5.4.5 Some owners neither wish nor have the ability to pay for Private Street works but the law does not recognise that these are valid reasons for objecting to an apportionment.

5.4.6 Payment methods and mechanisms have to be agreed with the County Council before the County Council will commission the actual works.

5.5 How can I be sure that the final cost will not grossly exceed the provisional cost of the work?

5.5.1 An owner can object to the Final Apportionment if:

- there has been an unreasonable departure from the specification, plans and sections,
- the actual expenses have, without sufficient reason, exceeded the estimated expenses by more than 15%,
- the method of apportionment of the final cost has not followed exactly that of the provisional apportionment.

5.5.2 If these objections cannot be resolved by discussion, they may be considered by a Magistrates' Court in the same way as objections to the Provisional Apportionment. However, there are several ways the cost can rise, including because protracted legal matters delay the commencement of the works.

5.6 **Will the County Council charges on my property be increased?**

5.6.1 Maybe, but this is a matter for the Housing Authority to determine.

5.7 **Who can I contact for further information?**

5.7.1 Discuss this with your neighbours and try to reach a common decision. Nominate a spokesperson for all the owners of the affected properties who will act as a contact for the County Council.

5.7.2 Contact the County Council’s Highway Adoption Engineer dealing with this matter (either identified on the attached letter or through your spokesperson), who will be happy to meet you to discuss the various issues.

5.7.3 For further information you may contact: -

Development Management
Highways, Transport and Infrastructure
Northamptonshire County Council
Riverside House
Riverside Way
Northampton
NN1 5NX
f. (01604) 364455
e. Highwayadoptions@northamptonshire.gov.uk <<<SET UP AGAIN>>>
w. www.northamptonshire.gov.uk

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The Midlands Service Improvement Group of highway authorities which aims to pool knowledge and experience, improve services provided and provide a consistent approach to issues in the Midlands and West Midlands Region.

Related Documents
Highway Adoption - A Brief Guide
Development Control and Adoptions – A Very Brief Guide
Adoption of New Roads Scrutiny Review



Northamptonshire County Council

Development Management – A Very Brief Guide

1. Introduction

- 1.1 This guide is written in plain English and endeavours to explain the County Council's role in the planning system, what we consider and how we respond to planning applications on which we are consulted.
- 1.2 Development is divisive and highly emotive. It sets neighbour against neighbour, from house extensions to Urban Extensions, from wind farms to warehouses. Someone's bright idea and dream is another's nightmare, an accident waiting to happen; someone's profit is someone's loss.
- 1.3 The planning system is complicated and bewildering to those who do not encounter it until they are directly affected. A lack of understanding of the system and the roles of the key parties leads to frustration, anger and confusion.
- 1.4 Everyone has a view and the County Council's Development Management Team we are very much in the middle and depending on who you talk to, are never right. We are sometimes on the front line between the warring factions with wildly different agendas and motives.
- 1.5 We represent the County Council as "Local Highway Authority" and are a Statutory "Consultee" in the planning system. We get consulted on planning proposals of all kinds and provide impartial, professional advice to the Local Planning Authorities, (LPAs) such as the Borough and District Councils as well as West Northamptonshire Development Corporation and the County Council's own planning department.
- 1.6 As a complication, our role is often confused with that of the Highways Agency which manages and maintains Trunk Roads, (A14, M1, parts of the A43 and A45 etc). To the public we are all "highways".

2. Local Highway Authority Role

- 2.1 As a "statutory consultee" we can only make recommendations. The LPAs etc must take "due weight and consideration" of all representations made by all parties. However they are not obliged to agree, after all everyone is entitled to their own opinion.

29.12.11

- 2.2 The LPAs can refuse a development that we have not objected to and can approve development that we have objected to. They must, however, demonstrate that they have taken sound and informed decisions and justify their position and determinations especially if they do not accord with a Statutory Consultee's recommendations.
- 2.3 If we object to a proposal and the LPA refuses an Application on that recommendation, we are required to defend that recommendation if the Applicant submits an appeal.
- 2.4 There are different levels of appeal ranging from simple exchanges of statements and a site visit known as Written Representations, through "Informal Hearings" where the affected parties engage in a managed debate in front of an Inspector up to a full blown Public Inquiry.
- 2.5 For those not familiar with Public Inquiries, think about courtroom dramas with barristers and witnesses and you are not far off. All appeals involve costs and take precious resources with the risk that if we do not, in the opinion of the Inspector, adequately defend our position Costs incurred by the Appellant can be awarded to be paid by the LPAs who, quite reasonably seek to recover such costs from the County Council.
- 2.6 We do not recommend refusal of an Application without considering the potential implications and would not wish to put the LPA in a situation of refusing an application on grounds that we do not consider can be defended.
- 2.7 If you have any concerns or issues associated with planning applications then you should contact your local District or Borough Planning Department. If your concerns relate to current Applications then it is essential that you put them in writing, if possible, to the LPA to ensure that they take your concerns into consideration before reaching their decision.

3. Considerations

- 3.1 A fundamental planning principle is that every Application is considered "on its own merits" based on the information submitted by the Applicant in the public domain. It is unreasonable for us to base decisions on documentation or information which other parties especially the LPA's do not have access to.
- 3.2 With potential appeals in mind and their associated costs, we have to ensure we make sound decisions, on sound evidence. It is essential, therefore that we have sufficient information on which to form such an opinion.
- 3.3 Most developments will have an impact on the highway network and traffic levels. Applicants are required to engage with us to establish the scope and scale of information that is required before they submit a planning application. In most cases, this takes the form of "Transport Assessments" or "Transport Statements". These documents have also been called Traffic Impact Assessments, Traffic Reports or abbreviated as TAs, TSs or TIAs.

29.12.11

- 3.4 The content and format of Transport Assessments and Transport Statements is guided by the Department for Transport's "Guidance on Transport Assessment" (www.dft.gov.uk/pgr/regional/transportassessments/guidanceonta).
- 3.5 Transport Assessments or Transport Statements can be highly complex technical reports running into multiple volumes. To assist us, we engage the County Council's Highway Services Provider, MGWSP, to provide expert impartial and objective technical advice regarding the merits of a development in highway and transport terms.
- 3.6 In reviewing such complex information we try to take the views of lay people into consideration to ensure that there are non technical explanations of matters covered so that they can make their own informed decisions and understand how we reach ours.
- 3.7 Once we have sufficient information we consider proposals from first principles, against national guidance, local policies and a raft of other legislation including the likes of the Highways Act, Building Regulations, Traffic Management Act etc.
- 3.8 Our overall aim in the process is to protect the interests of the community and highway users sometimes from themselves.

4. Challenges and Opportunities

- 4.1 Developments provide challenges but also opportunities. Mitigation works and contributions to facilitate a development can have wider benefits; new crossings; pedestrian and cycle enhancements; improved bus services; changes to speed limits; traffic calming etc all play their part in terms of development mitigation.
- 4.2 The cumulative impact of development and planned growth in the County is a big issue. The County Council has developed strategies and packages of works and initiatives to accommodate the challenges of major growth in many of the affected towns, especially in the North of the County.
- 4.3 The County Council has developed Transport Strategies and a scheme of Pooled Developer Contributions to fund them. Put crudely the impact of the planned growth and windfall development has been assessed and a package of works and initiatives considered necessary to mitigate the effects of that development has been determined. The costs of that mitigation is then spread evenly and reasonably over the quantum of development proposed. This Pooled Developer Contribution approach will be replaced in due course by the new "Community Infrastructure Levy" or CIL.
- 4.4 The Development Management teams negotiate hard to secure substantial contributions, sometimes running into eight digits to pool together to facilitate the delivery of the strategies where such strategies have been finalised. This is predominantly in the Kettering, Corby and Wellingborough areas.
- 4.5 The package of mitigation does not just rely on financial contributions. Local impacts also need to be assessed and mitigated with appropriate highway works identified and secured through the planning system to be implemented by the developer.

29.12.11

- 4.6 In addition Travel Plans which are documents which look at affecting and influencing people's choices of how they get to and from a development are also considered and secured through the planning system.
- 4.7 The scale of development proposed for Northamptonshire is substantial and we can not build our way out of the inevitable problems that will be created.
- 4.8 By influencing how people move around and encouraging the use of more sustainable modes, walking, cycling and public transport for example, can reduce the traffic levels generated by a development and assist in mitigating the effects of it.
- 4.9 The County Council's policy is to secure Travel Plans that deliver a 20% reduction in car trips compared to those that would otherwise be expected from communities in the immediate vicinity. This is a challenging but achievable objective and requirement.

5. Highway Adoptions

- 5.1 Many developments involve new houses and roads as well as new junctions onto existing roads. The Development Management team deal with all of these matters from scheme inception, through the planning process and onto implementation and ultimately adoption of new roads.
- 5.2 As such we help shape new communities, affect the way people move around it and how they integrate into existing communities. Through the Travel Plans that we secure we influence how people get to and from the site in sustainable ways.
- 5.3 The issue of adopting roads has had a significant local and national profile recently with debates in the House of Commons and with the County Council adopting a new approach to resolve the number of outstanding new roads that are effectively built but not adopted yet by the County Council.
- 5.4 The Development Management team along with colleagues from other highway and planning authorities are directly involved in addressing the issue of un-adopted new roads and informing the local and national debate on how to improve the legislation and working practices to the benefit of new communities engaging directly with the Department for Transport and the Department for Communities and Local Government.
- 5.5 It should be noted that a single adoption agreement can cover multiple roads and a single road, like a spine road may be covered by multiple agreements built by multiple developers at different times using different contractors.
- 5.6 To ensure that roads that will be adopted by the County Council meet our standards and minimise maintenance costs in the future, the Development Management team undertake audits of plans submitted by the developers and commissions MGWSP to inspect their construction.

29.12.11

- 5.7 Only when we are happy that roads have been designed and constructed properly, will we adopt. From 2009 to 2010, the team assisted in adding some 17.5Km of new roads to the adopted network benefiting thousands of residents.
- 5.8 The County Council’s Scrutiny Review revealed that one of the biggest issues is that of a lack of knowledge and understanding by house buyers about the financial and social implications of living on an un-adopted road. The County Council is therefore working with the house builders, the sales and marketing side, conveyancing and legal side as well as mortgage lenders to ensure people really understand the issues that may affect them.
- 5.9 Further information on the highway adoption process and frequently asked questions along with issues associated with Private Streets can be found in other “Brief Guides” “Highway Adoption - A Brief Guide” and “Private Streets - A Brief Guide”.
- 5.10 If you have any queries regarding this guide or require further information on the Development Management service please contact: -

Development Management
 Highways, Transport and Infrastructure
 Northamptonshire County Council
 Riverside House
 Riverside Way
 Northampton
 NN1 5NX

e. HighwayDC@northamptonshire.gov.uk <<<SET UP AGAIN>>>
[w.www.northamptonshire.gov.uk](http://www.northamptonshire.gov.uk)

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Related Documents
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Northamptonshire County Council

Highway Adoption – A Brief Guide

Introduction

The Highway Adoption process can be complicated and confusing to those unfamiliar with it. However whilst there are areas of technical and legal issues involved, put very simply, when new developments are constructed, new roads are usually built to serve them. In the majority of cases the roads, when completed, are then “Adopted” by the County Council and are then managed and maintained at public expense.

The benefits of this to those served by such roads include, but not exhaustively: -

- The right to pass and re-pass without hindrance or obstruction and without having to have “access rights” or pay ransoms
- The roads being swept and cleansed by the local District or Borough Council,
- Having gullies cleared and potholes filled with no direct cost to themselves
- Refuse collection
- Having the roads gritted in winter, if eligible.
- The County Council can undertake improvements, install crossings and enforce (in areas covered) parking restrictions
- The Police can enforce weight restrictions, where appropriate
- Public Transport access
- Public Utilities, (gas, water, electricity and telecommunications etc) have full access without weigh leaves.

Whilst in some cases some privately owned and maintained streets can have some of the above benefits, they usually come at a direct cost to the resident via management company fees.

This Guide does not cover the issue of existing or historic Private Streets. Please refer to **“Private Streets – A Brief Guide”**

The rest of this brief guide considers and answers frequently asked questions to: -

- Provide advice in dealing with some situations
- The roles of the authorities and parties involved,
- How the status of a road can affect the services you receive,
- To help you understand the implications of buying a house on an un-adopted new road and where to find more information

You will note that some answers are repeated. This is to ensure that each question is answered as fully as possible and to avoid cross referencing.

26.09.12

1. What is Highway Adoption?

- 1.1. When a road is “adopted” it becomes the responsibility of the County Council as Local Highway Authority to manage and maintain it at public expense. This is usually done with the completion of a legal agreement between the developer and the County Council under Section 38 of the Highways Act 1980. Such agreements ensure that roads are constructed to the County Council’s standards and that when complete the land over which the road runs is “dedicated” as a highway maintainable at public expense.
- 1.2. The terms “Adoption Agreement”, “Highway Adoption Agreement”, “Section 38” and “S38” are used by developers, solicitors, estate agents and others involved in house building, but tend to all relate to the same form of agreement. See also the Glossary of Terms in Appendix A of this guide.
- 1.3. Whilst there are other routes to facilitate the adoption of a new road, Section 38 Agreements are the most common.
- 1.4. However, it should be noted that the County Council has no legal powers to force a developer to have a new road adopted or to force them to enter into an adoption agreement. It can only insist at the planning stage that a road is laid out and constructed to appropriate adoptable standards. Beyond that we endeavour to encourage and relay any third party concerns to them.

2. How do I find out if my road is adopted?

- 2.1. Visit the County Council’s Web Site www.northamptonshire.gov.uk, click on the “Maps” option and follow the instructions :-
 - Note that one of the options or “Layers” of information available is “Transport and Streets”. Click this.
 - Within that layer there is a tick box for “Register of Highways Maintainable at Public Expense”. Tick this box and read the disclaimer.
 - On the main map use the tools to zoom in on your street, or use the search option.
 - With the Register active, if the street is adopted, a thick blue line will be shown along the middle of the road.
 - If no line appears along the street concerned, this may indicate the road is currently not adopted or is private.
- 2.2. Please note that very recent adoptions may not be shown as there can be up to a month or so between adoption and the update of the web site.
- 2.3. In addition please note that the Highway Register on the County Council’s website only shows the length of street adopted only and not the width or extent of the highway. Please read the explanatory note when you click on the Register for more information on what the information provides and what it does not.
- 2.4. If you require a plan or confirmation regarding the extent of the highway in the vicinity of your property then please contact the County Council’s Land Search Section landsearches@northamptonshire.gov.uk Please note that this may be a chargeable enquiry.

3. Why is my road not adopted?

3.1. There are a number of reasons why a road may not be adopted. The commonest but not the only reasons are listed below: -

- The road does not serve enough houses to warrant adoption. The County Council require any development serving more than five dwellings, independent of any frontage to any existing highway to be served by an adoptable road.
- The developer has not entered into an agreement to get the road adopted when finished.
- There is an agreement but the road is not finished to the County Council's satisfaction.
- The road may be finished but the drains or other utilities have not been adopted by the relevant service provider.
- The developer does not want the road adopted.
- The road is only accessed from another road that is also un-adopted.

4. How do I find out if there is an Agreement to adopt the road?

4.1. In time, the County Council's website mapping system will be updated to confirm if a "Section 38 Agreement" is in place, is pending or is not being considered. For now the best contact is the County Council's Development Management team. Email highwayadoptions@northamptonshire.gov.uk <<<SET UP AGAIN>>>.

5. If the road is not adopted, who is responsible for it?

5.1. If the road in question does not appear to be adopted, then whilst not definitive, this indicates that it is currently private and is the responsibility of the land owners, the developer, the residents served or a combination of these parties.

5.2. In most cases the developer who built the road or adjacent houses will be responsible for maintenance, potholes, gully emptying, mud on the road, verges, footways, street lighting, signs etc.

5.3. Any damage to vehicles or injuries to people occurring on roads that are not adopted should be referred to the owner(s) of the road involved and / or the developer. Regrettably the County Council has no responsibilities and can not deal with any claim unless the road is adopted.

5.4. If the road is not to be adopted then the developer will normally transfer the road or portions of it to the owners of the new houses. The owners or those stated on the deeds of a property will be responsible for the maintenance of the road. In such situations it is common to have "Management Companies" that manage and organise repairs in return for an annual fee.

5.5. Refuse collection, street cleansing and litter picking etc are managed by the District or Borough Council. The use of roads by refuse vehicles does not indicate that the road is adopted. It is suggested that you should contact the District or Borough Council for details of refuse collection on the road concerned.

26.09.12

6. The developer says the road is “On Maintenance” what does that mean?

- 6.1. If the developer has entered into a “Section 38 Agreement” with the County Council to adopt a road, once the road is finished to the satisfaction of the County Council the road is placed “On Maintenance”. This is a period of no less than one year during which the developer remains fully responsible for maintaining the road and repairing any defects or accident damage. This period ensures that there are no latent defects in the road or footway etc that may only become apparent after the road is used for a while. It also gives the developer the opportunity to finish minor works that may be outstanding.
- 6.2. As other issues and factors can affect when a road will actually be “Adopted” it should not be assumed that once a year after completion has expired that the road is automatically adopted. In some cases a road may be “On Maintenance” for a considerable period of time.
- 6.3. Whilst the County Council will endeavour to exert their limited pressure on developers to resolve a current backlog of un-adopted new roads, there are situations where key issues have to be resolved to ensure that when it does adopt, that the roads meet our criteria and will not create maintenance liabilities that the taxpayer will have to pick up.

7. The Developer says that the County Council will not adopt the road, why?

- 7.1. There are a number of reasons why an apparently finished road is not adopted even though there may be a “Section 38 Agreement” and the road has been “On Maintenance” for more than a year. These included, but not exclusively the following: -
 - The Developer has not asked the County Council to formally adopt the road yet.
 - There may be outstanding works of either a major or minor nature that the County Council requires the developer to complete to its satisfaction before taking on the liability for the road to maintain it at public expense.
 - The road in question does not link to any other road that is already adopted. On large developments issues with the main spine roads or access routes can delay the adoption of peripheral roads or cul-de-sacs covered by Section 38 Agreements accessed from them.
 - The drainage or other services within the road have not been adopted by the relevant utility or drainage authority. This is the commonest form of delay to adoption. The County Council will not adopt roads with private drains or services within it.
 - A “Deed of Variation” is required. This is a formal legal change to the Section 38 Agreement. They are used to address any amendments to approved plans or alignments that may have occurred over the construction period. They can be required for any changes to the highway boundaries to ensure that the land dedicated is accurately marked on the drawings and vice versa. Other changes from revised layouts can also require such Deeds of Variation, as can changes in land ownership.

26.09.12

8. Why has the road not been finished?

- 8.1. A road may remain without its final surface or “wearing course” with raised gullies or chamber covers or a lack of kerbing, signs and road markings for a number of years. Such roads would invariably not be adopted. The road may be left in such a state until the developer has finished or nearly finished building all of the houses. This ensures the final surface of the road does not get damaged by construction vehicles. This may also explain why some features such as traffic islands or traffic calming measures, pedestrian crossings etc are not completed as construction plant may damage them or simply could not get through if they were there.
- 8.2. It is always advisable to check the approved planning layout at the District or Borough Council Planning Office for a development if you are buying a new house from a developer. The approved layout will show the final layout and extent of development. It is also common for developers not to finish an initial length of road if they anticipate that the development will be extended in the near future. Any queries about what is permitted and future development should be referred to your local District or Borough Council.
- 8.3. It also recommended that Borough and District Planning Policy teams are contacted to ascertain any longer term development aspirations. Contacts are included in Appendix A of this guide.

9. Who is responsible for getting the road finished and adopted?

- 9.1. This lies fully with the developer and their contractor. Even if there is a “Section 38 Agreement” the County Council has no influence on a developer’s programme of works or when they finish the road.
- 9.2. If there are works within an existing adopted highway then the County Council will have some control but only up to the limit of current adopted highway.
- 9.3. There may also be planning conditions imposed by the Borough or District Council that require the road(s) is / are completed to a certain level or extent before any or a certain number of houses are occupied. In such situations it is possible that the District or Borough Councils can force the developer to finish a road to their satisfaction. This does not infer that the road is adopted or indeed adoptable. Further information on the planning status, outstanding conditions or obligations should be referred to the local District or Borough Council. See Contacts list in Appendix A.

10. I am buying a house on a new development is there going to be any more houses or factories nearby?

- 10.1. It is always advisable to contact the local District or Borough Planning Office before considering the purchase of a new house on a new development, a house on a development which appears incomplete or a house on the edge of a town or village overlooking open countryside.

26.09.12

- 10.2. The District or Borough Planning Office will be able to tell you if permission for the property you are considering has actually been granted, any other developments in the vicinity and in some cases whether development has been allocated but not applied for in the vicinity.
- 10.3. The District or Borough Planning Authorities also have “Plans” of where development is anticipated to occur into the future. In addition changes in national legislation now allow for Local, Neighbourhood or Town Plans. Whilst many of these plans are still being developed the District or Borough Council Planning Office may be able to advise. Town and Parish Councils / Meetings will also know what is being planned for their areas.
- 10.4. Adopted and emerging Planning proposals are usually available via the relevant authority’s websites.
- 10.5. In the North of Northamptonshire, the “North Northamptonshire Development Company” (www.nndc.co.uk) and North Northamptonshire Joint Planning Unit, (www.nnjpu.co.uk) have published plans and proposals. These cover the Kettering, Corby, Wellingborough and East Northamptonshire areas.
- 10.6. Similarly in the West of the County the West Northamptonshire Development Corporation, (www.wndc.gov.uk) also has proposals. These cover the Northampton, South Northamptonshire and Daventry areas.

11. My question is not on this sheet. Who do I talk to?

If the above has not answered your query or you have additional questions regarding a specific development then you should contact: -

Development Management
Highways, Transport and Infrastructure
Northamptonshire County Council
Riverside House
Riverside Way
Northampton
NN1 5NX

e. Highwayadoptions@northamptonshire.gov.uk <<<SET UP AGAIN>>>

w. www.northamptonshire.gov.uk

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Planning and Public Rights of Way

Glossary of Terms, Useful References and Contacts

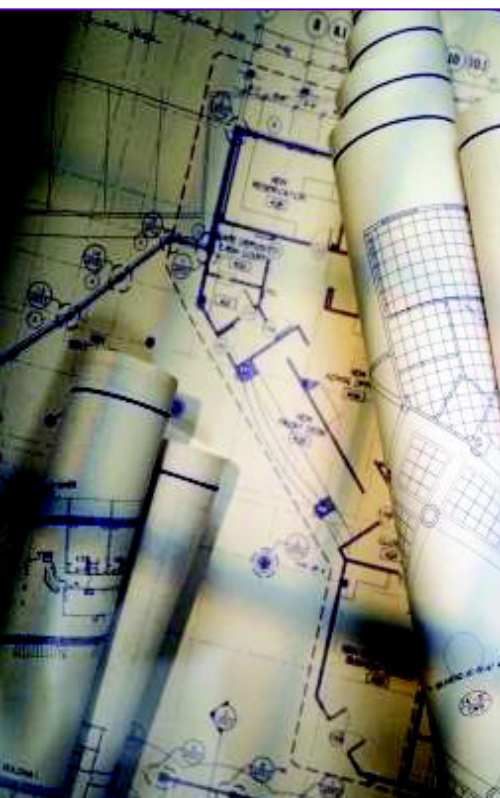
Term	Definition
Adoption	The process by which the County Council assumes control and responsibility for the management and maintenance of a new road
Agreement	In respect of this guide this would refer to an Agreement under Section 38 of the Highways Act 1980
BCoW	Borough Council of Wellingborough www.wellingborough.gov.uk Responsible for local planning permissions, street cleansing and refuse collection
CBC	Corby Borough Council www.corby.gov.uk Responsible for local planning permissions, street cleansing and refuse collection
DDC	Daventry District Council www.daventry.gov.uk Responsible for local planning permissions, street cleansing and refuse collection
Dedication	This is the legal process that allows a road to become highway maintained at public expense. Land over which roads run gets “dedicated” as public highway. The Highway Authority assumes full control over what can and can not occur on the highway. Once dedicated as a highway it remains as such unless or until highway rights are removed or “Stopped Up”. This guide does not cover such processes.
Deed of Variation	This is a legal process and document that formally changes a completed Section 38 Agreement. Usually used to regularise changes on site due to circumstances revised planning layouts or land ownership.
Development Control / Management	The term used for the planning process. The County Council’s Development Control department responds to planning application consultations. It also manages the highway adoption process. District and Borough Councils also have teams with the same name but these deal with the administration of the planning system in their areas.
ENC	East Northamptonshire Council www.east-northamptonshire.gov.uk Responsible for local planning permissions, street cleansing and refuse collection
Highway Register	The definitive information held by the County Council’s Land Searches department that identifies the lengths, widths and extents of highways and roads maintained by the County Council
KBC	Kettering Borough Council www.kettering.gov.uk Responsible for local planning permissions, street cleansing and refuse collection
Land Searches	The County Council department that maintain the Highway Register of adopted roads, their lengths, widths and extents
Management Company	An organisation that maintains a new road if it is to remain private or to maintain the landscaping or open spaces associated with a development. There is usually an annual fee paid by all residents to finance the company.
NBC	Northampton Borough Council www.northampton.gov.uk Responsible for local planning permissions, street cleansing and refuse collection

26.09.12

NNDC	North Northamptonshire Development Company www.nndc.co.uk A company funded by the District and Borough Councils in the North of the County, along with Government funding to co-ordinate and promote development in the North of Northamptonshire.
NNJPU	North Northamptonshire Joint Planning Unit www.nnjpu.co.uk a partnership of the District and Borough Council's Planning departments to assist in wider strategic planning and development allocations
On Maintenance	The term used to describe a period of at least one year during which the new road is effectively complete and maintained by the developer to ensure that if there are any latent defects that they occur and are rectified by the developer before the County Council Adopts the new road. This ensures that the County Council and the tax payer does not take on unnecessary maintenance liabilities.
Section 38 / S38	In respect of this guide this would refer to an "Agreement under Section 38 of the Highways Act 1980
SNC	South Northamptonshire Council www.south-northamptonshire.gov.uk Responsible for local planning permissions, street cleansing and refuse collection
WNDC	West Northamptonshire Development Corporation www.wndc.gov.uk

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Adoption of New Roads Scrutiny Review



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Adoption of New Roads Scrutiny Review - Chair's Introduction



I wish to present on behalf of the Scrutiny Management Committee this report and recommendations for dealing with the challenges having to be faced regarding the adoption of new residential roads in our county.

It follows in the footsteps of other recent scrutiny reviews carried out by Deputy Scrutiny Champions and results from the decision by the Cabinet at its meeting on 7 July 2009 to request a scrutiny review of this matter.

It has been established that this is a national issue currently being faced by many highway authorities, as reflected in debates in the House of Commons led by Philip Hollobone MP.

As members are aware we are also continually being urged to address particular local road adoption issues, with innovative action having been taken at Grange Park in South Northamptonshire and Oakley Vale in Corby.

Following initial investigation it became clear that the issues to be addressed by the scrutiny review fell within two related but distinct categories, being the need:

- a) To prepare a strategy for addressing the current challenges of the number of un-adopted roads throughout the county.
- b) To prepare a strategy for more effective future management of the process for adopting new roads within the county.

It also became clear that achieving these objectives would be no easy task in view of the complex nature of the subject and the existing caseload of over 1,000 un-adopted roads in the county.

The scrutiny review has considered a range of specific challenges concerning the operation of the road adoption process. One of these relates to the issue of drainage services that are located under a new road and can affect adoption.

Another important issue that has been addressed is 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.

Recommendations have been made concerning the role that the legal profession, house builders, water authorities and licensed building control companies could play in improving the adoptions process.

Fundamentally, however, there is recognition of the need for Section 38 agreements or other form of legal provision to be made mandatory by central government to protect property purchasers. This is apparently being considered by the current government, which is welcome.

The main imperative for addressing such matters in Northamptonshire is of course the challenge of the Growth Agenda, which will result in a significant increase in new roads and raises the question of whether all future roads need to be adopted.

In overall terms this represents a time-bomb that is waiting to go off and emphasises the need for the County Council to have an effective strategy for managing the adoption of new roads in Northamptonshire.

Fundamentally it is appreciated that, as recognised in the report, the implementation of all or any of this scrutiny review's recommendations will be reliant on the availability of adequate finance and resources, particularly during the current period of financial constraint, on which basis its recommendations are now being made.

It is however believed this scrutiny review will make a positive contribution to the work of the County Council, for which I would like to thank all those involved and particularly Councillors Ken Melling, Chris Long, Dennis Meredith and Bob Scott.

Councillor Bob Seery

Chair, Adoption of New Roads Working Group

1. Background and Context

- 1.1 The adoption of a road refers to the process by which a road in private ownership but that is in public use is formally taken on by the local highway authority as a public highway to be maintained at public expense. The Highways Act 1980 provides the legal basis for this process. Section 38 of the 1980 Act is the most commonly used means of bringing roads into public maintenance. This enables the highway authority to reach a legal agreement- commonly referred to as a Section 38 agreement- with the owner and developer of a site (in practice, usually one and the same) that a road will become a highway maintainable at public expense when completed to the highway authority's satisfaction. However, this is a voluntary agreement between the highway authority and the developer as the 1980 Act does not give authorities any power to compel developers to enter into such an agreement.
- 1.2 The key steps that will bring a developer to the point of offering a road for adoption can be broadly summarised as follows:
- A developer decides to develop a parcel of land for housing.
 - A planning application is made to the local planning authority (LPA) to build a housing estate.
 - The LPA registers the application and then seeks views from the public and from relevant public bodies on the impact of the proposed development. The County Council is one of these public bodies and is able to make recommendations to the LPA on several matters, including transport issues. Its recommendations may include requesting that a planning condition or obligation requiring that roads are built to an adoptable standard be linked to the grant of planning permission.
 - The LPA considers all recommendations made during the consultation period, although it is not obliged to accept them. Its planning committee will then take a decision to grant or refuse the planning application.
 - Once planning permission is granted and the developer wants to start building work the developer contacts the County Council to discuss having roads that serve more than five dwellings adopted under a Section 38 agreement.
 - When a road has been constructed in accordance with the specification set by the County Council, the developer is able to meet the conditions required and complete a Section 38 agreement (see paragraph 1.3 below), and the road connects directly onto an adopted highway or one which is subject to a Section 38 Agreement, the road is taken into a maintenance period of (minimum) one year. This period allows for any defects to become apparent and for any resulting remedial measures to be completed by the developer.
 - The road is then formally adopted as a public highway that is maintainable at public expense.

- 1.3 The County Council requires that a developer must be able to meet the following criteria to complete a Section 38 agreement:
- The developer can demonstrate title to the land making up all parts of the road to be dedicated: this should be relatively straightforward but can be complicated if there is more than one title to the land, more than one landowner involved, or the developer changes during negotiations. A developer may also sell parts of the land to a third party in error, which can cause difficulties.
 - The developer has put in place a bond to the value of works required to complete roads to an adoptable standard. If the developer fails to complete the roads (for example if it goes out of business) the County Council may call on the bondsman to pay a sum equal to the value of carrying out the works required or the total bond sum, whichever is the lesser.
 - The road is of sufficient 'public utility': a development of five houses or less can be served by a private drive and will therefore not be taken into public maintenance as it would not be of sufficient 'public utility'.
 - All other consents by relevant public bodies have been obtained: principally that the sewers beneath the road have been adopted by a water company (in Northamptonshire this is predominantly Anglian Water) through an agreement under Section 104 of the Water Industry Act 1991 between the developer and the water authority. The County Council requires the completion of such an agreement before a Section 38 agreement is completed and the adoption of the sewers before the roads subject to the Section 38 agreement are adopted. This is to protect the authority against future liabilities arising from problems with the sewers.
- 1.4 As a result of this a Section 38 agreement can remain in a draft status because one or more of the above criteria cannot be demonstrated. Similarly, it is not in the public interest for the County Council to take on obligations or potential liabilities unless it is fully satisfied about the level of risk involved.

2. Rationale and Focus of the Review

- 2.1 This scrutiny review resulted from a resolution by the Cabinet at its meeting on 7 July 2009 that the adoption of roads under Section 38 be referred to the Scrutiny Management Committee for scrutiny. This arose from consideration by the Cabinet of specific action necessary to resolve difficulties concerning the adoption of roads on the Grange Park estate in South Northamptonshire.
- 2.2 This issue was subsequently further highlighted as a potential topic for scrutiny in 2009/10 in the following ways:
 - The Cabinet meeting on 10 November 2009 agreed specific action to be taken in conjunction with Corby Borough Council to complete the adoption of roads on the Oakley Vale estate in Corby.
 - An adjournment debate in the House of Commons on 11 November 2009 secured by Philip Hollobone MP, the Member of Parliament for Kettering, on the difficulties faced by local authorities in adopting new roads on residential developments.
- 2.3 A preliminary meeting of scrutiny councillors took place on 10 December 2009 to consider the scope for a scrutiny review of this topic and to understand the issues involved. The Scrutiny Management Committee subsequently agreed at its meeting on 13 January 2010 to commence a scrutiny review.
- 2.4 The original project brief for the scrutiny review is included with this report (at Appendix 1). During the course of the scrutiny review the working group refined its focus to concentrate on the following two aims:
 - a) supporting the effective future management of the process for adopting new roads in the county; and
 - b) addressing challenges associated with existing un-adopted roads.
- 2.5 The timescale for the scrutiny review was also extended by the Scrutiny Management Committee following initial evidence-gathering work.
- 2.6 The resulting scrutiny review has been carried out by a working group consisting of councillors Bob Seery (Chair), Chris Long, Dennis Meredith, Ken Melling and Bob Scott.
- 2.7 The road adoptions process has been subject to further discussion at a national level whilst the scrutiny review has been underway. The Cabinet Member for Environment & Transport and Corporate Director of Environment, Growth & Commissioning participated in a meeting with the Department for Transport with Mr Hollobone and representatives from Kettering Borough Council in March 2010. County Council representatives have since been invited to a further meeting with the Department for Transport and other local authorities. Mr Hollobone secured a second debate on 10 June 2010, during which the Parliamentary Under-Secretary of State for Transport advised of action being taken by the Transport and Communities & Local Government departments to investigate ways of addressing this matter. A further debate on

the road adoptions process was led by the MP for St Albans on 23 June 2010. Finally, Mr Hollobone presented a Private Member’s Bill- the Residential Roads (Adoption by Local Authorities) Bill- on 5 July 2010. The Bill requires the handover of residential roads built by developers to local highway authorities within certain time periods. It is scheduled for a second reading debate on 18 March 2011.

- 2.8 It is also important to recognise ongoing work led by the County Council’s Development Control & Road Adoptions Team to enhance the operation of the road adoptions process in the county. The results of this are indicated by the following summary of the number of roads adopted in the past three years:

Year	Number of roads adopted	Number of associated Section 38 agreements	Length of roads (kilometres)*
2007/08	69	43	13.842
2008/09	53	37	7.383
2009/10	103	53	17.515

* Includes associated footways and cycleways

- 2.9 The Working Group wishes to acknowledge all of these efforts and hopes that its recommendations will complement them, rather than being seen as a suggestion that no other work is underway.

3. Evidence-Gathering

3.1 The Working Group has been informed by evidence from the following perspectives obtained during the review:

Northamptonshire County Council	
Councillor Heather Smith	Cabinet Member for Environment & Transport
Tony Ciaburro	Corporate Director of Environment, Growth & Commissioning
<i>Transport & Highways Service</i>	
David Farquhar	Head of Transport & Highways
Chris Bond	Development Control & Road Adoptions Manager
Brian Wooding	Deputy Head of Transport & Highways - Policy & Strategy)
<i>Legal Services</i>	
Rachel Baker	Law Clerk - Highways
Debbie Carter	Highways & Planning Manager
Local Planning Authorities	
Mark Harvey	Senior Development Officer, Kettering Borough Council
Water Companies	
Tony Heath	Waste Water Team Leader - Developer Services, Anglian Water
Licensed Building Control Bodies	
Philip Woodford	PWC Building Control Services Ltd
Conveyancing solicitors	
Simon Bridgens	Partner, Residential Conveyancing and Commercial Department, Wilson Browne LLP (Representing the Northamptonshire Law Society)
Developers	
Andy Lebish	Development Adoptions Manager - Midlands and South Area, Miller Homes Limited (Representing the Home Builders Federation)

- 3.2 The Working Group sought evidence of the operation of the road adoptions process and the challenges experienced by other highway authorities. Evidence was considered from Derby; Derbyshire; Dorset; Gloucestershire; Herefordshire; Leicestershire; Staffordshire; Stoke-on-Trent; and Warwickshire.
- 3.3 The Working Group considered the conclusions of previous scrutiny reviews on this topic carried out by other authorities. It gave particular attention to a recent scrutiny review carried out at Hertfordshire County Council.
- 3.4 The Working Group noted a case 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 failed to ensure that residents were properly protected against having to pay the cost of the work required in the event that the developer failed to do so. This 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 the different authorities.
- 3.5 Finally, the Working Group used funding from the Scrutiny Research Budget to commission a study of the Section 38 'caseload' in the county, providing a full picture of completed and partially completed Section 38 Agreements for the county, with a record in each case of the milestones in the adoption process that have been passed, those that still needed to be passed, and any outstanding issues that needed to be addressed for further progress to be made.
- 3.6 The Working Group identified the need for this information to inform its understanding of the current position in Northamptonshire. It was advised that this information could be extracted from case files held by the County Council's Development Control & Road Adoptions Team but the degree of work involved could not be completed within the Team's existing resources. The Working Group therefore recommended to the Scrutiny Management Committee that this work should be commissioned from the Team. The resulting Status of Sites Study has formed an important part of the evidence base for the scrutiny review and has assisted the Working Group to consider possible action to address challenges associated with existing un-adopted roads.

4. Findings and Recommendations

4.1 The findings of the Working Group and the specific recommendations resulting from them are set out in this section of the report under the following headings:

A) Increasing the future effectiveness of the road adoptions process

- Limits on highway authority powers
- Northamptonshire County Council's requirements for adoption
- The role of partnership working
- Raising awareness of the road adoptions process

B) Addressing current un-adopted roads in the county

4.2 The Working Group recognises that some of its recommendations will have financial implications for the County Council and will therefore need to be given particular consideration by the Cabinet, given the current financial pressures on the public sector.

A) Increasing the future effectiveness of the road adoptions process

The limits on highway authority powers

- 4.3 As a result of the evidence taken during the scrutiny review the Working Group concluded that the biggest single issue affecting the road adoptions process that needed to be addressed was the voluntary element of the process.
- 4.4 As discussed in paragraph 1.1 of the report, Northamptonshire County Council has no power to compel a developer to enter a Section 38 agreement or to do anything more than encourage a developer to negotiate a draft agreement. At the same time, various factors can discourage a developer from seeking an agreement and then from constructing roads to an adoptable standard. It is not in developers' interests to complete a Section 38 agreement at an early stage of work as it is binding and it is not desirable for the performance bonds required to exceed the value of the company. In the case of large housing estates, developers will not want to construct the spine roads beyond the base-course level (leaving the iron works exposed) too early as they would then be damaged by construction traffic to the remaining roads. However, this creates a problem for the highway authority as completed residential roads can not be adopted until the relevant spine road has been completed to adoptable standard, due to the need for a road to be linked with the adopted network before it can be adopted itself.
- 4.5 The Working Group was advised that the current recession was likely to increase developers' willingness to progress completed Section 38 agreements to adoption in order to remove large performance bonds from

their accounts. The reduction in the housing market could also have an effect if it resulted in prospective buyers becoming more reluctant to purchase a property where there were outstanding issues about associated roads. However, the Working Group considered that this still did not change the fact that the current limits on highway authority powers relating to road adoptions effectively create a situation in which progress is dependent on developers voluntarily taking action that can seem contrary to their own interests.

- 4.6 The Working Group considered 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. Members were advised that 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 highways rather than planning legislation. Planning conditions also had to meet the criteria of being necessary, relevant to planning, enforceable, precise and reasonable. Members 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 sum withheld in these cases would typically not be large- £1,000 per house, for example- and the Working Group considered that this approach alone did not represent a sufficient financial incentive to developers to complete a Section 38 agreement.
- 4.7 These considerations ultimately led the Working Group to the question of whether the current situation could really be improved without a change in highways legislation. Members noted 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. However, the Working Group agreed to recommend:
- R1) That the Cabinet agrees to make representations to the Local Government Association and the Parliamentary Under-Secretary of State for Transport urging that it is made a mandatory requirement for developers to enter Section 38 agreements with highway authorities prior to the commencement of work on-site.**
- 4.8 The Working Group considers that this approach should be backed up by efforts to engage developers in a discussion about the mutual advantages of making Section 38 agreements a mandatory requirement. The implications of the current recession for developers carrying outstanding performance bonds have already been discussed. The representative from the development industry who 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 likely financial cost to the developer of keeping it at an adoptable standard.

- 4.9 The Working Group identified the potential to communicate with the development industry via the National House-Building Council (NHBC). The NHBC represents a powerful voice in the industry as they act as a bondsman for many developers entering Section 38 agreements. The NHBC, rather than the developer, is therefore directly affected if the County Council is required to call in a bond because work required to complete a road to adoptable standard has not been carried out.
- 4.10 On this basis, the Working Group recommends:
- R2) That the Cabinet agrees to make representations to the National House-Building Council urging it to encourage developers to recognise the potential benefits to them of the introduction of a mandatory requirement relating to Section 38 agreements.**

Northamptonshire County Council's requirements for adoption

- 4.11 This scrutiny review originally arose from the need for the Cabinet to agree specific action to resolve problems affecting the adoption of new roads on the Grange Park and Oakley Vale estates as a variation from the County Council's standard approach. The Working Group has considered the action taken in these particular cases and the potential to learn lessons from them that could be applied more widely. This line of enquiry has come to focus on two particular aspects of the current road adoptions process: the County Council's requirements relating to the adoption of sewers and its approach to setting bonds.
- 4.12 At present, the County Council will generally not adopt a road with an un-adopted sewer crossing underneath. A Section 38 Agreement will be completed where a Section 104 agreement is in place between the developer and the water authority, committing the water authority to adopt the sewer works. If a road is adopted without the sewers being adopted it may leave the County Council liable for any problems affecting the road that are attributable to the related sewer that subsequently occur.
- 4.13 The Working Group appreciates that this approach is designed to minimise the County Council's exposure to risk that could ultimately represent a charge on the local taxpayer. However, it considers that a more flexible, case-specific approach would retain the protection of the current standard approach without the disadvantage of acting as a brake on the adoption process. The Working Group has been advised that the most common cause of cases where a Section 38 agreement is in place but a road has not been adopted is that associated sewers have not yet been adopted. The risk to the County Council of adopting a road prior to sewer adoption will not be uniform across all of these cases, but will vary depending on the amount of time that each sewer has been in place. On this basis some highway authorities will adopt roads prior to formal adoption of the related sewers if the sewers have been taken into a year's maintenance by the water authority and are demonstrably working. In the case of the Grange Park estate, Northamptonshire County

Council was prepared to issue a Section 50 Street Works License 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 was commensurably reduced.

- 4.14 The Working Group recognises that a case-specific approach to the question of sewer adoption will rely on a good assessment of the potential risks involved in each case. This will require communication and co-operation with the water authorities operating in the county, and members have been advised that the existing working relationship can provide a basis for this. The Working Group therefore recommends:

R3) That the Cabinet agrees to adopt a flexible approach to the question of whether sewers relating to a road must be adopted by a water authority before the road will be adopted by the County Council, supported by discussion with water authorities.

- 4.15 The Working Group proposes that the County Council should also consider adopting a more flexible approach to setting the value of bonds that developers are required to put in place to complete a Section 38 agreement. At present the County Council sets bonds based on a nominal cross section on a per linear metre basis representing 100 per cent of the theoretical cost of constructing the road(s) in question to an adoptable standard. The Working Group considers 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 have been approved. This approach is used by other highway authorities. It also addresses cases where higher quality materials are used, such as in public realm areas, which would cost the Council more to complete if the developer defaults and the bond has to be called in. The value of bonds can be reduced when key milestones are reached, such as when the roads are put on maintenance. It is important that the value of bonds is not reduced too far, or too soon, to a level where completing Section 38 agreements in order to clear bonds seems unimportant. Rather, the Working Group sees this step as an incentive to developers. It would also support the County Council to be more active in calling-in bonds when a developer has defaulted than it has been in the past.

- 4.16 The Working Group therefore recommends:

R4) That the Cabinet agrees to adopt an approach to setting the bonds with developers required before a Section 38 agreement is made that enables 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.

The role of partnership working

- 4.17 At an early stage in the review the Working Group identified the need to consider the relationship between the planning process and the adoption of new roads. This reflected members' view that there should be a significant opportunity for the local authority to exert leverage over developers at the point when they were looking to secure planning permission.
- 4.18 The Working Group was advised that there were various actions that could be taken at the planning stage to support the road adoption process. Highway 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 for the project. When a developer used a construction management plan it had to be agreed by the local planning authority. As the authority would usually take advice on the proposed plan from relevant bodies this gave the highway authority an opportunity to work with it. Developers could not start work until the plan had been agreed. The technical work required to produce the plan then made it far easier for a Section 38 agreement to be put in place.
- 4.19 However, the Working Group noted that the County Council does not have control over whether these opportunities are taken. Although local planning authorities are required to give consideration to representations on development proposals, including those from the County Council as the highways authority, they are not required to accept these. Planning decisions also do not need to take account of matters relating to highways legislation. This could encourage a tendency for planners to draw a sharp distinction between planning and highways matters; possibly reflected in the fact that Kettering Borough Council- which has taken a particular interest in road adoption issues- was the only district / borough council in the county to accept the Working Group's invitation to give evidence to the review.
- 4.20 The Working Group considered that it was not 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, the Working Group proposed that the County Council and the local district / borough councils need to have a clearly understood approach for dealing with new developments that ran 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 new developments supported the adoption of the roads involved. Members noted that a phased approach to construction - involving the completion of the infrastructure in one part of a development before work starts on the next phase- had been adopted over 20 years before in relation to the Bedford Road development in Rushden. This approach seemed to have the potential to alleviate the problems that could result from work on different parts of a large development proceeding at different speeds. Similarly, members recognised the problems that could result from construction traffic and the first residential traffic on a new development being required to use the

same access routes, as had been the case with the Mawsley Village development in Kettering. This had led to residents becoming unhappy with the state of the roads, whilst the developers were unwilling to carry out the work required to bring them up to an adoptable standard when they were still being used by construction traffic. The Working Group recognised that separating construction and residential traffic is only likely to be feasible with larger developments, but felt that it is important that the opportunity to take this approach is considered where it is appropriate.

4.21 Taking into account all of these considerations the Working Group recommends:

R5) That the Cabinet agrees to build on existing work with local planning authorities to put in place arrangements to ensure that consideration of road adoption issues commences 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 adoptable standards**

4.22 The Working Group identified a specific concern about the effectiveness of joint working in the county relating to the use of the Advance Payment Code to support the road adoptions process. The Highways Act 1980 enables highway authorities to use the Advance Payment Code to require money to be deposited by a developer to cover the costs of works in private streets next to new buildings, including the costs of building a road to serve the buildings in a new development. Upon completion of a Section 38 Agreement or adoption of the road the deposited money will be returned to the developer. In order to rely on the Advance Payment Code, the highway authority is required to serve an APC notice within a six-week period of building regulation approval being granted. Approval can be sought from the district / borough council for the area or from a licensed building control body working in the private sector. The Working Group was therefore concerned that if the County Council was not being informed when building regulation approval was granted its ability to use Advance Payment Code would be limited. Members recognised that licensed building control bodies are not required to advise local planning authorities when they give building regulation approval, but were advised that it would be possible for local planning authorities to advise the County Council when initial notices were received on any cases that may involve road adoption issues.

4.23 The Working Group therefore recommends:

R6) That the Cabinet agrees to develop existing work with local planning authorities and licensed building control bodies to ensure that arrangements are in place to inform the County Council when building regulation applications generating potential road adoption requirements are processed.

Raising awareness of the road adoptions process

- 4.24 Working Group members brought to the scrutiny review their own examples of how the road adoptions process had affected local residents, in addition to the two significant cases that originally led to this issue being identified as a subject for scrutiny. Evidence taken during the review, though, led the Working Group to consider whether the difficulties and frustrations that could be experienced by members of the public were a question of how well the road adoptions process was understood, rather than an indication that it was not operating effectively.
- 4.25 Members recognised that the requirements of the road adoptions process and the respective responsibilities of the County Council 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 inevitably would be. A road could only be adopted if it was constructed to the appropriate standard and necessary amenities were in place. However, members of the public would become dissatisfied if a road looked finished but was not being maintained. Developers remained responsible for maintenance and other amenities such as street lighting and litter picking until a road was adopted, but residents would not necessarily seek redress from them if these responsibilities were not being met. Finally, even if the first owners of a new property were aware of any local road adoption issues subsequent purchasers might not have the same knowledge.
- 4.26 The Working Group sought to identify ways of supporting greater understanding of the road adoptions process and its implications for residents. Members identified the potential for the County Council to produce a simple guide to the road adoptions process as a straightforward but beneficial step. On the same basis it was suggested that an information portal could be developed on the County Council's website that would enable members of the public to access information about the status of particular roads, potentially using the information from the Status of Sites Study completed for the scrutiny review. The Working Group was advised that the level of work required to develop and maintain such an information portal could not be delivered within the existing resources available to the Development Control & Road Adoptions Team, which received capital funding from within the County Council budget but got its revenue funding from income from developers' fees. However, members still considered that the proposal should be investigated as an invest-to-save measure, which, in the long term, could help members of the public to help themselves to become more informed, without needing to call on expert assistance.
- 4.27 The Working Group therefore recommends:
- R7) That the Cabinet agrees to develop a brief guide to the road adoptions process for the information of members of the public.**

R8) That the Cabinet agrees to pursue the development of a map-based system on the Council website to show information about the status of roads in the county for use by the community.

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

4.29 The Working Group was advised that a solicitor would be doing a negligent job if they failed to advise a client on road adoption issues relevant to a property. However, the Working Group did identify potential concerns about whether the best quality of service was delivered across the whole legal sector. Members were advised that the solicitors that the County Council's Legal Services Highways & Planning Team dealt with on road adoption issues raised during property transactions were split equally between firms from inside and outside the county, but the number of large firms offering services nationally was growing. The Team was also dealing with more 'call centre' type businesses providing conveyancing advice. These businesses did not require all conveyancing staff to be legally qualified, as conveyance documents would be seen by a solicitor before completion, and were becoming more common as part of cost-saving in the legal sector. However, this approach could result in road adoption issues on property transactions only being raised with the County Council at a late stage, when solicitors received case files from the staff that had carried out the conveyancing.

4.30 The Working Group concluded that the question of whether professionals involved in conveyancing could provide more information to clients about the road adoptions process, and alert them to the implications of buying a property served by un-adopted roads, should be raised with the relevant national bodies. At the same time, members agreed to highlight the need for local planning authorities to ensure that supporting information was being made available on the land charges register.

4.31 The Working Group considered that assisting prospective home buyers to become more informed about how the road adoptions process affected them might in the long term generate an incentive for developers to complete Section 38 agreements, if the alternative was to risk the loss of a sale. To support this principle, members proposed that the question of how far the status of the roads serving a property is taken into account by mortgage lenders should also be taken up with the appropriate professional body.

4.32 The Working Group therefore recommends:

R9) That the Cabinet agrees to make representations to the Law Society and the Council for Licensed Conveyancers urging them to consider whether conveyancers provide clients with sufficient information about the road adoptions process and how they may be affected by the status of roads serving a property.

- R10) That the Cabinet agrees to encourage local planning authorities to ensure that full information concerning the status of roads associated with a property is provided in response to land charge searches.**
- R11) That the Cabinet agrees to make representations to the Council of Mortgage Lenders urging it to consider whether its members take sufficient account of the status of roads serving a property when reaching mortgage decisions.**
- 4.33 Having made these recommendations the Working Group finally wishes to highlight that helping members of the public to understand the road adoptions process will potentially help individuals to take a considered view about whether a road needs to be adopted at all. Local authority maintenance may provide a level of reassurance, but it is not the only option available. Many new developments are served by roads that remain private and that are maintained through a residents' management company using funds from a service-charge. Members of the public should be put in a position to take an informed view about all the options to meet their needs.

Addressing current un-adopted roads in the county

- 4.34 The scrutiny review's second main aim was to consider potential action that could be taken to address the number of existing un-adopted roads in the county. This has required a significant amount of evidence-gathering work, but the outcomes of this can be summarised relatively concisely.
- 4.35 At an early stage in the review the Working Group identified the need for a clear picture of the size of the existing 'caseload' and of factors preventing the adoptions process from being progressed in each case. This was obtained by commissioning the Status of Sites Study referred to in paragraphs 3.5-3.6 above.
- 4.36 The Status of Sites Study lists 584 case files of un-adopted roads in Northamptonshire as of 29 April 2010. The Working Group had previously been advised that there are approximately 1,150 un-adopted roads in the county; 650 with a completed Section 38 agreement but that had not been adopted and 500 with a draft Section 38 agreement that had not been completed. The figure of 584 case files reflects the fact that some Section 38 agreements will cover multiple roads whilst others may only apply to part of one road. The Working Group accepted that the status of Section 38 agreements represented the key issue that needed to be considered in any case.
- 4.37 Further analysis of the Status of Sites Study identified the following headlines:
- Section 38 agreements were in place in 300 of the 584 cases (51.3%). In 70 cases agreements were in place prior to 2000: there were 65 agreements that were made in the 1990s and 5 in the 1980s.
 - Advance Payment Codes had been served in 145 of the 584 cases (24.8%).

- Roads had been taken into maintenance by the County Council in 157 of the 584 cases (26.8%). Dates when roads were taken into maintenance ranged from the mid-1990s to the start of 2010.
 - Sewers were listed as not having been adopted in 495 of the 584 cases (84.7%).
 - Recurring factors preventing progression of the adoptions process that were identified in the Status of Sites Study included that associated sewers had not yet been adopted; that a Section 38 agreement could not be signed until one had been completed for a previous phase of work or a related case; that the developer had gone into liquidation; or that the developer was not offering roads for adoption.
- 4.38 The Working Group considered how this information could be used to develop a clear priority order for trying to resolve existing cases. Working Group members emphasised the importance of addressing cases that had been outstanding for a set number of years. However, it was recognised that setting a threshold for action should not lead to a situation in which developers gave less priority in the short term to completing roads to an adoptable standard. At the same time, the Working Group proposed that any programme should have the flexibility to deal with cases that could be resolved relatively simply, even if they dated from after a particular time threshold.
- 4.39 The Working Group agreed that its proposed prioritisation programme should make provision to address particular barriers to progressing the adoptions process, such as the adoption of related cases and the adoption of sewers, reflecting its conclusions about the County Council's current requirement concerning the adoption of sewers. Members' attention was also drawn to other technical matters that could act as a barrier, for example problems with street furniture or visibility splay.
- 4.40 Taking into account all of these matters, the Working Group recommends:
- R12) That the Cabinet agrees to use the Status of Sites Study to develop a prioritised programme for reducing the caseload of un-adopted roads in the county, which prioritises the resolution of:**
- **Cases involving roads that are un-adopted and have been completed to adoptable standards and have been on their maintenance period from 1999 or earlier.**
 - **Cases involving roads that are un-adopted and have been completed to adoptable standards and have been on their maintenance period from between 2000-2005 where outstanding matters can be readily resolved.**
 - **Cases where the adoption of related sewers or other technical issues represent the only outstanding matters preventing progression of the roads to adoptable status.**

- **Cases involving un-adopted roads that are acting as a barrier to the adoption of other un-adopted roads that are complete in all other respects.**

4.41 The Working Group identified the need for the implementation of a prioritised programme of this kind to be supported by dialogue with the developers concerned. Meetings with individual developers with a number of sites in the county would assist in discussing outstanding matters, identifying the best means of addressing these, and influencing developers' prioritisation of sites. Meetings with all of the developers involved in large-scale projects could be sought in cases where progress on one road was being affected by a third party. The Working Group was advised that the National House-Building Council had previously offered to act as a mediator in such cases. The Working Group considered that discussions with developers about their existing portfolio of roads in the county could be sought when they made contact with the County Council to enter into new Section 38 agreements. It also recognised that regular dialogue with developers would assist the County Council in dealing with future demands as well as resolving existing cases.

4.42 The Working Group therefore proposes:

- R13) That the Cabinet agrees to seek regular dialogue with individual developers concerning their portfolio of roads in the county to assist in progressing new and existing agreements.**

Following-up the Scrutiny Review

4.43 It is important for the Overview & Scrutiny Function to follow-up individual scrutiny reviews by monitoring how recommendations agreed by the Cabinet have been implemented and the impact they have had. The Working Group therefore recommends:

- R14) That the Scrutiny Management Committee agrees to review action taken in response to the recommendations of the Adoption of New Roads Scrutiny Review 6 months after the presentation of the final report to the Cabinet.**

5. Summary of Recommendations

- A) Increasing the future effectiveness of the road adoptions process

That the Cabinet agrees:

- R1) To make representations to the Local Government Association and the Parliamentary Under-Secretary of State for Transport urging that it is made a mandatory requirement for developers to enter Section 38 agreements with highway authorities prior to the commencement of work on-site.
- R2) To make representations to the National House-Building Council urging it to encourage developers to recognise the potential benefits to them of the introduction of a mandatory requirement relating to Section 38 agreements.
- R3) To adopt a flexible approach to the question of whether sewers relating to a road must be adopted by a water authority before the road will be adopted by the County Council, supported by discussion with water authorities.
- R4) To adopt an approach to setting the bonds with developers required before a Section 38 agreement is made that enables 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.
- R5) To build on existing work with local planning authorities to put in place arrangements to ensure that consideration of road adoption issues commences 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 adoptable standards
- R6) To develop existing work with local planning authorities and licensed building control bodies to ensure that arrangements are in place to inform the County Council when building regulation applications generating potential road adoption requirements are processed.
- R7) To develop a brief guide to the road adoptions process for the information of members of the public.
- R8) To pursue the development of a map-based system on the Council website to show information about the status of roads in the county for use by the community.

- R9) To make representations to the Law Society and the Council for Licensed Conveyancers urging them to consider whether conveyancers provide clients with sufficient information about the road adoptions process and how they may be affected by the status of roads serving a property.
- R10) To encourage local planning authorities to ensure that full information concerning the status of roads associated with a property is provided in response to land charge searches.
- R11) To make representations to the Council of Mortgage Lenders urging it to consider whether its members take sufficient account of the status of roads serving a property when reaching mortgage decisions.
- B) Addressing current un-adopted roads in the county

That the Cabinet agrees:

- R12) To use the Status of Sites Study to develop a prioritised programme for reducing the caseload of un-adopted roads in the county, which prioritises the resolution of:
- Cases involving roads that are un-adopted and have been completed to adoptable standards and have been on their maintenance period from 1999 or earlier.
 - Cases involving roads that are un-adopted and have been completed to adoptable standards and have been on their maintenance period from between 2000-2005 where outstanding matters can be readily resolved.
 - Cases where the adoption of related sewers or other technical issues represent the only outstanding matters preventing progression of the roads to adoptable status.
 - Cases involving un-adopted roads that are acting as a barrier to the adoption of other un-adopted roads that are complete in all other respects.
- R13) To seek regular dialogue with individual developers concerning their portfolio of roads in the county to assist in progressing new and existing agreements.
- C) Following up the Scrutiny Review
- R14) That the Scrutiny Management Committee agrees to review action taken in response to the recommendations of the Adoption of New Roads Scrutiny Review 6 months after the presentation of the final report to the Cabinet.

Appendix 1: Adoption of New Roads Scrutiny Review Project Brief

Scrutiny Project Brief	
Title of work	Adoption of New Roads Scrutiny Review
Scrutiny Committee	Scrutiny Management Committee
Purpose	<p>The purpose of the scrutiny review is to review the effectiveness of Northamptonshire County Council’s current policy and management arrangements for the future adoption of new roads in the county.</p> <p>The scrutiny review will also, if appropriate, make recommendations for formulating updated policy and management arrangements.</p> <p>The scrutiny review will consider the following issues:</p> <ul style="list-style-type: none"> ▪ the number of roads due to come forward for adoption by the County Council in the near future. ▪ good practice by other highways authorities in the East Midlands; ▪ the potential for changes at a national level following discussion of the issue in the House of Commons; ▪ information provided to local elected members and the members of the public about the road adoption process; ▪ lessons learnt from actions taken by the County Council to complete the adoption of roads in specific cases (Grange Park, South Northamptonshire and Oakley Vale, Corby) and opportunities to apply these lessons more widely.
Origin	<p>The Cabinet meeting on 7 July 2009 agreed that the subject of the adoption of roads under Section 38 of the Highways Act 1980 should be referred to the Scrutiny Management Committee to review. This decision arose from consideration of a report on the adoption of highways at Grange Park, South Northamptonshire.</p> <p>The Scrutiny Management Committee meeting on 22 July 2009 agreed that this topic should be included in the list of proposed scrutiny reviews that forms part of the Committee’s 2009/10 work programme.</p> <p>The Deputy Scrutiny Champion with responsibility for Growth & Regeneration subsequently carried out preparatory information-gathering work to set the scope of the scrutiny review.</p>
Relevant corporate outcomes	<p>Safer, freer and stronger communities</p> <p>A smaller, more enabling council focussed on our customers</p>

Timetable	Duration of review: The Working Group phase of the scrutiny review will run from December 2009 to April 2010.
Corporate Director’s view	The Corporate Director of Environment, Growth & Commissioning has highlighted the need for the scrutiny review to recognise that the scale of growth in Northamptonshire is such that the level of road adoptions in the county would eventually outweigh the budget available to maintain them and that there is already a significant waiting list for roads to be adopted. The County Council is already exploring a new highway maintenance strategy. The scope of the scrutiny review should therefore avoid confusing the two issues of the road adoption process and highway maintenance.
Overview & Scrutiny Team lead	James Edmunds (Overview & Scrutiny Team Leader)
Resources Required	<p>Scrutiny officer(s)</p> <ul style="list-style-type: none"> ▪ Organisation and support for working group meetings and evidence-gathering processes; ▪ Provision of support to the working group in understanding and challenging evidence presented; ▪ Preparation of the draft scrutiny report. <p>Service officers</p> <ul style="list-style-type: none"> ▪ Engagement with and provision of evidence to scrutiny councillors at working group meetings or outside.
How will the work be carried out?	<p>The review will be carried out by a working group reporting to the Scrutiny Management Committee, with the following members:</p> <ul style="list-style-type: none"> ▪ Councillor Bob Seery (Chair) ▪ Councillor Chris Long ▪ Councillor Ken Melling ▪ Councillor Dennis Meredith ▪ Councillor Bob Scott <p>The timetable for the review will be as follows:</p> <p>December 2009</p> <ul style="list-style-type: none"> ▪ Development of project brief ▪ Confirm Working Group membership ▪ Issue call for evidence ▪ Overview of baseline position in Northamptonshire <p>Scrutiny Management Committee (13 January 2010): will consider a report by the Transport & Highways office outlining the road adoption process, baseline position in</p>

Northamptonshire, potential alternative approaches available to the County Council and the potential cost implications.

January - March 2010

Evidence-gathering / analysis stage, which will seek input via face-to-face meetings and written evidence from relevant sources, potentially including:

- All county councillors as divisional councillors
- Cabinet Member for Environment, Growth & Transport
- NCC Environment, Growth & Commissioning Directorate
- Representatives of partner organisations
- Developers
- Relevant national organisations / guidance

March 2010: development and agreement of draft report

14 April 2010: presentation of final draft report to the Scrutiny Management Committee

5 May 2010: presentation of recommendations to the Cabinet

This information can be made available in other languages and formats upon request, including large print, Braille, audio cassette and floppy disk. Please contact 01604 236053.



Published 07/2010

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