

Adoption of New Roads Summary from Lancashire County Council

Introduction

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

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

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

Potential pitfalls

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

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

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

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

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

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

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

Strategies to limit risk

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

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

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

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

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