

# 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:

<b>Northamptonshire County Council</b>	
Councillor Heather Smith	Cabinet Member for Environment & Transport
Tony Ciaburro	Corporate Director of Environment, Growth & Commissioning
<i>Transport &amp; 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
<b>Local Planning Authorities</b>	
Mark Harvey	Senior Development Officer, Kettering Borough Council
<b>Water Companies</b>	
Tony Heath	Waste Water Team Leader - Developer Services, Anglian Water
<b>Licensed Building Control Bodies</b>	
Philip Woodford	PWC Building Control Services Ltd
<b>Conveyancing solicitors</b>	
Simon Bridgens	Partner, Residential Conveyancing and Commercial Department, Wilson Browne LLP (Representing the Northamptonshire Law Society)
<b>Developers</b>	
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

<b>Scrutiny Project Brief</b>	
<b>Title of work</b>	Adoption of New Roads Scrutiny Review
<b>Scrutiny Committee</b>	Scrutiny Management Committee
<b>Purpose</b>	<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"> <li>▪ the number of roads due to come forward for adoption by the County Council in the near future.</li> <li>▪ good practice by other highways authorities in the East Midlands;</li> <li>▪ the potential for changes at a national level following discussion of the issue in the House of Commons;</li> <li>▪ information provided to local elected members and the members of the public about the road adoption process;</li> <li>▪ 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.</li> </ul>
<b>Origin</b>	<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 &amp; Regeneration subsequently carried out preparatory information-gathering work to set the scope of the scrutiny review.</p>
<b>Relevant corporate outcomes</b>	<p>Safer, freer and stronger communities</p> <p>A smaller, more enabling council focussed on our customers</p>



<b>Timetable</b>	Duration of review: The Working Group phase of the scrutiny review will run from December 2009 to April 2010.
<b>Corporate Director's view</b>	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.
<b>Overview &amp; Scrutiny Team lead</b>	James Edmunds (Overview & Scrutiny Team Leader)
<b>Resources Required</b>	<p>Scrutiny officer(s)</p> <ul style="list-style-type: none"> <li>▪ Organisation and support for working group meetings and evidence-gathering processes;</li> <li>▪ Provision of support to the working group in understanding and challenging evidence presented;</li> <li>▪ Preparation of the draft scrutiny report.</li> </ul> <p>Service officers</p> <ul style="list-style-type: none"> <li>▪ Engagement with and provision of evidence to scrutiny councillors at working group meetings or outside.</li> </ul>
<b>How will the work be carried out?</b>	<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"> <li>▪ Councillor Bob Seery (Chair)</li> <li>▪ Councillor Chris Long</li> <li>▪ Councillor Ken Melling</li> <li>▪ Councillor Dennis Meredith</li> <li>▪ Councillor Bob Scott</li> </ul> <p>The timetable for the review will be as follows:</p> <p>December 2009</p> <ul style="list-style-type: none"> <li>▪ Development of project brief</li> <li>▪ Confirm Working Group membership</li> <li>▪ Issue call for evidence</li> <li>▪ Overview of baseline position in Northamptonshire</li> </ul> <p>Scrutiny Management Committee (13 January 2010): will consider a report by the Transport &amp; 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.



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