

# **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) 11<sup>th</sup> November 2009 and 10<sup>th</sup> June 2010, Ann Main MP (St Albans) 23<sup>rd</sup> 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" 5<sup>th</sup> July 2010, the Second Reading is due November 2011.
  - Justin Tomlinson MP has laid a Private Members Bill "Planning (Developer Bonds) Bill 2010-11" 27<sup>th</sup> October 2010 with a Second Reading due 17<sup>th</sup> 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.