

Report of the Overview and Scrutiny Task Group – Adoption of Estates

March 2013



CONTENTS PAGE

Page No

- 1. PREFACE**
- 2. EXECUTIVE SUMMARY**
- 3. LIST OF RECOMMENDATIONS**
- 4. BACKGROUND AND CONTEXT**
- 5. METHOD OF INVESTIGATION**
- 6. FINDINGS**
- 7. CONCLUSION**
- 8. GLOSSARY OF TERMS**

1. PREFACE

The Scrutiny inquiry into the Adoption of Estates was requested by Members of Chorley Council after very many requests by residents across the borough to address the growing number of estate and open space adoption issues.

We discussed in detail the present problems that many of our constituents face when trying to get their estates adopted. It was accepted that there are some real issues for residents across the Borough and Members thought that they needed to look at past performance to identify areas where the process of adoption of estates has been both successful or less successful, lessons could be learnt from those experiences and ways to improve the process could be identified for the future and further failures prevented.

We identified a mix of small and large housing estates across the Borough that had or were still having adoption issues to be used as case studies from which to identify the concerns and issues that existed. The Group then interviewed the developers of these estates, along with borough and county officers and residents.

The estates chosen were

- Gillibrand, Chorley
- Buckshaw, Buckshaw Village
- Kittiwake, Heapey
- Fairview Farm, Adlington

It was also highlighted that the Council needed to improve relations and communications with existing developers and other partner organisations in the Borough and to better engage with the public to develop their understanding and knowledge of the adoption process.

Whilst undertaking the review we were informed about a national review that is taking place by the Department for Transport (DoF) and Department of Communities and Local Government (DCLG) and a similar scrutiny review that had been undertaken by Northamptonshire County Council that provide us with a platform from which to start.

I would like to thank the Task Group Members for their deliberations, the officers and external representatives and those residents of Chorley who made a contribution to this report.



Councillor Matthew Crow
(Chair)

2. EXECUTIVE SUMMARY

The Overview and Scrutiny Committee asked the Task Group to undertake a scrutiny inquiry to look at the Adoption of Estates.

Objectives

- 2.1 Look at past performance and identify areas where the process of adoption of estates has been both successful and less successful and learn from those experiences; and
- 2.2 make recommendations to Executive Cabinet as to how processes may be improved for the future.

Desired Outcomes

- To recommend ways to improve the process for the adoption of new housing estates across the Borough.
- Improve relations and communications with existing developers and other partner organisations in the Borough.
- To work through targeted studies of un-adopted sites of varying sizes in Chorley and to make recommendations to both rectify existing sites and prevent further failures in the adoption process
- To have engaged in effective public consultation and to develop residents and future residents' knowledge and understanding of adoption processes.

Task Group Membership

Councillor Matthew Crow (Chair)
Councillor Julia Berry
Councillor Jean Cronshaw
Councillor Steve Holgate
Councillor Roy Lees
Councillor June Molyneaux
Councillor Dave Rogerson
Councillor Kim Snape
County Councillor Mike Devaney

Officer Support:

Lead Officers

Jamie Carson	Director of People and Places
Jennifer Moore	Head of Planning

Support Officers:

Alex Jackson Senior Solicitor
Paul Whittingham Development Control Team Leader
Robert Rimmer Business Support Team Leader

Democratic Services

Dianne Scambler Democratic and Member Services Officer

Meetings

The meeting papers of the Group can be found on the Council's website:
www.chorley.gov.uk/scrutiny. This includes the inquiry project outline and other relevant information on policy and procedures.

Contribution of Evidence

The Task Group would like to thank all those who have provided evidence and contributed to the Inquiry. Section 4 contains the details of those involved.

2. LIST OF RECOMMENDATIONS

The Executive Cabinet is asked to consider the following recommendations:

- 1. That the Executive Cabinet asks Lancashire County Council to consider building on existing work with local planning authorities to put in place arrangements to ensure the consideration of road and highways 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
 - Phased implementation of larger development
 - Laying out and constructing roads to adoptable standards**
- 2. That the Executive Cabinet be asked to approve the use of a draft set of national planning conditions seeking pre-commencement on adoption matters, drawn up by the Department of Transport to be trialled by our planning service.**
- 3. That the Executive Cabinet be requested to commission a study of the existing adoptions 'caseload' in the Borough, to provide a full picture of all completed and partially completed agreements, including Section 38's and 106's.**
- 4. That the Executive Cabinet request Lancashire County Council to consider adopting a more flexible approach to the setting of bonds with developers, that are required before a Section 38 Agreement is made to enable the level of bond to be set on a site-by-site basis that reflects the actual cost of completing the road concerned to the required state of adoption.**
- 5. That the Executive Cabinet agrees to make representations to the National House-Building Council (NHBC) urging it to encourage developers to recognise potential benefits to them of the introduction of a mandatory requirement relating to Section 38 Agreements.**
- 6. That Lancashire County Council review their operational practices and resources to ensure a more timely response for developers to secure adoption.**
- 7. That both Chorley and Lancashire County Council consider developing a more co-ordinated approach to the process of adoption and that regular reports on the current status of adoptions across the borough be reported to the Neighbourhood Meetings of the Council**
- 8. That Lancashire County Council considers the introduction of a pre-application service with associated costs that would not only generate additional income and focus service delivery but would also benefit the early identification of estates for adoption.**

9. That a review be undertaken on a risk based approach for the adoption of open spaces.
10. That the Executive Cabinet considers putting into place arrangements for the development of a map based system to be accessed on or via the Council's website to show information about the status of the roads in the borough for use by the community. For example, an area specifically relating to "would you like to live in Chorley" be developed that could potentially be linked to the County's website. Individual roads would be tagged according to status and actively used by Contact Chorley for the provision of information to residents.
11. That a list of Frequently Asked Questions (FAQ's) about the adoption of estates be published on the Council's website.
12. That Chorley Council considers a pilot for the introduction of Development and or Site Exit meetings with developers, to identify new sites coming on stream.
13. That the Executive 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 estate adoptions process and how they will be affected by the status of roads serving a property.
14. That developers be encouraged to nominate a dedicated officer that would work proactively with officers of both borough and county Councils on the adoption processes and be asked to consider reviewing their complaints procedures to improve relations with residents on their developments.

3. BACKGROUND AND CONTEXT

It is part of the County Council's role to adopt new roads as part of the public highway network, as long as they are built to adoptable standards. This process is often long and drawn out and in some disappointing cases still not completed after many years.

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. This Act enables the highway authority (Lancashire County Council) to reach a legal agreement commonly referred to as a Section 38 Agreement, with the owner and developer of a site (usually 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. The developer has to want it and be prepared to pay the required inspection and legal fees and provide the necessary construction records etc.

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

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

4. METHOD OF INVESTIGATION

Evidence

The Group were provided with a pack of relevant information which had been collated for each of the housing estates that were identified and which included information on:

- The planning background
- Various planning applications
- Section 106 Agreements
- Section 38 and 278 Agreements
- Highways information
- United Utilities information

- Any issues that had arisen
- Public Open Spaces and Leisure facilities
- Site Plans
- Planning permissions that had been granted.
- Open Spaces provision
- Update from Lancashire County Council on adoption status

Presentation

Members received a presentation by Chorley Council officers and summary documentation from Lancashire Council County Council at a Member Learning Hour on 13 August 2012 for background information to the review, including the legal processes which make up adoption.

Northamptonshire Scrutiny Review

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

National Review

We also received information about a scrutiny review that had been undertaken between the Department of Transport, and the Department of Communities and Local Authorities regarding adoptions on a national scale. Problems associated with the status and safety of un-adopted new streets had been raised by a number of MP's in the Commons.

The Task Group received representations from:

Officers:

Rachel Crompton, Development Support Manager – Lancashire County Council

Nicola Hopkins, Principal Planning Officer, Chorley Council

Resident Representatives from:

- Buckshaw Village
- Fairview Farm, Adlington
- Gillibrand Chorley

Developer Representatives:

Phillip Powell, Development Engineer – Arley Homes North West Ltd

Peter Dartnell, Technical Director – Redrow Homes Ltd

Adam Ripplingham, Engineer – Redrow Homes Ltd

Stewart Gower, Adoptions Co-ordinator – Taylor Wimpey Homes

5. FINDINGS AND RECOMMENDATIONS

The findings of the Task Group and the specific recommendations resulting from them are set out in this section of the report and are for improvements for the customer and developer, adoption processes and partnership working.

The Task Group recognises that some of the recommendations will have financial implications for both Borough and County Councils, and will therefore need to be given particular consideration by both Executive Cabinets, given the current financial pressures on the public sector.

NATIONAL REVIEW

We received information about a scrutiny review that had been undertaken between the Department of Transport, and the Department of Communities and Local Authorities regarding adoptions on a national scale. Problems associated with the status and safety of un-adopted new streets had been raised by a number of MP's in the Commons.

Concerns included:

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

In response to the House of Commons debates, the Department for Transport, (DfT) and Department of Communities and Local Government (DCLG) met with Local Highway and Planning Authorities to discuss options and opportunities to improve the existing systems associated with the adoption of new streets in developments and any legislative requirements that would assist. The resultant Policy and Legislative Review Working Party commissioned a sub group of LHA's, led by Northamptonshire County Council, to consider the matter in greater detail and prepare a paper for further discussion.

NORTHAMPTONSHIRE SCRUTINY REVIEW

An officer from Northamptonshire County Council attended one of our meetings to talk about a scrutiny review that his authority had undertaken on the adoption of new roads in their county area following the adjournment debates that had taken place in the House of Commons in relation to adoptions.

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

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

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

Northamptonshire County Council highlighted that the Local Planning Authority (LPA) have no power to compel a developer to enter into a Section 38 Agreement or do anything more than encourage a developer to negotiate a draft agreement. At the same time, it became apparent that various factors can discourage a developer from seeking an agreement and then from constructing roads to an adequate standard.

They 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, reflecting the fact that Section 38 agreements were based on highways rather than planning legislation.

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

The planning process and adoption of new roads was a key factor in the process. It is extremely important that the local authority should be allowed significant opportunity to exert leverage over developers at the point when they are looking to secure planning permission.

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

Recommendations:

- 1. That the Executive Cabinet asks Lancashire County Council to consider building on existing work with local planning authorities to put in place arrangements to ensure the consideration of road and highways 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**
 - **A phasing implementation of larger development**
 - **Laying out and constructing roads to adoptable standards**
- 2. That the Executive Cabinet be asked to approve the use of the draft set of planning conditions seeking pre-commencement on adoption matters to be trialled by our planning service.**

Taking on board the recommendation that Northamptonshire County Council had implemented at an early stage in their review, the Group recognised the need for a clear picture of the size of the authorities existing 'caseload' and the factors preventing process from being progressed in each case. Upon its completion, a prioritisation programme could then be devised that would address the particular barriers to progressing the adoption process more effectively.

Officers from Lancashire County Council had extended their willingness to work together with Chorley on the issues surrounding adoption and thought that they could assist by sharing intelligence about developments across the borough.

Recommendation:

- 3. That the Executive Cabinet be requested to commission a study of the existing adoptions 'caseload' in the Borough, to provide a full picture of all completed and partially completed agreements, including Section 38's and 106's.**

PROCESS

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 those 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 granting of planning permission.
- The LPA considers all recommendations made during the consultation period, although it is not obliged to accept them. It is the Development Control Committee who will 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 Lancashire 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 specification set by Lancashire County Council, the developer is able to meet the conditions required and complete a Section 38 agreement 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 be 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 by public expense.

Lancashire 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 straight forward 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.
- The developer has put in place a bond to the value of the 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 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 (United Utilities) through an agreement under Section 104 of the Water Industry Act 1991 between the developer and the water authority. The County Council requires 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.

As a result of this a Section 38 Agreement can remain in draft status because one or more of the above criteria cannot be demonstrated. Similarly, it is not in the public interest for Lancashire County Council to take on obligations or potential liabilities unless it is fully satisfied about the level of risk involved.

The Developer is required to deposit a Bond of Surety with Lancashire County Council to cover the cost of the adoptable highway works. This Bond ensures that the County Council does not incur any costs if the highway works are stalled, changed or aborted by the Developer. If the Developer fails to perform or observe any of the Agreement's conditions, the County Council can use the Bond to complete the highway works, recover fees and charges, and retain the Commuted Sums to cover future maintenance costs. The County Councils fees and charges element of the Bond must be deposited with them prior to any design works being undertaken. The cost of the highway works and Commuted Sums must be deposited with the County Council prior to any works commencing on site.

The Bond is released back to the Developer incrementally in accordance with the table below, except where a Commuted Sum is due from the Developer as part of the S38₁₃

Agreement – if this remains outstanding, the Bond shall not be reduced to a value less than the Commuted Sum.

Stage	Bond Value Reduced to % of original Value
Part 1 Certificate	55%
Part 2 Certificate	10%
Final Certificate	0%

At present the usual practice for County Councils is to set a bond 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. Northamptonshire County Council had given delegated authority to their designated officer to set the bonds to reflect more closely the likely cost of construction in the actual case concerned, based on constructional details that had been approved. This was an approach already being used by other highways authorities and was proving successful. The value of bonds would be reduced by much greater amounts than at present, when key milestones were reached, such as when roads were put on maintenance.

Recommendation:

- 4. That the Executive Cabinet request Lancashire County Council to consider adopting a more flexible approach to the setting of bonds with developers, that are required before a Section 38 Agreement is made to enable the level of bond to be set on a site-by-site basis that reflects the actual cost of completing the road concerned to the required state of adoption.**

It was also recognised that the National House-Building Council (NHBC) represents a powerful voice in the industry as they act as a bondsman for many developers entering onto Section 38 Agreements. The NHBC, rather than the developer, is therefore directly affected if the County Council are required to call in a bond because work required to complete a road to adoptable standard has not been carried out.

Recommendation:

- 5. That the Executive Cabinet agrees to make representations to the National House-Building Council (NHBC) urging it to encourage developers to recognise potential benefits to them of the introduction of a mandatory requirement relating to Section 38 Agreements.**

When a developer is ready for adoption, they make a request for Lancashire County Council to inspect their works and a list of snags on the site is produced, for example, broken curbs. The County Council will then either ask for all the remedial work to be completed by the developer or negotiate which jobs they may take responsibility for. Once these works have been undertaken they will make an assessment. At this stage all completed highways works must be considered to be of low level risk before the

County Council will adopt. Throughout the review it was brought to our attention that a key issue was time delays in the County Council responding to the requests to inspect. Developers liked the familiar, slightly informal service but frustrations occurred if not done in a timely fashion.

Recommendation:

- 6. That Lancashire County Council review their operational practices and resources to ensure a more timely response for developers to secure adoption.**

The highways design is key to the development and subsequent adoption of the site and effective partnership working between borough and county officer was key to maintain progress. A number of recent staffing changes at County had also meant a lack of continuity in the process and officer from both authorities felt that there were merits for a more co-ordinated approach to provide an enhanced level of co-ordination to the adoptions process and to oversee the recommendations of this Task Group and status updates could be reported to the eight Neighbourhood Area meetings of the Council.

Recommendation:

- 7. That both Chorley and Lancashire County Council consider developing a more co-ordinated approach to the process of adoption and that regular reports on the current status of adoptions across the borough be reported to the Neighbourhood Meetings of the Council.**

It was explained that officers from Chorley Council explained that they currently did a lot of work around pre-application processes and had implemented a scheme of fees and charges associated with this process. The service had become more customer focused and encouraged officers to work in a more business-like fashion to ensure that deadlines were adhered to and ensured smoother delivery. The pre-application process enables officers to sort out a number of issues that are associated with a development prior to an actual application for development being submitted and established and maintained good working relationships with developers.

It is the Council's understanding that Lancashire County Council does not offer such a service, although they undertake a lot of the work that is necessary for us to complete this process. It is considered that taking early advice of a pre-application opportunity allows for the planning of effective adoption.

Recommendation:

- 8. That Lancashire County Council considers the introduction of a pre-application service with associated costs that would not only generate additional income and focus service delivery but would also benefit the early identification of estates for adoption.**

Developers commented that the transfer of open space to a management company instead of the local authority was mainly down to cost implications. If the costs were lower, the developer would probably hand this land over more readily. There was a view that often after around ten years, the land was often neglected and was at this stage that the ownership for its maintenance was taken on by the Council. Members felt

that the authority may be able to take on this work sooner and asked for alternatives from the present policy to be explored, particularly on smaller developments in the Borough.

Recommendation:

- 9. That a review be undertaken on a risk based approach for the adoption of open spaces.**

RAISING AWARENESS/COMMUNICATION

Group Members brought to the review, many examples of how the road adoptions process had affected local residents and evidence taken throughout the review had highlighted the difficulties and frustrations experienced by members of the public.

There was also recognition by Members that the requirements of the road adoptions process and respective responsibilities of the County Council and developers would not be apparent to members of the public.

Developers remained responsible for maintenance and other amenities such as street lighting and litter picking until a new road was adopted, but residents did not necessarily seek redress from them if these responsibilities were not being met.

It also became apparent that even if the first owners of a new property were aware of any local adoption issues, subsequent purchasers may not have the same knowledge so the Group sought to identify different ways of supporting greater understanding of the roads adoption process and its implications for residents.

The Group were advised that issue often became more complicated when developers went bankrupt and were taken over by other companies. The new developers often had differing ideas about what they wanted to build and amended applications were often submitted, which in turn generated amended Section 38 and 106 agreements and planning permissions. This was a common occurrence and slowed progress down quite considerably. This also contributed to an issue that was considerable highlighted by residents, regarding inconsistencies surrounding the information issued on the status of the adoption of different developers on the same site. Although there was admittance by developers that staffing changes exacerbated the problem, there was also an acceptance that a more co-ordinated approach needed to be taken going forwards and there was a willingness to work with the Councils to improve the customer experience.

Members thought that an information portal could be developed on the Councils website that would enable members of the public to access information about the status of particular roads, potentially using the information that would be gathered from the requested commissioned study and may be linked into areas within the Lancashire County Council's website.

It was also considered that the introduction of Development and or Site Exit meetings that would specifically deal with adoption of sewers, roads and green spaces, to include

compliance with conditions would be beneficial. This would not only assist with the identification of new sites coming on stream and provide better working arrangements with developers regarding all matters to do with adoption but would also allow provide any future website with the required updated information, enabling search information to be accurate and would help to reduce back office questions about the compliance of developments with conditions. It would contribute to an end to end delivery of development and provide a degree of certainty for all involved in the development process including existing and new residents and developers.

Even with the proposed measures to include more information for members of the public on the Council's website, the 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. Speaking with various residents, it became apparent that there are inconsistencies in the provision of information provided by legal professionals involved in the conveyancing process.

Recommendations:

- 10. That the Executive Cabinet considers putting into place arrangements for the development of a map based system to be accessed on or via the Council's website to show information about the status of the roads in the borough for use by the community. For example, an area specifically relating to "would you like to live in Chorley" be developed that could potentially be linked to the County's website. Individual roads would be tagged according to status and actively used by Contact Chorley for the provision of information to residents.**
- 11. That a list of Frequently Asked Questions (FAQ's) about the adoption of estates be published on the Council's website.**
- 12. That Chorley Council consider a pilot for the introduction of Development and or Site Exit meetings with developers, to identify new sites coming on stream.**
- 13. That the Executive 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 estate adoptions process and how they will be affected by the status of roads serving a property.**
- 14. That developers be encouraged to nominate a dedicated officer that would work proactively with officers of both borough and county Councils on the adoption processes and be asked to consider reviewing their complaints procedures to improve relations with residents on their developments.**

5. CONCLUSION

6. GLOSSARY OF TERMS

Adopted Highway

An adopted highway is one where the authority has taken on the responsibility for maintenance.

Developer Bond

The developer is required to deposit a Bond of Surety with the Highways Authority to cover the costs of adoptable highways works. This Bond ensures that the County Council does not incur any costs if the highway works are stalled, changed or aborted by the developer.

LHA

Local Highway Authority (Lancashire County Council)

LPA

Local Planning Authority (Chorley Council)

Private Road

Roads that are intended to remain in private ownership.

Section 38 Agreement, Highways Act 1980

A Section 38 Agreement is completed to secure adoption by the Highway Authority of new estate roads on private land owned by a Developer. The estate road may be either residential or commercial.

Planning permission is initially obtained in respect of an indicative layout. Following this the Developer prepares detailed technical drawings and these are forwarded to County for approval. Once satisfactory, these drawings are added to the completed Section 38 agreement and used to supervise the construction works. The works are carried out by the Developer entirely at their own expense.

Under the terms of the Section 38 Agreement the Developer is required to provide either a cash deposit or other form of security is provided to prevent any purchasers of properties being liable for any street works charges. Once the roads have been completed in accordance with the terms of the agreement, the County Council will adopt the roads as highways maintainable at the public expense.

Section 104/102 agreements

These are sewers bonds as required by local authorities, including the Scottish Irish equivalents. Other highways bonds can also be facilitated. A statutory agreement for adoption, or Section 104 agreement (so called because it is made under section 104₁₉

of the Water Industry Act 1991), is an agreement between the owners of a private sewer (usually a developer) and the water authority whereby, subject to the owner constructing the sewer to an agreed standard and maintaining it for an agreed period the water authority will adopt it and it will thereafter become a public sewer.

Section 106 Agreement, Town and Country Planning Act 1991

S106 of the Town and Country Planning Act 1990 provides for agreements to control the development or use of land. A Local Planning Authority (District Council or County Council) may enter into a Section 106 Agreement with a Landowner which, for example, prevents a certain activity being carried out on a site, or which prevents the development proceeding until a particular time.

Councils also use Section 106 Agreements as a way of approving and securing works to the existing highway. Where a Developer requires work to be carried out on the existing highway (other than a simple access) and the Council is satisfied that the works will be of benefit to the public, an Agreement will need to be completed between the Developer and the County Council under Section 106. Traffic calming, a new roundabout or other junction improvement are a few examples where such an Agreement would be necessary. Under no circumstances shall works be permitted within the limits of the publicly maintained highway until the Section 106 Agreement and bond or cash deposit is secured.

As a minimum, the general arrangements for the highway works must be agreed prior to the signing of the Section 106 Agreement and bond after which full engineering drawings will need to be formally approved prior to works starting on site.

Unadopted Highway

Roads that are constructed under a Section 38 agreement that are not adopted yet.

Chorley Council



2008-2009
*Transforming Services:
Citizen Engagement
and Empowerment*



2009-2010
Cohesive and resilient communities



2009-2010
Better outcomes for people and places