

BRIEFING NOTE ON ADOPTION OF HIGHWAYS AND EXTINGUISHMENT OF HIGHWAY RIGHTS IN HAMPSHIRE

Introduction

Highway adoption is just one part of a complex process that runs from the initial design concept to completing the development. The process involves many interests at various stages, including those of the developer, local planning authority, County Council, local community, Police and Fire Service, and disability groups.

The Highway Authority has a responsibility to manage the processes required for the creation of publicly maintainable highways. It is also responsible for maintaining records of its extent and the extinguishment (stopping up) of highway rights.

The guidance for the creation and adoption of new highways is set out in the 'Manual for Streets' publication and its own adopted companion document (adopted April 2010). These documents provide designers and developers with information needed to ensure that new highways meet the standards required and that the correct processes for adoption are followed.

An adopted highway is one for which the Highway Authority is responsible for maintenance at public expense.

Publicly maintainable highway can be created in a number of ways, as follows:

- By historic precedent if it was highway prior to 1835;
- By formal dedication or conveyance to the Highway Authority for highway purposes;
- By formal adoption as public highway;
- By acquisition, if usage by the public for a period of at least 20 years can be demonstrated.

Adoption under Highways Act 1980

Adoption of a road can be made under the following sections of The Highways Act 1980:

- Creation of a new road by the Highway Authority Section 24;
- Creation of a public highway through 20 years of uninterrupted public use Section 31;
- Adoption of highways pursuant to Part V of the Housing Act 1957 Section 36(2);
- Offer to dedicate a highway by a landowner Section 37;
- Agreement to adopt highway between the landowner and the Highway Authority Section 38;

- Adoption by the Highway Authority where there is no known landowner Section 228;
- Agreement to adopt highway works constructed by a third party in existing public highway Section 278.

Any road which has been in existence prior to 1835 is assumed to be a public maintainable highway, or more commonly known as an 'ancient highway'.

Where a District/Agency Council constructs new roads as part of a local authority housing scheme, these roads can be offered for adoption under Section 36(20) of the Highways Act 1980.

Any person who wishes to dedicate a road as highway can do so by giving notice to the Highway Authority under Section 37 of the Highways Act 1980, and if the Highway Authority is satisfied that the road is of sufficient benefit to the public and that it has been constructed to satisfactory standards the road may be adopted.

The next most common way of adopting new roads today, apart from major new roads such as by-passes, etc, is in conjunction with the development of new housing estates. A Section 38 Agreement is entered into with a builder who will construct new roads to the Highway Authority's standards. The Agreement between the Highway Authority and a builder will allow the road and other associated areas to be dedicated as publicly maintainable highway.

Roads can be adopted by free dedication. This process is usually used when a landowner wishes to dedicate small areas to the Highway Authority without the benefit of a legal Agreement.

Adoption Policy

Highway rights are conveyed on any area that is adopted by the Highway Authority under Section 37 or 38 of the Highways Act 1980.

The Highway Authority shall establish that areas proposed for adoption are safe, fit for purpose and meet the County Council's standards for construction. Any road, footway, footpath, cycle track or verge that has been constructed in accordance with the Highway Authority's specification and is to be routinely used on a regular basis by pedestrians, cycles or vehicles shall be designated as highway and adopted as such.

The area of adoption shall include margins as required to achieve the necessary visibility standards or maintenance of the infrastructure. The adopted areas shall include any specific design features such as regulatory signs, street lighting and speed restraint points.

The adopted area may include margins to accommodate Statutory Undertakers' apparatus.

It is recognised that trees and shrubs have an important environmental role and may relate to particular highway features. In themselves, the areas of land incorporating such landscaping features seldom warrant the status of 'Highway' and conveyed highway rights. There is a presumption against the adoption of verges where the sole purpose is landscaping, screening or amenity use. Such areas shall primarily be the responsibility of the District Council, or in certain situations it may be appropriate for the developer or landowner to assume the responsibility. Any such arrangements shall be subject to consultation and agreement of the Highway Authority prior to granting of detailed planning permission and approval of the layout.

Remote footways forming separate access to an individual or small group of properties shall not normally be adopted and shall be subject to discussion and agreement with the Local Planning Authority or Housing Association.

Separate areas allocated for vehicle parking and/or access to remote garages, parking areas and drives to individual or small groups of properties shall not be adopted and shall be subject to discussion and agreement with the Local Planning Authority or Housing Association.

There is scope for external bodies to manage and maintain planted and landscaped areas of designated highway subject to agreement and licence arrangements with the Highway Authority and Local Planning Authority.

Any new road or associated area forming part of a new development site shall be constructed in accordance with Hampshire County Council's Companion Document to Manual for Streets.

There are a number of issues which can prevent and delay adoption which are out of the County Council's control and are as follows:

- Non adoption of sewers.

Hampshire County Council will not adopt new roads until the sewers have been vested with the Water Authority. Also if highway water outfalls into a private system until discharge rights are obtained adoption cannot proceed.

- Land required for highway purposes not being under the developers' control.

It is becoming more common that areas of land initially under the control of the developer at the time the Section 38 Agreement is signed is then subsequently sold off to house buyers. The developer cannot therefore dedicate such areas as publicly maintainable highway. The developer will be expected to negotiate with house owners for these areas to be dedicated which can result in lengthy delays.

- There may be issues relating to safety audits that are required during various stages of the Section 38 process which will delay adoption.

Extinguishment of Highway Rights

When considering requests for the extinguishment of highway rights the Council shall apply the following criteria in determining whether the land is considered to be surplus to highway requirements:

- Is the land required for sight line purposes, forward visibility splays for all traffic including pedestrians, equestrians and cyclists?
- Is the land required for any future highway improvement scheme?
- Could the extinguishment and disposal of the land result in a change to the character of the street scene?
- Could the extinguishment and disposal of the land result in a perceived loss of amenity value if transferred from public to private ownership, including environmental considerations?
- Could the extinguishment and disposal of the land result in perceived gain to the applicant but to the detriment of local residents: for example, to secure private parking on land which previously enjoyed and demonstrated general access or utility? Local residents are consulted in the course of all applications.
- If the land is owned by Hampshire County Council does it need to be retained for other purposes?

Where areas of publicly maintainable highway are affected by new development, an application should be made to the Secretary of State for the 'stopping up' of such areas under Section 247 of The Town and Country Planning Act 1990.

As stated earlier, the County Council produces a range of documents for developers detailing the expected standards required when designing and constructing roads, be it within a housing development or a single driveway access onto the adjacent highway.

The documents used by Hampshire County Council are 'Manual for Streets' and the County Council's own companion document to the former document giving formal highways guidance on the 'Hampshire' approach to street design and also recognising changes in national guidance. It does not replace or duplicate national guidance but sits alongside it as local guidance.

The companion document details what the County Council requires in securing a Section 38 Agreement. This relates to the creation of new highways on land owned by anyone other than the highway authority. It is an agreement between the landowner and the authority for the construction of new highway and its adoption by the authority as a public highway.

When adopted the highway authority takes on responsibility for its long term maintenance, sometimes with funding (commuted sum) from the developer to off-set future maintenance costs.

However, when a developer wants to carry out work on an adopted highway, a Section 278 agreement must be entered into with the County Council. Under this agreement the developer would usually be allowed to do this work as the County Council's agent. The works would be then be inspected and approved by the County Council.

It is common practice for the developer to appoint a civil engineering contractor to carry out the highway works. Before any work can commence the contractor has to be approved to go on the County Council's list of suitable contactors. To achieve this, financial and professional information has to be supplied on the contractor's business.

The agreements with the developer are drafted by the County Council and a fee is charged for this work. As part of the agreement a bond is required of the developer which equates to the value of the work until adoption is completed.

Once the works are completed the developer will submit as built drawings to the Highway Authority. Once inspections have taken place and test certificates submitted the bond is released and the County Council becomes responsible for the future maintenance of the highway.

Contact for future reference

Should Members have any issues relating to adoption of highway in the future not covered in this Briefing Note please contact Martin Gilbert at Hampshire Highways. E-mail martin.gilbert@hants.gov.uk.