

## HAMPSHIRE COUNTY COUNCIL

### Report

<b>Committee:</b>	Environment and Transportation Select Committee
<b>Date:</b>	6 <sup>th</sup> November 2012
<b>Title:</b>	Unadopted Roads
<b>Reference:</b>	4401
<b>Report From:</b>	Chris Lait, Head of Highways (Area South)

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#### 1. Purpose of Report

1.1. The purpose of this report is to clarify the County Council's position regarding the adoption of private streets and new estate roads. Concerns have been raised with respect to the adoption of more recently built estate roads as a number of developments have been completed without ensuring the highway elements are adopted. Further information, in relation to specific cases raised by Members of the Committee, is set out in Appendix 1.

#### 2 Definition of a Private Street

2.1 A street is defined in Section 329 of the Highways Act 1980 as 'any highway and any road, lane, footpath, square, court, alley or passage whether a thoroughfare or not, and includes any part of a street'.

2.2 A private **street** is therefore a way which fulfils the above criteria but which is not maintainable at the public expense.

2.3 A private **road** differs from this as it is completely private. It may be gated. A private road has no public right of way for vehicles.

#### 3. Section 38 – the Highways Act 1980

3.1 The most common way of adopting new estate roads is under Section 38 of the Highways Act 1980. A developer enters into an agreement with the Council to carry out specific works to a certain standard that will be subsequently adopted as publicly maintainable highway.

- 3.2 The agreement is covered by a bond with a bank or the National House Building Confederation (NHBC) acting as surety and prevents owners of new properties from being liable for road charges. If the developer fails to meet the obligations of the agreement or ceases trading the County Council can call in the bond and complete any outstanding works.
- 3.3 The works contained within the Section 38 Agreement are to be completed within a reasonable timescale which is agreed with the developer. If the timescale stipulated in the agreement is exceeded, the developer may be liable for the payment of additional fees or, in extreme circumstances, the bond could be called in.
- 3.4 Where roads on new development sites are covered by Section 38 Agreements, the County Council tries to ensure that works and subsequent adoption are completed within a reasonable timescale. However, there are other factors which can prevent adoption progressing, such as non-adoption of sewers, outstanding lighting remedials, or land issues whereby the developer has sold off land to third parties and has no ability to dedicate.
- 3.5 On sites where there is no Section 38 Agreement, the situation can be more problematic. Developers have no legal obligation to enter into a S38 Agreement prior to works commencing on a site, or indeed at any stage of the development process. The developer, as the landowner, has a right to implement development proposals according to the planning permission granted by the local planning authority. Therefore, the Highway Authority has no control over proposed highway works until such time as a S38 Agreement is put in place. However, the County Council does endeavour to work closely with developers at all stages of the development process to enable new roads to be adopted as quickly as possible.

#### **4. Other Considerations**

- 4.1 Other than the eventualities above relating to the S.38 process, there are two main reasons why private streets and new estate roads may go unadopted:
  - a) in the 'boom years' developers were advancing at such a pace that some failed to complete the S38 Agreements prior to completing the development and, having sold all houses, had little interest in completing roads;
  - b) developers have chosen to keep the roads private with either a management company overseeing those areas or responsibilities passed directly to residents.
- 4.2 Whilst the Highway Authority cannot require a developer to enter into a Section 38 Agreement to secure the adoption of roads, many residents put pressure on the County to resolve what they perceive as an unacceptable situation.

## **5 Historical Context**

- 5.1 In the past, roads meeting the criteria above have often been constructed to adoption standards under the Private Street Works procedures contained in Part XI of the 1980 Highways Act (previously in the 1959 Highways Act).
- 5.2 From the 1950s to the late 1980s, there was an extensive programme of Private Street Works. The programme followed a comprehensive canvass of residents on a large number of streets where it was considered appropriate to apply the street works procedures. The programme of works consisted of streets where the majority of residents were in favour of works being implemented, and where it was considered to be of significant public benefit.
- 5.3 The cost of street works is met by the residents and is calculated on a frontage basis. The County Council has responsibility to fund certain aspects of street works. This has historically been in the region of 25% of the costs of the work. These costs may include the cost of any works on acquired land, the cost of any accommodation works to existing accesses and property boundaries, and the cost of diversion of utility undertakers' apparatus. Places of worship, railways and land belonging to the National Trust are exempt from street works charges and, if there were frontages in those places, the Highway Authority would need to fund the works.
- 5.4 The County Council funds the initial outlay of the works and recoups street works' costs from residents over time. The payment of street works charges can be phased over a number years and is subject to interest charges.
- 5.5 Many streets have not been constructed to current adoption standards and, therefore, remain unadopted since the late 1980s. This can be either due to the residents having elected not to have their street made up, i.e. constructed to current adoption standards, or due to the County Council having had to restrict the resources available due to other competing priorities.

## **6 Current Situation**

- 6.1 No works have been carried out using the Private Street Works procedures since 1989. Some streets have been made up and adopted in conjunction with new development under a S278 Agreement.
- 6.2 The County Council considers requests for private streets to be adopted if the following criterion is:

*the road is constructed to adoption standards; as detailed in the Council's Companion Document to Manual for Streets which is available at:*  
<http://www3.hants.gov.uk/hampshire-manual-for-streets.htm>;

### 6.3 Adoption standards require :

- (i) Sufficient public benefit in the street's becoming publicly maintainable. Examples of this are for roads serving a public amenity such as a school, or where there is a bus route, or the road could form part of a greater highway network for the general public;
- (ii) the full cost of the works are met by the residents. In such cases the County Council would offer technical advice but the residents will be expected to employ a suitable engineering consultant to carry out design work and letting of contract; and
- (iii) payment of the Council's inspection fees is forthcoming together with any legal fees associated with the adoption process.

Note: where there is a known freehold owner of the subsoil of the street then a Deed of Dedication is required. Where there is no known owner, then notices under Section 228 of the Highway Act (1980) can be posted to advertise adoption.

## 7 Adoption under Section 37 of the Highway Act (1980)

- 7.1 A land owner may propose to dedicate a road or a way as a public highway by serving notice on the Highway Authority. The County Council has to be satisfied that there is sufficient public benefit and that the road or way has been constructed to adoptable standards, as contained in the Council's Companion Document to Manual for Streets. The Council can object if the criteria is not met and, on rare occasions, the matter may be referred to the Magistrates Court to be resolved. Where a land owner requests adoption of areas not covered by a Section 38 Agreement, it is normal practice to enter into a Deed of Dedication. This is a legal agreement between a land owner/developer and the Council whereby the land owner or developer agrees to formally hand over a road and associated areas to the Council to be maintained at public expense. This process is normally followed when works have been completed and it is not practical to enter into a S38 Agreement. The Council will only accept the maintenance responsibility for the construction thickness of the area that is dedicated. The ownership remains with the landowner/developer.

## 8 Adoption of New Estate Roads

### The Advance Payment Code

- 8.1 The Advance Payment Code (APC) enables developers of new estate roads to deposit monies with the County Council to cover the cost of proposed road works. The deposit, which may be in the form of a bond, is designed to safeguard the purchasers of properties and ensure they will be served by the

new roads should there be a requirement for the County Council to complete the road works if the developer defaults or ceases trading.

8.2 The Highway Authority is notified when building regulations are issued either by the local Planning Authority, the National House Building Council or an independent body. Once notification is received the County Council has six weeks to serve an APC notice on the developer. The notice together with a schedule of charges is recorded as a land charge and remains in place until either a Section 38 Agreement is signed or the road is adopted by another means. The Council does have powers to stop building works should the developer not comply with the APC notice.

**9 Conclusion**

9.1 The County Council does consider the adoption of private streets where the required condition has been met. It will continue to work closely with developers to ensure that new estate roads are completed as quickly as possible.

**CORPORATE OR LEGAL INFORMATION:**

**Links to the Corporate Strategy**

<b>Hampshire safer and more secure for all:</b>	no
Corporate Improvement plan link number (if appropriate):	
<b>Maximising well-being:</b>	no
Corporate Improvement plan link number (if appropriate):	
<b>Enhancing our quality of place:</b>	Yes
Corporate Improvement plan link number (if appropriate): n/a	

## **Appendix 1 Unadopted Roads Report**

### **To be considered by the Environment and Transport Select Committee 6<sup>th</sup> November 2012.**

The Select Committee brought to the attention of Economy, Environment and Transport Officers three cases as examples of problems encountered in relation to unadopted roads.

The examples relate to:

- a) Ramshill Estate, Petersfield
- b) Dowds Farm, Hedge End
- c) Great Binfields, Chineham

Taking each of the cases in turn, the following information seeks to give members further context about those specific cases and an update on the latest position, including actions that the County Council is able to take to help address the issues.

#### **Ramshill Estate, Petersfield.**

The delay in adoption of the roads has been due to issues relating to the adoption of the sewers. This is a common problem which can result in significant delays in the adoption of new roads and is referred to in Section 3 of the main report.

The County Council will not adopt new roads if there are outstanding issues relating to the adoption of the sewers which may have an adverse affect on the new highway. In this case there was land and outfall issues and a lack of a discharge consent which prevented adoption progressing. These issues are being resolved following a meeting with the Residents Association, the developers and Southern Water .Confirmation is currently awaited from Southern Water so that the adoption of the roads can be progressed.

#### **Dowds Farm, Hedge End.**

This is a multi phased development site and adoption of the roads will be on a phased basis. Construction works to latter phases of the development are still ongoing. Adoption of the first phase of the main infrastructure (Whites Way to the Community Centre and Wellstead Way) is imminent. Outstanding highway and lighting remedials are to be completed shortly so that adoption can be progressed. Once the adoption of the first phase has been completed adoption of the roads served from the main infrastructure can be progressed in a similar way (Pomeroy Crescent, Gammon Close and Mescott Meadows).

Currently phase two of the main infrastructure is being used as a haul road for ongoing building works and has not been completed to adoption standards. The roads served off of this phase (namely Hansen Gardens, Lebburn Meadows,

Wilkins Road and Barfoot Road) will not be adopted until satisfactory completion of the infrastructure.

Concerns regarding indiscriminate parking are increasingly common on estates of this type and can only be resolved by the introduction of Traffic Regulation Orders. These orders can be considered by Eastleigh Borough Council.

The lack of general maintenance is a problem particularly where building works are ongoing. It is important to note that this is a responsibility of the developer. Similarly responsibility for the maintenance of street lights remains with the developer and should be reported accordingly. If there are continual problems these should be reported via the Council's web page and Officers will try to help in advance of the lighting being accrued on to the PFI.

The provision of grit bins is normally the responsibility of the developer. However the with developer's permission the Council can consider the supply and installation of grit bins at suitable locations.

**Lilly Mill Chine, Binfields, Chineham.**

The adoption has been delayed for many years due to issues with the adoption of sewers. As stated in the main body of the report and in relation to the issues on the Ramshill Estate (see above) the County Council will not adopt new roads where there are outstanding matters relating to the sewers which may have an adverse affect on the new highway. In this particular case there were problems associated with the outfall and also problems with the drainage from adjoining land which had an effect on this phase of development. These issues have now been resolved and a meeting has recently been held with a representative from the developer with a view to progressing the adoption. These are outstanding highway and lighting remedial to complete but it is hoped that adoption can be completed in the near future.

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