
TITLE: HIGHWAY ADOPTION ON DEVELOPMENT SITES

Committee: Development & Transport Committee

Date: 10th January 2013

Author: Head of Planning & Sustainable Development

[M200]

1.0 ISSUE

1.1 To outline the mechanisms available to the Council and to County Highways to manage the delivery and adoption of roads on development sites.

2.0 RECOMMENDATION(S)

2.1 That the report be noted.

3.0 BACKGROUND/OPTIONS

3.1 The limitations of the highways adoption process have become clear over recent years in East Cambridgeshire. In a number of cases roads have remained incomplete and/ or unadopted for significant periods of time after nearby houses have been completed. Particularly notable examples include Thistle Corner in Ely where the new roundabout remained closed for a period of years, and Kingfisher Drive in Soham where the developer went into administration before all the necessary works had been completed. In some cases roads have been left at base course level with raised iron works for considerable periods of time. Where roads are unadopted this will prevent the Police from being able to enforce speeding and parking restrictions, and there may be no treatment for snow or ice. In addition there may be no maintenance of lights or pothole filling. The issues in East Cambridgeshire have been replicated elsewhere in Cambridgeshire and nationally.

3.2 Officers have been in discussion with officials at Cambridgeshire County Council on how to better address these issues. Attached in Appendix 1 is a guidance note from the County Council on new estate road adoption. This note outlines the two main ways in which a new road may be offered to the Highway Authority for adoption. Under Section 37 of the Highways Act the developer may complete the road and then offer it to the Highway Authority for adoption. Alternatively under Section 38 of the Act the developer may enter into a legal agreement. This agreement comprises a framework of clauses, conditions, terms and prescribed timescales within which the developer is expected to operate. A Section 38 agreement is always supported by a bond or cash deposit. The County Council views the approach under Section 38 as preferable as this provides greater certainty

and safeguards. The County Council looks to incentivize early agreements ahead of work commencing on site by setting lower inspection fees in this situation.

- 3.3 It is important to note that both the Section 37 and Section 38 approaches are discretionary. A developer does not have to offer the roads on a development for adoption and the County Council has no statutory ability to require this. If the developer wishes the roads on a development to be adopted the choice of whether to use Section 37 or Section 38 will be down to the developer.
- 3.4 Attached in Appendix 2 is a letter from Councillor Ian Bates, the Cabinet Member for Growth and Planning at the County Council, suggesting the use of planning conditions to supplement the adoption process. This approach has the potential to avoid some of the problems experienced in the past. Planning conditions can specify that roads are completed up to adoptable standards by a given phase of development. This can therefore avoid the situation whereby all of the houses on a development site are completed and occupied but the roads are still in an unfinished state. Conditions to this effect have recently been used in East Cambridgeshire, for example with the Hopkins Homes proposal on Fordham Road in Soham. Conditions can also be used to require the submission and approval of a management scheme for the roads to ensure that they are maintained. Planning conditions cannot however require that the County Council adopt a certain road as this is subject to a separate legal process. The Council can use its planning enforcement powers if conditions are not complied with.
- 3.5 Policy CS7 of the East Cambridgeshire Core Strategy (October 2009) states that there should be adequate infrastructure in place to serve the needs of new development. Policy S6 requires development to address access and highway issues.
- 3.6 The East Cambridgeshire Design Guide (March 2012) addresses the issue of the completion of roads. It states that conditions will be applied to all planning permissions requiring the developer to state clearly, when the road layout will be completed. It also states that this shall be prior to the completion of the scheme. The Design Guide sets out the following guidelines:
- Development of 5 dwellings. Roads to be completed following completion of the fourth dwelling;
 - Development of 10 dwellings. Roads to be completed following completion of the eighth dwelling;
 - On larger estates, the roads shall be completed following the completion of 70% of the dwellings.
- 3.7 The emerging Local Plan, which was presented to Committee in December, introduces a requirement for masterplanning on large scale sites, including details of infrastructure phasing and delivery. This new requirement will

provide information on the phasing of road infrastructure and inform the judicious use of planning conditions.

4.0 ARGUMENTS/CONCLUSIONS

4.1 There has been significant public concern over the completion and/or adoption of new roads on development sites over recent years. It is clear the formal highways adoption process cannot by itself avoid all potential problems, because the adoption process is at the developer's discretion. Therefore the use of planning conditions can play a valuable role in helping provide additional safeguards.

4.2 The Principal Development Control Officer will look to share best practice on this issue with officers from other Cambridgeshire authorities. He will also investigate whether planning conditions could be used to further incentivize the Section 38 adoption process.

5.0 FINANCIAL IMPLICATIONS/EQUALITY IMPACT ASSESSMENT

5.1 There are no additional financial implications arising from this report.

5.2 Equality Impact Assessment (INRA) not required.

6.0 APPENDICES

Appendix 1 – Network Management Leaflet No.3 (April 2010), New Estate Road Adoption, Cambridgeshire County Council

Appendix 2 - Letter Highway Infrastructure within New Residential Development, Councillor Ian Bates, Cambridgeshire County Council

<u>Background Documents</u>	<u>Location</u>	<u>Contact Officer</u>
East Cambridgeshire Core Strategy (October 2009) East Cambridgeshire Design Guide (March 2012)	Room 007 The Grange, Ely	Giles Hughes Head of Planning & Sustainable Development (01353) 665555 E-mail: giles.hughes@eastcambs.gov.uk

**Network Management Leaflet No. 3 (April 2010)
New Estate Road Adoption****How does a new road become adopted as public highway?**

The County Council's policy is to consider adoption of new roads for maintenance at public expense where they serve 5 or more dwellings. However, as the Highway Authority, the County Council has no power to insist that a road is made up to an adoptable standard or that a road is subsequently offered for adoption.

The construction of new highway on housing estates is the responsibility of the developer, who constructs the development at the pace he considers fit. If the road under construction is to be adopted (and not all are), the role of the County Council, as Highway Authority, is to ensure that it is built to the appropriate standard and adequately lit and drained.

There are two main ways in which a new road may be offered to the Highway Authority for adoption to become maintainable at the public expense:

1. The developer may complete the construction of the road and then offer it to the Highway Authority under Section 37 of the Highways Act 1980; or,
2. The developer may opt for the more desirable route and enter into a legal agreement under Section 38 of the Highways Act 1980.

What's the difference?

Adoption under Section 37 allows the developer to construct the road and complete the development without the need for a formal road agreement with the Highway Authority. Provided the road is considered to be of sufficient utility to the public to justify it's being maintained at the public expense and has been constructed to an acceptable specification, the Highway Authority would accept the notice of proposed dedication by the developer and following a 12 month maintenance period the road would become maintainable at the public expense.

Adoption under Section 38 allows the developer to enter into a legal agreement with the Highway Authority to secure ultimate adoption of a new estate road. The agreement comprises a framework of clauses, conditions, terms and prescribed timescales within which the developer is expected to operate. Whilst the Highway Authority has no power to insist that a developer enter into a Section 38 agreement, many consider it the most desirable route to achieve ultimate adoption of their estate road(s). If an agreement is in place the developer will receive the full purchase price of a house from the buyer without any retention being made to cover possible future road charges.

A Section 38 agreement is always supported by a bond or cash deposit calculated by the Highway Authority and based on the cost of the works proposed. This bond or cash deposit can be called upon if the developer goes into liquidation or otherwise defaults on his responsibilities.

When will the road be finished under S38?

A Section 38 agreement requires the developer to complete the road(s) not later than the completion of all dwellings fronting, adjoining, abutting or otherwise accessed by the road(s) or within 2 years of the date of the agreement whichever is the sooner.

Upon satisfactory completion of the road(s) a Provisional Certificate of Completion is issued by the Highway Authority following which the developer must fully maintain the road(s) for a period of twelve months. Provided no remedial works are required at the end of the twelve month maintenance period, the Highway Authority will issue a Final Certificate of Completion whereupon the road(s) will become highway maintainable at public expense.

What is done to ensure a developer completes the road adoption under S38?

A Section 38 agreement will require the developer to complete certain works within prescribed timescales. For example, before any dwelling fronting a new road is occupied, the carriageway must be complete to base course of the surfacing material (the layer under the final finished road surface), the footways must be complete and the street lighting must be operational. Consequently, adherence to the agreement should secure a safe and usable highway for residents prior to formal adoption.

Large developments comprising an extensive network of roads and footpaths are often divided into phases, with a separate S38 agreement for each phase, sometimes with different developers. This scenario is the most challenging in terms of establishing appropriate road construction and completion rates as developers are often under pressure to build and sell houses out of normal sequence due to market demand. Different developers build at different rates and not all sections of road within a development may be completed in sequence. For a section of road to become adopted highway it needs to be connected to another section of adopted highway. This can sometimes result in sections of road being completed to a suitable standard but not being adopted until such time as the sections of road connecting it to the adopted highway are also completed to an adoptable standard.

Whilst a S38 agreement is normally sealed for a period of two years, it is possible for a developer to negotiate an extension of time, provided there is acceptable justification for doing so, for a further period not exceeding two years. The developer will incur further fee charges and possible additional bond charges if an extension of time is agreed. There is, therefore, a financial incentive for the developer to complete the roads on time.

Development Control Inspectors regularly visit sites to ensure that the highway works are being installed in accordance with the approved plans and to ensure that the works are progressing in accordance with the agreement. However, site inspections and technical vetting for Section 38 agreements will only commence on receipt of a full application and the associated fees.

What happens if the developer defaults on his obligations or goes bankrupt?

If the developer fails to satisfactorily progress the works in accordance with the agreement the Highway Authority will always attempt first to resolve the problem by negotiation. If this fails then the Highway Authority have the option of calling upon the bond to pay for the highway works to be completed.

If developers are deemed not to have made sufficient progress in completing road works to facilitate the adoption process, within the timescales set out in the agreement, a formal notice will be issued giving three months for the developer to demonstrate that the completion of the road works is being actively pursued. If, after three months, there is no evidence of the road works being actively pursued to completion, the Director of Highways and Access will seek to use the agreement surety to fund the completion of the road works by the County Council. Similarly, if the developer defaults due to bankruptcy, the bond would be used to pay for the completion of any outstanding highway works.

What about industrial estate roads?

Roads that only provide access to industrial estates or commercial or business parks will not be adopted as highway maintainable at public expense.

What about parking in estate roads?

Roads in urban and suburban locations will only be adopted subject to the payment by the developer of a deposit to meet the costs of introducing parking controls based on the assumption that all parking will be prohibited other than in specifically designed and designated parking places. If parking controls are not implemented within 5 years of the adoption of the road as highway maintainable at public expense, the deposited sum will be refunded.

What can house buyers do to mitigate any future road charges in the event that there is no Section 38 Agreement in place?

When purchasing a property the buyers' solicitor or legal representative should undertake a Local Authority Land Search to gain important information on the likely responsibilities that will be transferred when contracts are exchanged. One of the responses to the Search will reveal if the road fronting the property is maintained at the public expense, or if not, whether there is a Section 38 Road Agreement in place to secure future adoption. In the event that there is no Section 38 Agreement in place, it is strongly recommended that the buyer, through their solicitor, retains some of the purchase price of the property to pay for possible road works in the future. Whilst it cannot be guaranteed that retention sums will cover the cost of any necessary road works to bring the road up to adoption standard, it may go some considerable way to securing adoption or achieving an outcome that is acceptable to the residents.

What is a reasonable retention sum?

Retention sums are usually based on the length of property frontage to the road and the current linear metre cost of estate road construction. For example, a buyer of a property with a 10 metre long frontage to the road should, using the current construction cost of £800 per linear metre, look to retain a sum of £4,000 ($10 \times 800 \div 2$ (half the width of the road) = £4000).

Advice relating to current linear metre estate road costs can be obtained from the Highway Development Control Team, the details of which are given below.

Who do I contact for advice or further information?

If you have any questions or would like further information on road adoption and/or the Section 38 agreement process, please call Sue Reynolds – Highway Development Control Manager:

- By telephone on 01223 814438
- By e-mail: sue.reynolds@cambridgeshire.gov.uk

From:- Councillor Ian Bates
Please reply to:- RES1108, Shire Hall, Castle Hill,
 Cambridge, CB3 0AP
Telephone:- Cambridge (01223) 699173



To: Jo Mills (South Cambridgeshire District Council)
Steve Ingram (Huntingdon District Council)
Giles Hughes (East Cambridgeshire District Council)
Graham Nourse/Alison Callaby (Fenland District Council)
Simon Payne/Patsy Dell (Cambridge City Council)
 (via e-mail)

cc: Portfolio holders

10th April 2012

Dear All

Highway Infrastructure within New Residential Development.

In the absence of any powers to insist that a developer enters into a section 38 Agreement to secure adoption of new estate roads, or further, offers them for adoption, the County Council, as Local Highway Authority, has been seeking ways of encouraging developers of new residential schemes to at least complete the highway infrastructure in a timely manner and to a robust standard, for the benefit of new residents.

The current County Council Section 38 Agreement process has 'in-built' incentives which effectively reward developers for negotiating and entering Agreements prior to commencement of development. Clauses within the Agreement require roads and footways to be constructed to a certain level and comprise street lighting prior to occupation of the dwellings. This provides for safe vehicular and pedestrian access to any occupied housing.

Notwithstanding the incentives, many developers continue to develop sites without entering into an Agreement. This often results in residents accessing their homes via unlit roads and footways that have not yet been built to a level that provides safe and convenient passage for vehicles, or more importantly, pedestrians.

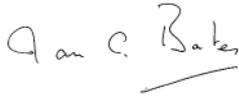
In an attempt to prevent this unwelcome situation, I believe the planning process could offer some assistance through the prudent use of Conditions applied to the grant of planning permission. Whilst it is not possible to require a developer to offer a road to the County Council for adoption, it is possible to require a road to be built to a specified standard, and further, that a specified constructional level of both road and footway be reached prior to occupation of frontage dwellings.

This approach has been discussed with individual planning teams in the past and has been raised at Adoption scrutiny panels by the County Highway Development Control Manager.

It is only through the use of appropriate planning Conditions that delivery of an appropriate standard of infrastructure at the right time can be achieved until such time as a Section 38 Agreement is sealed.

There is a need for clarity and consistency in the use of such Conditions and to this end, the Highway Development Control Manager will arrange to meet with you shortly to discuss the matter further.

Yours sincerely



Cllr Ian Bates
Cabinet Member for Growth and Planning