

Meeting:	Decision Session Executive Member for Economy and Transport
Meeting date:	12/09/2023
Report of:	James Gilchrist, Director of Transport, Environment and Planning
Portfolio of:	Councillor Kilbane, Executive Member for Economy and Transport

Decision Report: Response to Granary Estate Road Adoption Petition

Subject of Report

1. A petition with 138 signatories was presented to Full Council on 23 March 2023, asking for the following: *“We the undersigned call on City of York Council to adopt the roads and infrastructure on the Granary (Redrow) Estate in Clifton Without - working with Yorkshire Water, Persimmon and Redrow to resolve all outstanding issues”*.
2. This report presents an update on the issues to be resolved for the adoption of the prospective highways within The Granary estate to progress.
3. The Executive Member will be asked to:
 - i. note issues which hindered the adoption process;
 - ii. note the actions taken by Council officers to date to seek to resolve those issues;
 - iii. support continued efforts by officers of the Council to find a solution to the issues, working with Persimmon, Redrow and Yorkshire Water.

Reason: to update the Executive Member and petitioners on the role of the Council and progress in resolving the issues.

Pros and Cons

4. The decision is to note work undertaken so far and support continued efforts to resolve the issues hindering the adoption of the highways for The Granary.
5. If a solution can be found to enable the adoption of the sewers by Yorkshire Water and all other stages of the adoption process pursuant to Section 38 of the Highways Act 1980 are completed, the roads/streets within The Granary site will become highways maintainable by the Council, as local highway authority, at public expense.
6. The streets in The Granary site have already become highways open to the public due to the developer having entered into Agreements with the Council pursuant to Section 38 in July 2017. Under those Agreements, the developer dedicated the roads as highways for use by the public but to remain privately maintainable until the adoption stage of the Agreements is reached. This is standard procedure for highway adoptions under Section 38.
7. If a solution cannot be found, the streets of The Granary will remain privately maintainable with the frontagers, through the estate's management company, ultimately being responsible for the maintenance of the streets. If the streets in The Granary site are adopted by the Council without the sewers or pumping station being adopted by Yorkshire Water, there is a risk that the Highway Authority could incur additional costs in these areas.

Policy Basis for Decision

8. This report and recommendations reflect the new administrations priorities in terms of engaging and consulting widely with citizens on transport issues.
9. The adoption of highways contributes to the following outcomes of the current Council Plan 2019-2023:
 - a. getting around sustainably;
 - b. a greener and cleaner city;
 - c. creating homes and world-class infrastructure;
 - d. safe communities and culture for all; and
 - e. an open and effective council.

10. The power for the adoption by agreement of newly constructed roads is set out in the Highways Act 1980 and the process is set out in associated guidance. This includes central government guidance issued in the form of an Advice Note by the Department of Transport, entitled “*Highways Adoption The Adoption of Roads into the Public Highway (1980 Highways Act)*” – available here: www.gov.uk/government/publications/adoption-of-roads-by-highway-authorities. Section 38 Agreements are the most common method of adopting new roads and ensure that the roads are built to adoptable standard.

Recommendation and Reasons

11. The Executive Member will be asked to:
 - i. note issues which hindered the adoption process;
 - ii. note the actions taken by Council officers to date to seek to resolve those issues;
 - iii. support continued efforts by officers of the Council to find a solution to the issues, working with Persimmon, Redrow and Yorkshire Water.

Reason: to update the Executive Member and petitioners on the role of the Council and progress in resolving the issues.

Background

12. A petition with 138 signatories was presented to Full Council on 23 March 2023, asking for the following: “*We the undersigned call on City of York Council to adopt the roads and infrastructure on the Granary (Redrow) Estate in Clifton Without - working with Yorkshire Water, Persimmon and Redrow to resolve all outstanding issues*”.
13. The Granary is a housing estate built by developers Redrow, comprising approx. 200 dwellings and located off Water Lane in the Rawcliffe and Clifton Without ward. The site lies between Green Lane and Water Lane, south of the Aldi supermarket. The vehicular access to the site is through Miller Road, off Water Lane, with a non-motorised and emergency vehicle access point off

Green Lane. See Annex A for a location plan showing the residential estate within the red line.

14. Although the adoption process was started for the main roads serving the estate (agreements are in place between CYC and the developer under Sections 38 and 278 of the Highways Act 1980), the adoption process has not been completed due to Yorkshire Water's refusal to adopt the site's sewers and associated pumping station (surface water and highway drainage).
15. The highway adoption process, usually undertaken by agreement between the developer and the highway authority under Section 38 of the Highways Act 1980, is separate from the planning process. This means that it is possible for a development site to comply with its planning approval(s) and associated planning conditions without the adoption process being completed. As noted in the Government guidance, *"the completion of the agreement may be subject to legal processes over which the local authority has no control. Such processes may relate to third party negotiations and agreements, land matters, easements, private rights, private covenants (and their removal if necessary), drainage discharge consents and agreements etc"* (see page 12 of *"Highways Adoption The Adoption of Roads into the Public Highway (1980 Highways Act)"* – available here: www.gov.uk/government/publications/adoption-of-roads-by-highway-authorities).
16. To be able to adopt the sewers, Yorkshire Water requires the following:
 - a. Pumping station land ownership - The pumping station for the sewers on both estates is located on Clifton Backies (off Headley Close and accessed through Minchin Close). The land is privately owned by a third party. The pumping station was built by the developers of the Arlington/Tamworth Road estate (a separate estate to The Granary) and is currently managed by Persimmon Homes. The land where the pumping station has been built does not belong to Persimmon Homes however and the developers have therefore been unable to transfer it to Yorkshire Water;
 - b. Discharge rights – The pumping station discharges into the pond adjacent to the pumping station on Clifton Backies. Discharge rights need to be granted by the owners of the pond to Yorkshire Water;

- c. Pumping station and sewers remedials and upgrades – Once the land and discharge rights issues have been resolved, Yorkshire Water would start the adoption process for the sewers. This is likely to require some works to be undertaken by Persimmon Homes to repair and upgrade the pumping station and sewers on the Arlington/Tamworth Road estate to bring them to an adoptable standard.
17. The Council has made multiple attempts to discuss and resolve the issues with Yorkshire Water and the developers. The most recent attempts are summarised below:
- a. October-December 2020 - Senior level contact between CYC and Yorkshire Water resulting in meetings between CYC and Yorkshire Water technical officers to identify Yorkshire Water's requirements to enable the transfer of the pumping station and adoption of the upstream sewers;
 - b. November 2020 – Technical discussions between CYC officers and Persimmon's team to establish what actions have been taken by Persimmon to address the situation with the pumping station and sewer adoption for the Arlington/Tamworth Road estate;
 - c. November 2020-December 2020 – Work by the CYC Legal Services and Property Services teams to identify possible options to address the issues. This work has included Property Services trying to contact the owners of the land where the pumping station has been built to discuss a transfer of the land. The CYC Property Services team has so far been unable to obtain any response from the landowners;
 - d. November 2021 – Renewed discussions between CYC and Persimmon Homes following leadership changes at Persimmon, including summary of CYC's views on required steps provided to the Persimmon team;
 - e. January 2020 – Meeting between senior leaders at CYC and Persimmon Homes – renewed commitment to solve the issues;
 - f. May 2022 – Discussions between CYC property team and legal representatives of the owners of the pumping station land – no resolution;

- g. May 2022 – Discussions with the Persimmon team indicating Persimmon would approach the landowner to find a solution for the pumping station land – no resolution;
 - h. February-March 2023 – Renewed contact between CYC property team and legal representatives of the owners of the pumping station land – no resolution;
 - i. March 2023 – Meeting between Persimmon Homes, Redrow and CYC to identify possible options to resolve the issues– no resolution.
- 18. Previous member decisions – The highways on the Arlington/Tamworth Road estate were adopted by CYC in September 2018, following the consideration of a petition presented at the Executive Member for Transport’s Decision Session on 17 July 2018 (papers available here: <https://democracy.york.gov.uk/ielIssueDetails.aspx?IId=53282&Opt=3>). At the time, the papers noted that the issues of the transfer of the pumping station and the adoption of the sewers by Yorkshire Water had been resolved.
- 19. The highways were adopted after remedial works had been carried out, and based on an assumption at the time, due to representations made by Persimmon Homes, that the issue of the ownership of the pumping station land would be resolved, and adoption of the sewers could take place. Persimmon Homes thought that they could successfully apply to HM Land Registry to be registered as the owner of the pumping station site based on claimed ‘adverse possession’ (alleged exclusive possession of the site for at least 12 years without the consent of the owner), but their application was not successful.
- 20. As the highways for the Arlington/Tamworth Road estate have been adopted by the Council without the sewers or pumping station being adopted by Yorkshire Water, there is a risk that the Highway Authority could incur additional costs and/or liabilities in these areas, if the sewers which are under the adopted roads fail or need to be upgraded, or if the sewers/pumping station fail, resulting in highway surface water discharge causing damage to private properties which the owners thereof might seek to hold the Council liable for.

Consultation Analysis

21. The work undertaken to resolve the issues precluding the adoption of the highways at the Granary has involved discussions and meetings with the key partners as described above.

Options Analysis and Evidential Basis

22. Options available are:
 - a. Continue working with partners to find a solution to this long-standing issue; and
 - b. Council to step back from discussions until the issues have been resolved between Persimmon, Redrow and Yorkshire Water and a 'vesting certificate', confirming that Yorkshire Water have adopted the drainage infrastructure, can be presented to the Highway Authority for the highway adoption to progress under Section 38 of the Highways Act 1980.
23. Option a) will result in Council resources being used to support the resolution of issues between Yorkshire Water and Persimmon. This is in the public interest to ensure that the pumping station and sewers are finally adopted by the undertaker, enabling the highway adoption to progress for The Granary. As attempts to support a resolution have failed so far, there is no guarantee that further attempts will be successful.
24. Option b) would remove the requirement for Council resources to be expanded on this issue, leaving discussions to the developers and Yorkshire Water. The Council would adopt a similar stance to that of Yorkshire Water, waiting for the vesting certificate to be provided before progressing the adoption of the roads within The Granary estate.
25. The option of the Council or Yorkshire Water using compulsory purchase powers to purchase the land where the pumping station was built has been considered but rejected by the Council due to the following issues:
 - a. Section 155 of the Water Industry Act 1991 gives Yorkshire Water (as a 'relevant undertaker' for the purposes of that Act) to compulsorily purchase land (subject to authorisation by the Secretary of State) 'which is required by Yorkshire

Water for the purposes of, or in connection with, the carrying out of its functions'. It is for Yorkshire Water to consider whether they could use their powers to compulsory purchase the pumping station site.

- b. The Council's statutory powers to compulsorily purchase land (subject to authorisation by the Secretary of State) for a variety of purposes connected with the Council's functions are set out in various Acts of Parliament. It is considered that the acquisition and maintenance of a pumping station is a function of Yorkshire Water as statutory sewerage and water supply undertaker rather than a function of the Council as local authority. Accordingly, any proposal for compulsory purchase made by the Council is unlikely to be approved by the Secretary of State. It should also be noted that:
 - i. the compulsory purchase process is time consuming and costly; and;
 - ii. in the event that a compulsory purchase process initiated by the Council were successful, it is likely that the Council would then have to take the liabilities for the required upgrades to the pumping station, securing the discharge rights, etc before Yorkshire Water would agree to adopt/take over responsibility for maintenance of such.

Organisational Impact and Implications

1. The following implications have been identified:
 - **Financial** – Limited financial implications identified for this decision due to the use of Council staff time to support the discussions with the key partners. If the issues are resolved and the adoption of the highways on The Granary progresses, financial implications will be similar to any other development site where highways become adopted through the Section 38 Highways Act 1980 process. If the sewers for the Arlington/Tamworth Road estate and the pumping station are adopted by Yorkshire Water, this would reduce the financial risk for the local authority for this area.
 - **Human Resources (HR)**: No HR implications identified.
 - **Legal** – Any 'adoption' by the Council as local highway authority of roads/streets constructed within/serving a residential development

(such that those streets then become highways maintainable by the Local Highway Authority at public expense) would usually only occur when all of the following conditions have been satisfied:

- (i) the Developer and the Council/ Local Highway Authority (LHA) have entered into a formal S.38 Agreement;
- (ii) the Highway Works detailed in the S.38 Agreement have been completed by the Developer, and then maintained by the Developer for the specified initial Maintenance Period, to the LHA's satisfaction;
- (iii) any sewer(s) and associated drainage infrastructure underneath or serving the relevant Road(s) have been adopted by Yorkshire Water;

The Council would not normally become involved in or assist in the adoption by/transfer to Yorkshire Water of the sewer(s) and associated drainage infrastructure underneath or serving the relevant Road(s) as that is for the developer to procure.

- **Procurement:** No procurement implications identified.
- **Health and Wellbeing:** No Health and Wellbeing implications identified.
- **Environment and Climate action:** No implications identified.
- **Affordability** – For residents of The Granary, if the streets were to remain privately maintained, this would have an impact on charges and insurance fees as the management company would need to charge the residents for the upkeep of the streets and frontagers would need to take liability insurance in case a claim is made against them by users of the privately maintained streets.
- **Equalities and Human Rights** – No Equality Impact Assessment required here as this is an update report and the decision for the member is on whether to commit CYC resources to support decisions to be made by third parties.
- **Data Protection and Privacy-** No implications identified and no DPIA required.
- **Communications-** No implications identified
- **Economy** - No implications identified

- Specialist Implications Officers – not applicable

Risks and Mitigations

26. Risks identified above:

- a. For residents of The Granary: additional financial burden of maintenance and repair costs for the private streets and insurance costs. Houses on privately maintained streets are also sometimes more difficult to sell.
- b. For the Council: Existing risks with the adopted highways on the Arlington/Tamworth Road estate as the sewers and pumping station are not adopted, which means that financial liabilities are unclear if upgrades/changes are required before adoption by Yorkshire Water and if sewers/pumping station failures result in highway runoff damaging private properties or apparatus.

Wards Impacted

27. Rawcliffe and Clifton Without

Contact details

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Background papers

Not applicable

Annexes

- Annex A: Location plan