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## **Economic & City Development Overview & Scrutiny Committee**

12 August 2009

### **Report of the Assistant Director for City Development and Transport**

### **Briefing Report - Adoption of Highways on New Estates**

#### **Summary**

1. This report provides further information on the issue of the adoption of highways on new estates as requested by the Scrutiny Committee. A feasibility report covering this matter together with the implementation of planning conditions was considered as a scrutiny topic at the meeting of 14 July 2009.
2. It should be highlighted that the report relates solely to the issue of highway adoption and not other aspects such as landscaped or play areas.
3. The service is provided by 3 FTEs covering all aspects of pre-planning consultation, review and approval of designs, agreement preparation and site supervision. Opportunities for redirecting staff resources to support the service are limited, as this would only create new pressures in the highways development control team.

#### **Background**

4. The Executive considered a report concerning a petition submitted by residents of Sovereign Park in April 2009 at which the Executive Member requested a further report to be submitted within 6 months to the Executive Member Decision Session covering the wider issues of highway adoption.
5. Whilst not strictly covered by this report Members should be aware that in February 2006 the Executive Member and Advisory Panel considered a report on the adoption of private streets. There are over 100 streets in York that are privately owned and maintained. 11 of those streets were subsequently consulted to establish what interest there was for making the streets up to adoptable standard and for the council to adopt them for future maintenance. From the responses it was clear that there was very little interest in the proposal as most frontagers were unwilling to contribute to the cost of bringing the streets up to adoptable standard and as a result the initiative was not pursued.
6. It is important to reiterate some key points which were appended to the previous report to the Scrutiny Committee,

- Satisfactory completion of a new section of publicly maintainable highway, is governed by highway legislation, chiefly Section 38 of the Highways Act 1980.
- Developers enter (in almost all situations) into a Section 38 Agreement with the Council as Highway Authority, which establishes the specifications and standards, which the new streets will need to meet before responsibility for maintenance can transfer to the council.
- A sub clause seeks to secure completion of the street in parallel with the completion of final dwellings. A 12 month maintenance period follows completion.
- Foul and surface water sewerage systems must be approved and adopted by Yorkshire Water, prior to formal highway adoption taking place.
- The legal framework (as applied across councils in England and Wales) is specifically laid out to protect the local authority.
- Within the authority area, there are currently 86 housing developments, which are governed by a Section 38 agreement.

### Introduction

7. To provide some context to the service area, a developments list, is attached at Annex A, including details of key stages in the whole process (this also includes commercial schemes, which are being developed with prospectively adoptable highway layouts, together with associated highway improvement schemes). Also attached are responses received from ten other Local Authorities, to three questions based on experiences in York and the current recession (Annex B).
8. As a consequence of the Local Authority reorganisation on 1 April 1996, York City Council increased its existing portfolio of developments with those from North Yorkshire County Council. Since that time, the York Unitary area has been constantly popular with developers resulting in the high number of developments that are now being processed.
9. The staffing resource for this service is equivalent to 3 permanent FTE's. A growth bid was submitted and approved for this financial year, which has allowed an additional FTE to be recruited for approximately 6 months. However this is a very small staff resource to address what is a very heavy workload. Switching of staff to address this workload would be difficult to achieve without resulting in other development control areas of the Network Management team suffering.
10. Of the developments taken in from surrounding districts, it may be surprising to find that some are still not fully adopted, some thirteen years later. The Brecks at Strensall being an example. Although three phases were already built in 1996, the other nine phases have since been completed, but the whole is still subject to formal adoption.

### The Process

11. The trigger for developers to start building on site occurs once Planning Consent has been issued. However, there is evidence from other local authorities that some don't even wait for this approval. At this point, the Highway Authority's only requirement is to issue a notice under the Advanced Payments Code once it has been notified that drawings have been deposited with the Council's Building Control section. Generally, developers will pursue completion of a S38 Highways Agreement as they have the comfort that the Highway Authority will ultimately adopt the roads and purchasing solicitors have the comfort that there will be no charge on their clients' property.
12. Unfortunately, developers rarely find the need to engage in detailed discussions with the Highway Authority before gaining planning approval as it involves additional cost for consultants. The drawings required for planning consent are not as detailed as engineering drawings required for a Highway Agreement. As a consequence, it can be some time before a S38 Agreement is completed, during which time the developer has already started on site. They are prepared to take the risk and site agents are probably under pressure from managers to start building.
13. Once dwellings are completed and sold, the developer will be looking to move staff to another new development. Their profit is with selling houses, not adopting roads. The ongoing wrangling with Highway Authorities is generally left with the company engineer to sort out while the developers' focus turns to new developments. Once staff and site cabins have left the development, the company engineer is reliant on being able to use any pot of money reserved for the purpose of bringing the road up to an adoptable standard. Any problems with the drainage system can easily swallow up spare cash, which ultimately prolongs the whole adoption process.
14. Traditionally, highways have not been adopted until the following has happened.
  - All adoptable street lighting has been approved.
  - Drawing 'as constructed' have been provided. We now ask for an electronic version as well as hard copies to build up a library for easy reference. This is not always possible with older developments.
  - The foul water and surface water sewers have been adopted and vested with Yorkshire Water. This ensures that there is no extensive private drainage system under a public highway. In respect of surface water, the gullies connect to a proper outfall.

### **Some reasons for delay**

15. In respect to large developments, such as The Brecks, jointly developed by Hogg the Builder and Persimmon Homes, it has been very difficult to reach a stage where all streetlights are working together.
16. Where old developments are being offered for adoption, consideration has to be made for normal wear and tear when preparing any remedial lists.
17. Yorkshire Water has insisted that any pumping stations be brought up to current standards, irrespective to what may have been shown in the original Drainage Agreement. For developers to agree to such upgrades, which can cost £20,000, has been very protracted.
18. Yorkshire Water do not had the same imperative to adopt sewers as the highway authority has for adopting the roads and footways and rely upon the highway authority to pressure the developer to seek adoption. As stated previously highway authorities will not adopt the roads until the sewers are adopted.
19. Organising for drawings 'as constructed' has similarly proved difficult, as details that have been missed or badly interpreted have necessitated several attempts before they can be accepted.
20. It may appear inconceivable that any development should take so long to adopt, but it is hoped that some of the reasons can be found above.

### **The Agreement (calling in bonds)**

21. The S38 Agreement is a standard document and, subject to some updating over the last decade, the same is used for each development. It does include an item that enables the Highway Authority to call in the bond in the event of any default. While this may appear to be an easy solution to overcome delays by the developer, it is generally intended for those companies who may become bankrupt and could not bring roads to an adoptable standard. An estimated cost for outstanding remedial works has to be prepared and the surety given the opportunity to allow the developer to complete or offer the work over to the Highway Authority. To reach this stage is time consuming and a heavy use of resources. The most recent occasion that the Council resorted to this remedy was at Tedder/ Slessor Road under pressure from members and residents where the developer, Barratt York, ultimately completed the work anyway.

### Completion Programme for 2009

22. It is anticipated that by the end of the year, the whole of The Brecks should be adopted, Clifton Hospital and all developments along Water Lane. As described above, ongoing issues with street lighting and Yorkshire Water have been the main reason for delay, although the developers have not been too proactive. Providing successful, this will mean that **23 development phases** will become public highway and thus can be deleted from the attached list.

### Effect of Recession

23. Visual evidence that the recession is taking its toll can be seen in the developments that have stopped, such as the Barratt development at Dennison/Gladstone Street and the Harron Homes development at Osbaldwick Lane. Those that have stalled include The Croft, Heworth Green and Northfield School, Beckfield Lane. Apart from Wright Group who built at the back of The Ainsty PH off Carr lane and Urbani (Birch Park), we are not aware of any more developers who are close to going bankrupt.
24. However the following developments are examples of active schemes, which continue to engage officers, whether that involves, the consideration/approval of proposed street layout, inspection of ongoing construction, or review of completed works:

Hungate, Derwenthorpe, Heslington Campus East, York College, Discus bungalows, and Chapelfields.

### Summary

25. The information detailed above hopefully sets the context for the service area and confirms the requirement to adhere to the well established procedures and legal framework.
26. Clearly the portfolio of schemes is significant and resources have to be carefully assigned to cover the full service, from office based review/checking/approval through to site based inspection. Both aspects involve extensive contact, meetings, negotiation, correspondence and administration, with a range of stakeholders. This includes, consultant engineering companies, multiple internal officers, resident engineers, site contractors, Yorkshire Water, Utility Company representatives, solicitors and Property/Land Conveyance Agents.
27. As has been stated earlier staffing resources in this area of service are limited for addressing such a large workload and redirecting further staff resources from development control would create new pressures on planning application side of the service, which is already under pressure with the major developments already under consideration.
28. Officers are actively engaged in pursuing the satisfactory completion and adoption of all outstanding schemes (some listed above), and with the

temporary additional resource, there is confidence that those on the priority list for 2009 will be achieved.

29. The responses from other local authorities, can be quickly summarised. The process and experience is very similar to what we see here in York, essentially:
- It is common for developers to start on construction of highways, prior to agreements being finalised,
  - Majority of developers lose interest in completion of highways once they have completed dwellings and moved off site, and
  - An almost unanimous experience of change of attitude by developers (since the recession started) to reduce bonds and get older developments adopted.

### Analysis

30. The criteria for registering the review topic related to:

**Public Interest** – Residents on new estates feel dissatisfied when their estates are neither built to plan, completed or adopted by the Council, and

**Under Performance/Service Dissatisfaction** – Residents feel that because of non-adoption of their estates they are not receiving services for which they pay, such as street cleaning. There are also safety concerns when conditions have not been completed before habitation of properties.

31. Whilst these matters are understood, the above commentary sets out the process and context for new developments in York. It is not uncommon for minor changes to be made to the design of the adoptable street. These changes usually result during detailed design, construction limitations on site or from a safety audit. They are however of a minor nature and would not be materially different from the original planning consent. As mentioned earlier, the plans submitted as part of a planning application are not the detailed engineering drawings required for highway design/ construction.
32. The timeline to reach formal adoption can be protracted, however in the vast majority of cases, developers in York, do construct carriageways to a driveable state (termed binder course) and footways to a completed finish (surface course), prior to occupation of residential units and arrange for the provision of street lighting. This construction/finish provides adequate surfaces allowing safe accessibility for occupants and other users. As many developments are constructed over different phases (with separate agreements in place, and sometimes different developers), completion (including top surface/course) of the prospectively adoptable highway to a state capable of starting a maintenance period (including surface course and landscaping) will be subsequent to full occupation and in many situations a considerable time after.
33. During the time prior to adoption, the developer is fully responsible for ensuring that adequate access is maintained at all times for residents, and responding

to matters relating to lighting, drainage or cleaning (including sweeping, spillage and litter picking). If such matters are raised directly with officers (or via Member's), officers ensure that these are brought to the developer's attention and (as appropriate) seek assurance that the matter/concern is satisfactorily resolved.

### Comments

34. A report will be submitted to the Executive Member Decision Session in September, which will describe the adoption issues and make recommendations about improvements to the service.
35. The Scrutiny Committee may wish to consider what areas there are for further investigation so that developments come forward for adoption as soon as is reasonably possible. Areas for investigation could be a better understanding of the issues faced by developers and by Yorkshire Water who have a major influence upon when developments are adopted.

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Report Approved



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**Specialist Implications Officer(s)** None

**Wards Affected:**

All



For further information please contact the author of the report

### Background Papers:

None

### Annexes

- Annex A** Development schedule
- Annex B** Responses from other local authorities