

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Executive Member for Environment and Transport
Date:	25 September 2018
Title:	Road Agreement Process
Report From:	Director of Economy, Transport and Environment

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1. Recommendation

- 1.1 That the Executive Member for Environment and Transport approves the proposed approach to the development of a new policy covering the adoption of new residential estate roads (Appendix 1), and authorises engagement with stakeholders as the next stage of policy development.

2. Executive Summary

- 2.1 The purpose of this paper is to update the Executive Member for Environment and Transport on progress of the Road Agreements Improvements Programme, and to set out and agree the proposal to develop a new policy covering the adoption of residential estate roads.
- 2.2 This paper sets out the wider context for the Road Agreements Improvements Programme and the challenges that are faced, highlights elements of the work done to date, and identifies further aims and aspirations.
- 2.3 The paper considers the implications for setting out a clear policy position on road adoption and provides an initial draft statement as Appendix 1 to the report. It considers alternative options before recommending that the County Council engages with industry and local planning authorities on the content of the draft statement. Once this engagement is complete, and its findings are reflected in the proposals as appropriate, it is anticipated that a further report would seek formal agreement of the policy by the Executive Member for Environment and Transport ahead of final publication.

3. Contextual information

The Road Agreements Improvement Programme:

- 3.1 The County Council, as responsible Highways Authority, works with developers to agree the adoption of highways, which serves to transfer ongoing responsibility for maintenance of the highway to the authority.
- 3.2 This can include adoption of:
 - new estate roads which facilitate access to housing developments, and which are adopted under Section 38 of the Highways Act (1980); and
 - works to the existing highway for the benefit of a third party (such as new junctions) under Section 278 of the Highways Act.
- 3.3 In 2017 a 'Road Agreements Improvement Programme' was launched, in a bid to improve the service that the County Council provides to developers, in facilitating the adoption of new highways. This was prompted by dissatisfaction expressed by developers about the service they were receiving, in particular regarding timescales for approval.
- 3.4 Throughout the programme of work, the County Council has been engaging extensively with both the development industry and local planning authorities in Hampshire, including multiple workshop events (attended by the Executive Member for Environment and Transport) and via an industry focus group run by County Council officers.
- 3.5 The Road Agreements Improvements Programme is a comprehensive package of work, looking at all aspects of how the County Council manages the road adoption process. Some of the key things it is delivering include:
 - a review of internal processes to ensure consistent and effective ways of working, alongside creation of new team structures to facilitate this as necessary;
 - an update to the comprehensive suite of technical guidance that is provided to developers;
 - a review of the fees charged to developers throughout the adoption process;
 - the launch of an improved 'pre-application' service for developers; and
 - creation of an online 'developer portal' facilitating improved communication between parties.
- 3.6 The proposal to develop a new policy on the adoption of residential estate roads is another element of this wider programme of work.

New residential estate roads

- 3.7 When new estate roads are built by developers to facilitate access to new housing, the question arises about how this new highway will be maintained in the long term.

- 3.8 Hampshire County Council, as responsible Highways authority is able to adopt new estate roads by agreement under Section 38 of the Highways Act (1980). This agreement sets out standards that these roads should be constructed to, and if these standards are met the road will be adopted after the one year maintenance period.
- 3.9 However, not all new estate roads are adopted and these can instead remain as private roads. In many cases this is because the developer desires for the road to remain private from the outset.
- 3.10 One of the key issues the Road Agreement Improvement Programme is addressing is the increasing number of new estate roads that are remaining private in Hampshire, and the potential reputational risk that this can create for the County Council.
- 3.11 The policy will clarify the County Council's position, where in the past there has been uncertainty over who is responsible for ongoing maintenance of estate roads, and reduce the reputational risk that can arise from misconceptions amongst the public about the County Council's responsibilities with regards to private roads.
- 3.12 The County Council wishes to clearly establish that in most circumstances, working with developers to agree adoption of new estate roads is the preferred option, even though there is no legal duty for the County Council to take this approach. Adoption of new estate roads offers certainty to residents that roads will be kept in acceptable condition in the long term.
- 3.13 However, the policy will also address residential estate roads where there is a desire for these to remain private in perpetuity by requiring evidence of a management company having been set up to facilitate maintenance arrangements for the long term benefit of residents.
- 3.14 There are an estimated 120,000 new houses to be built in Hampshire over the next fifteen years, and therefore it is of importance that the County Council is able to work effectively with industry and local planning authorities to ensure that agreement under Section 38 of the Highways Act is reached where there is a will to do so, or that alternatively a management company is established.

The Advanced Payment Code Process

- 3.15 Another aspect of the Road Agreements Improvement Programme has been to ensure that the County Council is applying a formal Advanced Payment Code (APC) Process.
- 3.16 The principle of the process is to secure a deposit (from the landowner, developer or builder) in advance of commencement of building works, so as to provide surety for the County Council regarding the adoption of highways in new residential developments.
- 3.17 A guidance note with regard to the application of the APC process has been published on the County Council's website (serving as a living document, which will be reviewed annually):

<http://documents.hants.gov.uk/transport/APCProcess-Guidancedocumentforwebsitev22018-04-02.pdf>

- 3.18 The proposed new policy and the APC guidance note are closely interlinked, and will be appropriately referenced against each other.

The ‘threshold’ for the APC Process, and for adoption of Estate Roads

- 3.19 In the past there has been no formal threshold (in terms of number of dwellings) for the adoption of new estate roads. However, in practice adoption of developments of less than six dwellings has not been considered to be in the public interest.
- 3.20 Similarly, as per the above referenced guidance note, when the County Council developed the above referenced APC Process, it was decided to serve notice only on developments of six or more dwellings that may ultimately be considered suitable for adoption.
- 3.21 However, the new policy proposes setting a threshold of ten dwellings for both the adoption and APC processes, in line with the status of ‘major developments’ in related statutory documents including the Town and Country Planning Act, the National Planning Policy Framework and the Flood and Water Management Act, as well as with the practice of some other local authorities.
- 3.22 In the majority of cases developers will not seek adoption of developments of less than ten dwellings, and will instead put in place ongoing management and maintenance measures accordingly. However, in instances where a developer wishes for a development of between six and ten dwellings to be adopted, the County Council would consider adoption subject to specific criteria being met. Developments of less than ten dwellings do not pose a significant risk that needs managing, and it is not in the public benefit to serve an APC notice.
- 3.23 The intention is to capture response to a threshold of ten dwellings, as part of the stakeholder engagement that is undertaken.

4. Financial Implications

- 4.1 There is a financial implication associated with these roads becoming part of the County Council’s Highways asset for ongoing maintenance, albeit the cost of this can be partly offset by grant funding received from the Department for Transport.
- 4.2 Dependent upon the design of estate roads, the County Council will also seek to offset maintenance costs via receipt of commuted sums, which the developer will be expected to pay in line with the Council’s commuted sums guidance.

- 4.3 There is also a financial implication associated with application of the Advanced Payment Code process.
- 4.4 It is the duty of the County Council to serve notice, and the duty of the developer to pay the required bond surety. Where this is not secured, it could present a risk in the event that the developer fails to complete construction of the estate road.

5. Options & Proposed Approach

- 5.1 As the County Council updates and refines its policies with regards to adoption of highways, there are two key options for how to communicate the new and updated policy with developers;
- Develop and adopt a new policy, setting out how the County Council will work with developers with regards to new residential estate roads; and
 - Continue to communicate policies and changes ad-hoc, via publication of discreet documents and/or communication at industry events.
- 5.2 The County Council wishes to establish a clear policy in relation to the dedication and adoption of estate roads and on the application of the Advance Payment Code (APC), regardless of whether or not the road will be offered up for adoption.
- 5.3 The County Council also wishes to be clear that the adoption of new estate roads continues to be the preferred option for the County Council, subject to developers adhering to Hampshire County Council's technical standards which will be clarified by the updated suite of technical guidance that the Road Agreements Improvement Programme is also developing.
- 5.4 The County Council is seeking to establish a policy towards new estate roads that are not being offered, or are not suitable for formal adoption. In most cases these roads can remain private in perpetuity and the APC surety can be released, but only when developers evidence that all relevant building works are completed to an acceptable standard, and that a management company is in place.
- 5.5 The County Council is also seeking to clarify its preference to establish an early view on whether estate roads will be offered up for adoption, or there is an intention to remain private in perpetuity. One potential mechanism for this will be to utilise Section 106 Agreements to agree by mutual consent that the developer will enter into either the adoption process, or the process to seek the release of APC surety through establishing evidence of arrangements for the road to be maintained privately.
- 5.6 Finally, the proposal is that the policy sets the threshold for the APC Process and for adoption of new estate roads on developments of ten dwellings and above.
- 5.7 In the context of all the above, it is considered appropriate to set out the County Council's position clearly, in a policy statement endorsed by the

Executive Member, which is easily accessible to all parties, serving the purpose of:

- Establishing a common understanding among all parties on Hampshire County Council's policy on adoption of new highways; and
- Setting out the reasons for the status of estate roads, whether they are adopted or otherwise.

5.8 The proposed policy would summarise the County Council's approach to the adoption of new highways at the highest level. It would complement existing guidance for developers, including the Manual for Streets, which will provide higher level guidance on design, and the suite of updated technical guidance notes that will provide detailed instruction on specific technical requirements for adoption of new highways.

6. Stakeholder Engagement

6.1 An established principle of the wider Road Agreements Improvement Programme has been to invite feedback and discussion with the development industry and Local Planning Authorities (LPAs). This has taken the form of:

- Hampshire development industry workshops (attended by the Executive Member for Environment and Transport);
- the creation of an industry focus group, led by County Council officers; and
- ongoing informal consultation and discussion via meetings with stakeholders.

6.2 In line with the above approach, it is considered appropriate to maintain this level of engagement with the development industry and LPAs, prior to further consideration for approval and publication of the Policy Statement.

6.3 This will underpin the principle that the County Council is seeking to work effectively with all parties, to create an approach to road adoption in Hampshire which is mutually beneficial for the aims of all involved, based on an open and collaborative approach.

6.4 It is proposed that engagement is carried out on an informal basis, inviting comment from key local stakeholders and representative industry groups, as well as utilising the existing industry focus group referred to in Paragraph 5.1. This is as opposed to a more formal consultation process, and is based on the existing structures for engagement that are in place.

6.5 Engagement with stakeholders is proposed to happen over a two month period, with the intention that the County Council can then refine or update its draft policy as appropriate, prior to returning to the Executive Member to seek formal adoption of the new policy in early 2019.

6.6 This engagement will be in the form of an update to stakeholders on the Road Agreements Improvement Programme, which provides details of the proposed policy, on which they will be invited to provide comment.

7. Future direction

7.1 The outcome of the engagement exercise will be reported to the executive member and next steps considered.

CORPORATE OR LEGAL INFORMATION:**Links to the Strategic Plan**

Hampshire maintains strong and sustainable economic growth and prosperity:	Yes
People in Hampshire live safe, healthy and independent lives:	Yes
People in Hampshire enjoy a rich and diverse environment:	Yes
People in Hampshire enjoy being part of strong, inclusive communities:	Yes

Other Significant Links

Links to previous Member decisions:	
<u>Title</u>	<u>Date</u>
Direct links to specific legislation or Government Directives	
<u>Title</u>	<u>Date</u>
The Highways Act	1980
Town and Country Planning Act	1990

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

<u>Document</u>	<u>Location</u>
Advanced Payment Code (APC) Guidance	Hampshire County Council guidance note

IMPACT ASSESSMENTS:

1. Equality Duty

1.1 The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- a) The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;
- b) Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;
- c) Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity which participation by such persons is disproportionately low.

1.2 Equalities Impact Assessment:

It is considered that the proposal will have a neutral impact on groups with protected characteristics, as the proposed change is at a policy / procedural level, relating to how the County Council and the development industry interact, at high level only. There is no immediate impact upon service users.

2. Impact on Crime and Disorder:

None anticipated.

3. Climate Change:

- a) How does what is being proposed impact on our carbon footprint / energy consumption?

No impact anticipated.

- b) How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

It is considered that the proposal will have no impact on the need to adapt to climate change and be resilient to its longer term impacts.