

Appendix 1 Road Agreements Supplementary Policy Guidance

Introduction

This Supplementary Policy Guidance seeks to clarify the way in which new highways infrastructure is considered for adoption by Hampshire County Council, to be maintained at the public expense, or otherwise can be considered as remaining private in perpetuity.

New estate roads and their associated drainage features have long been considered for adoption via the Highways Act (1980), most commonly through agreements under section 38, which are reached by consensus between the developer and the Council.

For Hampshire County Council, working with developers to agree the adoption of new estate roads (subject to adherence to required technical standards) is the preferred option, unless there is a specific desire for the development to remain private. Adoption of new estate roads offers certainty to residents that roads will be kept in acceptable condition in the long term.

The wide-ranging programme of housebuilding in Hampshire through to 2030 and beyond, which in turn supports economic growth and prosperity in the county, reinforces a need to work effectively with both developers and Local Planning Authorities (LPAs) to enable adoption, ongoing maintenance and associated surety for residents, for the numerous developments that are coming forward.

This Supplementary Policy Guidance is intended to support this need, by encouraging a collaborative approach to the adoption of new estate roads in Hampshire, working to the mutual benefit of all parties.

Purpose of the Supplementary Policy Guidance

This Supplementary Policy Guidance is intended to act in support of Hampshire County Council's four strategic aims, namely:

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

It sets out the scope, context and methodology for the integration of new estate roads and associated features into Hampshire County Council's Highways Asset (which is maintained at the public expense) – the process commonly referred to as adoption. It also highlights the County Council's commuted sums policy that will be applied as part of adoption process.

The aim is to clarify the extent of what will, and will not, be considered appropriate for adoption, set out the mechanisms which will be used to carry out the adoptions, and clarify how the various strands of detailed design guidance are integrated.

Furthermore, there is an additional aim to clarify Hampshire County Council's approach to developments where there is a specific desire for estate roads to remain private. While these developments will be expected to comply with the requirements of the Advanced Payment Code, under sections 219-225 of the Highways Act, the County Council will facilitate mechanisms to exempt the development from the requirements of the Code and return the associated bond surety, subject to certain criteria being met.

Scope

This Supplementary Policy Guidance is applicable to all new estate roads and associated infrastructure in Hampshire.

Policy statement

It is the preference of Hampshire County Council to adopt and maintain at the public expense all new residential estate roads and associated essential infrastructure, which are considered to provide sufficient public benefit, via the provision of access to developments of ten or more dwellings. 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.

Adoption will be on the premise that roads and associated infrastructure have been constructed so as to adhere to Hampshire County Council's technical standards, and in accordance with a previously approved layout and/or configuration.

The County Council wishes to be clear that working with developers to agree adoption is the preferred approach.

However, the County Council also recognises that in some instances, there is a specific desire for some new estate roads to remain private. Where this desire is expressed, Hampshire County Council will expect developers to follow the requirements of the APC code, but will then seek to exempt the development and return the bond surety, only where there is evidence that all relevant building works have been completed, and that a management company has been established, to the authorities reasonable satisfaction.

POLICY DETAIL

Early engagement

Hampshire County Council welcomes engagement with developers at the earliest possible stage. Early engagement creates alignment with the planning process and allows a holistic view of planning and transport requirements, and can provide assurance for developers ahead of entering into formal mechanisms for the adoption of estate roads.

Developers are encouraged to engage with Hampshire County Council's pre-application service, details of which can be found at [note: this service is in development and will be launched in autumn 2019]

Establishment of Intent

It is the preference of Hampshire County Council that the future maintenance of a new development is formally agreed at the earliest possible stage, whether this is in the form of a commitment to enter into an agreement for adoption under Section 38, or a commitment to the intention for the estate roads to remain private in perpetuity.

One of the potential mechanisms to achieve this is to utilise agreements under Section 106 of the Town and Country Planning Act (1990) to secure a planning obligation by mutual consent that estate roads will be offered up for adoption or will remain private in perpetuity, subject to these obligations meeting the requirements of the planning process.

The County Council welcomes any early engagement which helps to establish intent and provide clarity to all parties. While establishment of intent alone is not sufficient to exempt a development from the requirements of the Advanced Payment Code, it can help to enable effective, collaborative progress towards this outcome.

The Advanced Payment Code

The Advance Payments Code (APC) (section 219-225 of the Highways Act) requires the builder, developer or land owner to pay a lump sum or provide a financial surety to the County Council's satisfaction before works can commence on site (these works are for the purposes of erecting a new residential building). Where an APC Bond (in the form of a lump sum or financial security) has been paid and thereafter an exemption notice is served, the Council shall refund that sum or shall release the security, as the case may be.

Hampshire County Council will serve notice of APC under Section 220 of the Highway Act 1980 within six weeks of formal notification of Building Regulations being approved and / or the Initial Notice being served. This will apply to developments of ten dwellings or more.

Further guidance on the application of Advanced Payment Code in Hampshire can be found in the following document (which is a living document, to be reviewed on an annual basis): <http://documents.hants.gov.uk/transport/APCProcess-Guidancedocumentforwebsitev22018-04-02.pdf>

Adoption Processes

Where the criteria for adoption are met and a suitable layout and design can be agreed developers will be invited to enter into an appropriate adoption agreement as soon as possible.

Agreements under Section 38

This is the preferred method of securing adoption of new highways. An Agreement under this section of the 1980 Act provides a structured robust procedure for the technical

approval of the works, regular inspections and mechanisms through which the works are completed to an appropriate standard and other Council requirements.

The works are secured by an appropriate Surety which ensures that the road works can be completed in the event of the developer defaulting. The technical details and specifications for the works must be in accordance with the requirements of the technical guidance [note: updated technical guidance is currently under development at <https://www.hants.gov.uk/transport/developers/technical-guidance>]

If a Section 38 agreement has been entered into the development will be exempted from the requirements of the Advanced Payment Code, under Section 219(4) d of the Highways Act

Section 37 Notices

The provision of this notice allows for a builder or developer to serve notice on the Highway Authority requiring them to adopt the highway after a one year period. If the Council considers that the proposed highway is not of sufficient utility to the public to justify being maintained at public expense, or does not meet [current technical standards](#) required by the Council for approval and adoption of estate roads, the Council will refute these notices and make the appropriate complaint to a Magistrates' Court. The view of the Council is that this route to adoption results in higher costs to all parties (due to the need to provide sufficient proof of the works meeting the Council's requirements after construction without inspection by the Council).

Private Roads in Hampshire

Hampshire County Council is aware that in certain circumstances, developers will have a clear preference for new estate roads to remain private in perpetuity.

While the County Council will initially expect these developments to meet the requirements of the Advanced Payment Code, it will allow developers to provide evidence so as to allow the County Council to certify that they may be exempted under section 219(4) (e) and section 219(4) (f) of the Highways Act 1980 and accordingly have the APC Bond surety returned, where it is their intention for the street to remain private, with no future requirement to adopt and maintain estate roads for the County Council.

The following evidence will be required by the County Council to certify this intention;

- Evidence that all relevant building works have been completed
- Evidence that a management company has been instated, with documented responsibility for maintenance of estate roads and associated infrastructure. Without this, both the County Council and residents lack clarity over long-term maintenance arrangements.

Fees and Payments relating to adoption

Commutated Sums

Hampshire County Council requires developers to pay a commuted sum towards the future maintenance of items that have a higher maintenance cost compared with conventional

materials or items, or would not be required save for the development. This will be applicable for all roads prior to formal adoption under Section 38 of the Highways Act.

The Council's Commuted Sums guidance is set out in the following document: [Commuted Sums](#)

Fees

Current information about fees can be found on the Hampshire County Council [website](#).

Consultation and engagement

In drafting this policy the County Council has consulted and engaged with major developers operating in Hampshire, taking note of, and addressing, issues and concerns raised by them. We have also consulted with Local Planning Authorities, and Hampshire County Council's Executive Member for Environment and Transport.

Performance and risk management

The adoption of new highway infrastructure has been undertaken for many years and in drafting this policy we have taken note of, and dealt with, all likely risks and performance issues.

The effectiveness and application of this policy will be regularly monitored as part of the ongoing management of Hampshire County Council's Road Agreements Service.

Communicating the policy

This policy will be made available on the Council's website as part of the suite of documents available to developers and other interested parties. The Council will raise awareness of the content of the policy by engaging the development industry via the Home Builders Federation and the local planning authorities via the Hampshire and Isle of Wight Planning Officers Group.

Information and training

Further information concerning this policy may be obtained by contacting the Road Agreements Service (road.agreements@hants.gov.uk)

Evaluation and review

This policy will be reviewed annually.

Prepared by

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