

## **Hinckley & Bosworth Borough Council**

### **Procedure For Adoption Of New Roads**

#### **Introduction**

1. At its meeting of 6<sup>th</sup> September 2022 the Borough Council agreed the following motion

*“Hinckley & Bosworth Borough Council, whilst understanding that the adoption of highways is a county council function, resolves that road adoptions within our district are actively pursued by challenging Leicestershire County Council and developers to constructively work together to get adoptions signed off promptly without delay. Council also resolves:*

*(a) That the borough planning department sets out within a procedure document:*

*i. The wording of planning conditions which it proposes be attached to any grant of planning permission where there are roads which will require adoption, including any notes which may also be attached to planning permissions setting out the council’s expectations regarding developer engagement with Leicestershire County Council;*

*ii. The Borough Council’s proposed means by which it will support, influence and encourage developers and the County Council to adopt unadopted highways in a timely manner when they are constructed;*

*iii. How the local plan, neighbourhood plans and supplementary planning documents can incorporate the principles set out within the procedure document.*

*(b) That the Chief Executive requests that the County Council provides a list of unadopted roads within the borough every six months and this is cascaded to members;*

#### **Background to Road Adoption**

2. The Department for Transport (DfT) has published an advice note on ‘Highways Adoption – The Adoption of Roads into the Public Highway (1980 Highways Act)’ which was last updated in August 2022; this sets out the statutory arrangements, guidance and best practice for the adoption of new highways. Leicestershire County Council as Highway Authority also publish their own advice on the adoption of new roads as part of their Highway Design Guide (Part 5). The County Council is currently reviewing this Design Guide and this document will be updated as appropriate as a result of any changes to the Guide.

3. The DfT advice note covers the adoption of roads under different circumstances:
  - a. Under s38 of the 1980 Act (between developers and the county council for proposed new roads)
  - b. Under the Private Street Works Code (PSWC) (where the adoption of private roads is sought)
  - c. Under s37 of the 1980 Act (no agreement is made but the owner or developer notifies the County Council that they want an existing road to be adopted)

This procedure note focusses only on the adoption process under s38 of the 1980 Act as that is the most common route by which developers of new residential developments will request that new roads are adopted and maintained by the County Council.

### **Adoption Under s38 of the 1980 Act & in accordance with The Leicestershire Highway Design Guide**

4. The powers conferred on the County Council under section 38 of the Act makes this the most common approach by which developers of new roads will seek agreement with the County Council to have those new roads adopted into the highway so that they are thereafter maintained at the public expense. Entering into a section 38 Agreement is entirely at the discretion of the developer, who cannot be forced to enter an Agreement. However, the 'Section 38 Agreement' can only be entered into by the County Council with the developer, the Borough Council is not a party to such agreements.
5. Section 38(6) of the Act says: "An agreement under this section may contain such provisions as to the dedication as a highway of any road or way to which the agreement relates, the bearing of the expenses of the construction, maintenance or improvement of any highway, road, bridge or viaduct to which the agreement relates and other related matters as the authority making the agreement think fit."
6. The Agreement will be subject to legal processes that only the developer is able to control – such as private rights, third party ownership, easements, covenants, drainage discharge consents – which can delay the completion of Agreements. Developers are thus strongly encouraged to consider all matters which may impede the speed with which the Agreement can be completed at the earliest opportunity so that they may be resolved quickly and not unduly delay the Agreement.

7. Before entering into an Agreement the developer must have been granted full planning permission or reserved matters where outline approval has already been granted. The Agreement is a standard document and details are inserted once agreed.
8. There may be instances where planning permission is granted and development commences to the point at which houses begin to be occupied, but Agreement with the County Council has not been reached (see 6 above). It is the responsibility of the prospective homeowner and their conveyancing solicitor to establish if a road is intended for adoption. Some roads will never be offered for adoption, this is the choice that a developer makes. Until roads proposed for adoption are adopted they remain private. It is the responsibility of the homeowner to establish who has responsibility of the maintenance of these roads.
9. Where developers intend to offer roads for adoption they are encouraged to engage with the County Council at an early stage to ensure that their plans are technically compliant and designed to the standards set out in the County Council's Design Guide. Further, developers are advised to seek the views of the statutory water authorities on drainage matters to ensure that there are no drainage impediments to roads being adopted. Whether a road is adopted or remains private can be found here:  
  
<https://www.findmystreet.co.uk/streetlist?Street=&providerId=2460&District=HINCKLEY+AND+BOSWORTH&Town=&Sort=sd-asc&SortLanguage=ENG&PageSize=100>
10. Once planning permission has been obtained the County Council will require the developer to submit plans for 'technical approval' where they intend to offer roads for adoption. , A road safety audit may also be required. This approval can become lengthy and drawn out if the plans submitted by the developer are not of sufficient quality or content or fail to take account of the advice contained in the County Council's Design Guide. Developers are strongly advised to engage with the County Council at an early stage and to refer to the Design Guide when preparing plans for technical approval.
11. Completion of the s38 Agreement will require the full payment of any fees and bond which will be required by the County Council before the Agreement can be finalised.
12. The developer should not begin construction of the development unless:

- All pre-commencement planning conditions have been discharged by the planning authority that may prohibit the commencement of construction works (see also Commencing Development, below);
13. Once the internal roads have been substantially completed by the developer, the County Council will issue a 'provisional certificate' and thereafter the developer will enter into a period during which they are required to maintain the roads in good and safe condition– this is the 'maintenance period' and is a minimum of 12 months. The developer is then required to address any defects or problems identified in a Road Safety Audit that have arisen during the maintenance period; this can also become a source of delay to the adoption if the developer fails to address these defects/problems to the County Council's satisfaction. The County Council will also need the developer to demonstrate that drainage has been installed to the satisfaction of the adopting water authority..
  14. The County Council in its Design Guide reiterates the importance of early engagement by developers and encourages developers to offer all residential developments of more than five dwellings for adoption.
  15. The County Council will indemnify themselves against the risk of any liability from unfinished works. They do this by calculating the cost of the works, including any highway structures, highway drainage and commuted sums (where applicable) and will require the developer to provide them with an appropriate surety equal to the cost that they calculate. This surety is either in the form of a bond with a recognised financial institution or a cash deposit.

### **The Extent of the Borough Council's Involvement**

16. As can be seen from the procedures set out above, the Borough Council has no direct role in the process of adopting new roads, this is a matter entirely between the developer and the County Council. This can often lead to frustrations at the Borough Council level if there have been delays to the process of adopting new roads. Annex C of the DfT note is particularly dedicated to guidance for home buyers and is especially important in making home buyers aware of the responsibilities for adoption, including any liability which may fall on them if there is a delay, or complete failure, to the adoption of roads. Part of the annex is dedicated to situations where things go wrong and sets out potential routes for advice under those unfortunate circumstances.
17. One direct role the Borough Council does have though is in the application of appropriate conditions to any grant of planning permission for new developments that might include the construction of new highway. The

Council is bound in the use of planning conditions by s70 (1)(a) of the 1990 Town and Country Planning Act in being able to impose conditions “as they think fit”; but paragraph 55 of the National Planning Policy Framework sets out the tests which planning conditions must satisfy (necessary, relevant to planning, relevant to the development being permitted, enforceable, precise and reasonable in all other respects). The Council can use what are referred to as ‘model conditions’ which are conditions which can be applied in the same way to many different types of planning permission and do not have to be written in a bespoke fashion for each and every application. Most suggested model conditions are set out in Annex A of Circular 11/95 ‘the use of conditions in planning permissions’ (which has been replaced by the PPG in its entirety apart from Annex A). However, the DfT Advice Note also suggests model conditions which can be used to help secure the adoption of new roads (see Appendix 1 to this note). As part of the County Council’s review of its Design Guide the Borough Council will discuss the use of the DfT model conditions for future decisions on development proposals. . Planning conditions cannot be used to require or secure compliance with other regulatory requirements as such conditions are deemed ‘unnecessary’, so it would not be possible for example for the Council to apply a condition(s) which required the developer to enter into a s38 Agreement with the County Council.

18. Apart from its statutory role in determining planning applications and applying certain conditions to new developments involving new roads (as appropriate and described above) the Council will seek to highlight all of the good practice set out in the DfT advice note regarding early engagement between developer and County Council by:
  - a. Highlighting the DfT Advice note, particularly Annex C, along with this procedure note on the Council’s website;
  - b. Encouraging developers to engage with the County Council during the determination of planning applications;
  - c. Incorporating appropriate wording into its Local Plan and relevant Supplementary Planning Documents (SPD); as well as encouraging local communities preparing Neighbourhood Plans to also make appropriate reference to the timely adoption of new roads.

## **Appendix 1 – Model Conditions**

### **Completion of Streets / Estate Street Phasing Plan – Conditions**

The construction of any new estate street shall not be commenced until an estate street phasing and completion plan has been submitted to and approved in writing by the local planning authority. The estate street phasing and completion plan shall set out the development phases and the standards that estate streets serving each phase of the development will be completed.

Reason: - To ensure that the estate streets serving the development are completed and thereafter maintained to an acceptable standard in the interest of residential / highway safety; to ensure a satisfactory appearance to the highways infrastructure serving the development; and to safeguard the visual amenities of the locality and users of the highway, in accordance with Policies [X, Y and Z] of the development plan.

[No dwelling or dwellings / No dwelling or dwellings within phase 1 / No more than X number of dwellings] \* shall be occupied until the estate street(s) affording access to those dwelling(s) has been completed in accordance with the Estate Street Development Plan.

\* delete as applicable

Reasons: - To ensure that the estate streets serving the development are completed and maintained to the approved standard, and are available for use by the occupants, and other users of the development, in the interest of highway safety; to ensure a satisfactory appearance to the highways infrastructure serving the approved development; and to safeguard the visual amenities of the locality and users of the highway, in accordance with Policies X, Y and Z of the Development Plan.

### **Completion of Streets / Estate Street Phasing Plan – Note**

The applicant is advised to obtain the written approval of the local highway authority for the details required under condition X, prior to the submission of such details to the local planning authority in seeking to discharge the said condition. Such details, as may be submitted to the local highway authority, could be subject to technical and safety assessments / audits, which may result in changes to the layouts and alignments, as shown on any indicative layout(s), approved by virtue of the planning permission. The applicant is advised that the local planning authority may reject details submitted to them for the discharge of the condition without evidence of technical approval from the local highway authority.

### **Management and Maintenance of Estate Streets – Condition**

The construction of any new estate street shall not be commenced until details of the proposed arrangements for future management and maintenance of the proposed streets within the development have been submitted to and approved by the local planning authority. [The streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time

as an agreement has been entered into under Section 38 of the Highways Act 1980 or a private management and maintenance company has been established].

### **Management and Maintenance of Estate Streets – Note**

The applicant is advised that to discharge condition X that the local planning authority requires a copy of a completed agreement between the applicant and the local highway authority under Section 38 of the Highways Act 1980 or the constitution and details of a private management and maintenance company confirming funding, management and maintenance regimes.

### **Submission of Details – Adoptable Streets – Condition**

The construction of any new estate street shall not be commenced until full engineering, drainage, street lighting and constructional details of the streets proposed for adoption have been submitted to and approved in writing by the local planning authority. The development shall, thereafter, be constructed in accordance with the approved details, unless otherwise agreed in writing with the local planning authority.

Reason: - In the interest of highway safety; to ensure a satisfactory appearance to the highways infrastructure serving the approved development; and to safeguard the visual amenities of the locality and users of the highway in accordance with Policies [X, Y and Z] of the Development Plan. Submission of Details – Adoptable Streets – Note The applicant is advised to obtain a technical approval for all estate street details from the local highway authority prior to the submission of such approved details to the local planning authority to discharge condition X of this consent.