

Wiltshire Council

Environment Select Committee

9 December 2014

Report of the Adoptable Estates Task Group

Purpose

1. To present the findings of the Task Group to date and recommendations for the progression of the work of the Adoptable Estates Task Group, for endorsement.

Background

2. The requirement for local authorities to adopt roads arose from legislation that created a duty on them to protect house purchasers against road charges. All roads that are adopted must be built to an 'acceptable standard' as determined by the Council and the Council must satisfy itself that the standard is robust enough to protect the public.
3. It is not necessary for all new roads to be adopted, although the majority of residential roads are; approximately 20% are not adopted. This could be because, for example, a management company is given the responsibility, or the owners want to retain ownership of the land (often on employment sites).
4. There are a number of consequences associated with delays in adopting roads, the majority of which being greatly detrimental to the residents of the development. These include:
 - Confusion over responsibility for repairs and maintenance;
 - Home owners are made potentially liable for repairs where s220 notice charges are imposed by the Council which shifts liability to homeowners in the event of the developer defaulting and roads are left in a substandard state;
 - Issues with anti social parking cannot be resolved via enforcement;
 - Uncertainty and frustration for residents;
 - Issues with waste collection;
 - Potential for significant delays in selling the properties;
 - Buyers may not be able to secure the necessary mortgage agreement due to some banks being unprepared to lend where roads are unadopted;
 - Raised iron works with the base course finish level being too low may cause damage to cars;

5. There are also consequences with regards to the Council and the amount of officer time spent on monitoring s106 agreements, on the other hand where a road is unadopted, it will not fall to the Council to rectify the state of roads where a developer defaults.
6. The key principle of 'what is acceptable' is robust at the planning stage. It includes an assessment of the standard of roads, including width, visibility, footpaths etc, in 2D. If a site has significant contours, it may be necessary to consider vertical alignment and a 3D assessment will be completed. The planning permission obtained by the developer will define a good level of detail. Planning conditions will be included at this stage.

Process

7. At some stage after planning permission is granted (a developer may decide not to build immediately) discussions will begin to obtain an agreement under section 38 of the Highways Act 1980. The developer submits plans showing all elements of construction including technical details and materials specifications; these must be to an agreed standard for the Council to agree to adopt the road. The agreement generally follows a standard (national) format. The agreement is binding on the developer to complete works to the approved plans and timescales, and on the Council to adopt the road once it is completed.
8. The developer is required to deposit a bond to cover 100% of the works with a third party, usually a bank, to ensure that the proposed works can be satisfactorily completed in the event of any default or unforeseen occurrence.
9. 11 The agreement comprises 3 phases – Part 1, Part 2 and adoption. Part 1 requires the roads to be completed to just before the final surface is laid. The Council employs full time inspectors to check the work at key construction phases. They report back to the highways case officer who will then issue the Part 1 certificate. Once the certificate is awarded the bond is reduced to 50%. No houses can be occupied until the certificate is issued.
10. 12 Part 2 is when the work is finished, i.e. when the development is completed, but includes a period of 12 months of maintenance, within which time any defects must be repaired. The road is adopted after 12 months if there are no further problems.
11. 13 If the work is sub-standard, it is possible to claim on the bond but this would be a last resort, especially if the developer was solvent and active. This is a rare occurrence. Large sites tend to have several phased agreements, so if the Council's specifications change e.g. to use LED lighting, these could be accommodated.
12. With regard to the adoption of sewers the current order of action is:

a) Wessex Water (WW) makes a vesting declaration under s104 (Water Industry Act 1991);

b) Only then is a s38 (Highways Act 1980) agreement issued.

Work of the Task Group

13. The Task Group was established prior to the elections in May 2013 based on concerns over the conditions attached to planning approvals being open to abuse or being ignored to the detriment of council activity, owner-occupiers and tenants. This is manifested in the forms of: defaulting on or being slow to pay S106 money and failing to complete the installations of lighting, sewage and other infrastructure to a satisfactory standard for adoption resulting in long delays whilst problems are resolved.

14. It was agreed that the Task Group would continue as a legacy item at the June 2013 meeting of the Environment Select Committee. Also, it was recognised that the Task Group's work was not totally independent of the CIL Task Group; Cllr Wayman sits on both Task Groups.

15. The Task Group agreed their terms of reference to be:

- Examining the regulations attaching to the drafting and the imposition of conditions;
- Examining the contractual arrangements made with Wiltshire Council;
- Reviewing enforcement processes and recommending any desirable changes;
- Reviewing the timing of and protocols for adoption, including discussions with utilities on the objectives they have for the adoption process;
- Reviewing other councils' scale of success in development adoptions and examining their protocols to identify any improvements possible to the Wiltshire Council process (Cornwall and Shropshire as large unitary authorities were suggested, specific questions to be developed).

Membership

16. Cllr Tony Deane (Chairman)

Cllr Bridget Wayman

Cllr Mollie Groom

Cllr Peter Edge

Cllr Jose Green

Cllr Peter Evans

Cllr Julian Johnson

Evidence Gathering

17. The Task Group met on 5 occasions, post election, and received evidence from the following:

Area Development Manager (Central)

Development Control Team Leader (Central)

Technical manager, Persimmon Homes

Service Director Economy and Regeneration

Head of Technical Support, Development Services

Head of Sustainable Transport

Design and Technical Director, Bloor Homes

Technical Manager, Bloor Homes

Developer Services Manager, Wessex Water

Engineer, Wessex Water (previously Thames Water)

Head of Legal Services

Persimmon Homes

18. Persimmon Homes raised a number of areas in which they experience problems. The main area of concern was resources as a result of the upturn in the volume of planning applications being created by developers when Council resources are decreasing. It was highlighted that there has been an increase in the number of part-time development control staff, such as planners & urban designers, whose posts are not covered on non-working days, this leads to additional delays. It was suggested that if part-time posts were arranged as job shares this would be acceptable and not result in the current delays. It was also noted that the 13 week target was based on full time planners and is not achievable with the current workforce available, however the service received when in touch with staff was deemed to be helpful.

19. The pre-application process was also identified as an area of concern for the following reasons:
- delays in relation to the arranging of meetings,
 - not all consultees are present at the meetings,
 - the timeline for the process is unstructured, unlike the formal application process, resulting in delays across the programme;
 - excessive fees are levied in the form of 10% of the proposed planning application.
20. It was acknowledged that the pre-application process was intended to allow applications to be fast-tracked once received, however it is not held that this is the case and that the pre-application meeting results in a list of reasons to refuse an application. The process can be helpful but is more often protracted until a satisfactory agreement is reached and adds little value to the overall process.
21. In terms of liaising with councillors, it was agreed that it may be appropriate for councillors to be present at these meetings, however if the application was particularly sensitive this may not be the case. Furthermore, the pre-application process can be lengthy enough, thus any community engagement should be provided via a designated conduit to alleviate this. Persimmon homes identified the principle pre-application consultees to be: highways, affordable housing, landscape and urban design; as these consultees have an impact on the agreement of the overall design and layout. It was deemed appropriate to contact utilities providers post application only.
22. It was highlighted that the term 'urban designers' was unfamiliar and that it may be prudent to increase the numbers of full-time planners at the sacrifice of urban designers as case officers previously fulfilled the role of considering the aesthetics of the design.
23. A subsequent issue is surrounding consultation responses and the fact that there is not a deadline to receive responses from internal consultees as there is for external consultees, this may result in not meeting the thirteen week target. It was noted that in particular the Environment Agency can be delayed in returning their response. Support would be appreciated in co-ordinating a response to the views of consultees, particularly when they are conflicting and that planners should have more responsibility and the ability to take professional decisions.
24. The Task Group heard that an overall improved approach to project management and empowering case officers to take decisions would be greatly beneficial to the process.
25. It was explained that in relation to the adoption of roads, that Persimmon Homes pursue road completion as soon as possible, but this is affected by many factors. One factor that prohibits the completion of a road is where

heavy construction traffic is still in use. Another factor is that items are often included in the application, for example landscaping and are subsequently incorporated as a condition. There is a statutory period of eight weeks to receive a decision on a discharge of conditions, but this is rarely adhered to and results in the developer needing to prompt a response from the planners.

Bloor Homes

26. The Task Group heard that one of the more frequent reasons for delays in the adoption of roads is due to the water authority - Wessex Water in Wiltshire. The water authority has its own agreement for adoption (Water Industry Act 1991, s104), which is similar to s38 in that the developer must construct the sewer to an agreed standard, which is required to be checked by inspectors and maintained for 12 months prior to adoption by the water authority. The Council will not adopt a road until the water authority has adopted the sewer so that it does not incur costs if the road has to be dug up.
27. It was noted that this has a negative impact upon residents and that they are often concerned when a road may be left awaiting adoption by the Council, even though it might be in its finished state. Until the road is adopted, it is the responsibility of the developer.
28. It was reported that developers only benefit from engagement with the highways team once planning permission has been granted, to obtain a s38 agreement. This often results in changes being required on receipt of the technical detail from the developer; despite developers being aware of the highways' requirements and including them in the specifications. Due to an effective relationship between officers, developers and their consultants, developers often commence building works prior to all agreements being in place to avoid expensive delays. An example was given in Melksham that if the developer had waited until all agreements were in place, building would have been delayed by two years. The risk in this approach is acknowledged and adjustments are made as necessary. This is demonstrative of the fact that earlier engagement would be beneficial; it was also raised that if there was a more thorough paper trail, the lack of consistency of staff would not make such an impact.
29. Where it is the intention for the roads to be adopted, this is aimed to be achieved as soon as possible. This is important in relation to the release of the bond which is held to ensure that roads are promptly adopted, as the bond may be retained indefinitely whilst roads remain unadopted. When there are delays in adoption, the developers have often left the site by the time the 12 months maintenance period begins; for obvious reasons they would prefer to be on site during this period.

30. It was highlighted that developers are not delayed by any instances of slow adoption of sewers on completion of a phase (approximately 50 – 100 homes), the top finish to the roads may be applied immediately. It was acknowledged that the Council will not adopt a road until the water authority has adopted its works; however, it was expressed that it would be beneficial for the adoption processes to be done in parallel rather than sequentially as at present and that a s38 agreement does not exclude this.

Wessex Water

31. The Task Group heard that a more pro-active approach to make the procedure of adoption more efficient would be very beneficial and echoed the proposal that running the adoptions of the roads and sewers in parallel would be a positive step forward. It was reported that Thames Water did investigate this for use on strategic development sites but it failed to go any further than the consultation stage.
32. Wessex Water is also required to put up a bond but this is only 10% of the estimated cost of completing adoptable drainage works. It was noted that these bonds are rarely called in.
33. Once the sewers are adopted based on the necessary CCTV evidence being provided there is a 12 month maintenance period, after which a second submission of CCTV evidence is made to ensure that there are no flaws or damage, this would include sagging or displaced joints. The bond is returned after the second CCTV submission; this has been the procedure for many years.
34. Wessex Water expressed a keen interest in investigating how the inspection procedure may be streamlined and made more efficient, however it was noted that circumstances are not always straightforward and delays may be outside of the control of Wessex Water.
35. Large developments are typically phased, ideally the infrastructure road would be put in but this does not always happen. It is not always possible to adopt the first phase and it may be necessary for adjoining phases to be completed prior to the adoption of sewers as they must be able to discharge into the infrastructure run. The stretch of road between phase 1 and the main road can be adopted if phase 1 is complete. Phase 1 may have its final surface completed but the infrastructure road will not be done until the development is finished. All new homes are now built with water meters.
36. Each phase is subject to a s104 agreement, which requires 50% occupancy so that any construction rubbish will be cleared from the system, so the developer will start at his own risk.

37. It was proposed that the solution would be to have both the roads and sewers enter the 12 month maintenance period at the same time as the sewers. This would mean that the developers would only complete the final surface on the roads after the maintenance period has ended.
38. It was highlighted that Wessex Water do not have concerns with the planning process, as it is typically complete at the point that they become engaged.
39. The bond that the developer puts up is retained in its entirety until the end of the maintenance period to incentivise the development to be completed to match Wessex Water's specification. The bond is held by WW or as a guarantee with the NHBC and is repaid with interest.
40. It should be noted that Wessex Water actively seeks to adopt the assets and therefore have no interest in delaying or stalling the process. It was suggested that where delays occur in 5% of cases this is due to the developer. Where a development includes affordable housing, this has no impact upon Wessex Water.

Legal Services

41. The Task Group were informed that Legal Services are involved with the s106 agreement process by way of ensuring that it is in legal order, subsequently a s38 agreement is prepared for each phase. Once the s106 agreement is signed, this ceases that involvement from Legal Services unless it transpires that there is an enforcement issue. At the end of the process, the Highways team issue the adoption certificate and a copy is sent to Legal Services, the s38 agreement is then closed with the agreement with all of the developers involved, particular in relation to a large site. It should be noted that a later phase cannot be adopted prior to one that is completed earlier in the process.
42. The role of Legal Services is to ensure that the Council is protected. It was noted that where a road is ready for adoption, sign-off from Highways is sought and the title and conditions are checked prior to the adoption going through. The phasing of developments do not pose concerns for Legal Services as long as they are assured that it does not put the Council at risk.
43. The typical timeline for sign-off from Legal Services from the point that the road is eligible for adoption is between two and four weeks. This timeframe allows for checking the land registry and correspondence etc. The adoption process has however become quicker with the use of email. Sign off will not generally take place until after the 12 month maintenance period is completed.

44. The Task Group was informed that the Council does not benefit from a specialist team to deal with large developments; this is managed by team leaders or senior members of staff. A level 2 solicitor would deal with a complex development; level 1 would deal with individual houses, the allocation of levels is based on experience. Complex work can be outsourced where necessary but this is used as a learning opportunity whereby a Council solicitor is still assigned to the work so that they may bring further expertise into the legal team. Where work is outsourced due to its complexity, Legal Services retain the responsibility to oversee it and provide instruction but the costs of doing so are allocated to the highways officer.
45. It was reported that developers are not inclined to spend funds on roads until houses on the development have been purchased therefore they negotiate trigger points to dictate when the roads are required to be built. It is the developer's obligation to activate the trigger point.
46. The Task Group heard that there can be delays in relation to processing adoptions due to the resources available in Legal Services. Workloads are managed in a complaints recognition system with three levels: important, urgent (possible negligence) and other. The system used is dependent on Highways and Planning officers who also have high demand on their resources; it appears that this results in a blame culture.
47. It was reported that developers are entitled to complain or question the amount of time the Council is taking in facilitating road adoption, any such complaints would go to the Corporate Director. It was noted that pursuing a complaint any further would be an unusual occurrence as it would be costly to undertake litigation.
48. It was felt that where issues are encountered, that this is often due to a change in staff, at which point the valuable background knowledge is lost and becomes open to interpretation. Issues with staff turnover and recruitment was held to be a difficulty, this includes the need to use locum solicitors.

Task Group Conclusions

49. The Task Group concluded that there is not an easy Local Authority solution and that due to the conflicting evidence received by the Task Group, further investigation needs to be undertaken within the service. It is deemed that the Council is currently operating in a risk adverse manner that precludes putting residents first and resolving all issues without legal impediment on their behalf.
50. The lack of consistency throughout the process in terms of personnel creates uncertainty and delays. A key method of tackling this issue would be to instil a more project management based approach, with a single

officer to oversee the entire process. There appears to be a lack of engagement with the Highways team pre-application which leads to developers concluding that all aspects are agreed when they may actually be subject to change. This post may also go some way to alleviating the issue of other officer's workloads.

51. A lack of consistency was also identified in terms of practices across the county which requires addressing. It would be beneficial to have a key officer per area to maintain an overview and a mechanism to ensure this is shared, perhaps in the form of a 'best practice' guide to govern this and build on the regular meetings held between the area development managers and team leaders currently.

52. The lack of engagement across all involved parties was a common theme of the testimonies received, particularly in relation to councillors. Improving engagement would enable the impacts of development to be properly assessed.

53. A change of focus from enforcement to compliance would be beneficial to the process in that they would be able to identify issues at a much earlier stage.

Recommendations:

The Task Group make the following recommendations on recognition of there being a significant issue that is need of resolution:

- 1. That due to the conflicting evidence presented to the Task Group that the Task Group is stood down in lieu of further investigation and review of the process by the service;**
- 2. That the review is completed by a suitable individual or small team who is able to take a fresh and somewhat impartial view. This may include consideration of best practice utilised elsewhere, the use of bonds, the use of New Homes Bonus monies as a means of funding the streamlining and rationalising of the planning process; a revised template for s106 agreements and the need for additional officer training;**
- 3. That the Task Group reconvene once the review has been undertaken to support its progression and implementation.**

Next Steps:

An individual or team should be identified to undertake the review as previously described in preparation for the Task Group to meet with them in January to discuss the process and scope of the review. The Task Group will update the Environment

Select Committee in the process to be taken forward at its meeting on 17 February 2015.

Cllr Tony Deane - Chairman, Adoptable Estates Task Group

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