

## **ESTATE ADOPTION JOINT TASK GROUP**

### **1 INTRODUCTION**

- 1.1** The task group was set up in August 2010 following concerns expressed by members of both Gloucester City and Gloucestershire County Council regarding the adoption of roads on new housing estates. This matter was highlighted during discussions at a Gloucester City Council task group looking at highway issues. At the same time two county councillors were trying to address the concerns of residents on particular developments and it was recognised that this was a suitable topic for joint scrutiny.
- 1.2** Members were concerned that it can take years from the time work on a new housing estate is finished to when the roads are adopted. The average length of time for adopting estate roads following the completion of a legal agreement is thought to be between four and five years. There are examples where roads have still not been adopted 14 years after building work has ended. It is important to distinguish between these roads where negotiations are continuing and other roads where there is no prospect of adoption and the developer and residents are fully aware of the situation.
- 1.3** This can result in public open spaces not being maintained and problems with litter, street lights, road repairs, grass cutting, parking and obstruction of service vehicles. Developers do not have the same duty of care as the highway authority during the period that they are responsible for roads before adoption. For example, they are not required to remove obstacles or clear snow.

### **2 BACKGROUND**

#### **2.1 Membership of the task group**

Gloucester City Council - Cllrs Sebastian Field, Jan Lugg and Lise Noakes

Gloucestershire County Council – Cllrs Phil McLellan, Chris Pallet, Shaun Parsons and Mike Sztymiak

## **2.2 Terms of reference**

- To understand the process for adopting roads on new housing estates and recommend ways that this can be improved.
- To look at specific sites where roads remain unadopted after many years and make recommendations to move things forward.
- To receive information on the number of unadopted roads across Gloucestershire.

## **3 WHO DID WE SPEAK TO?**

3.1 The task group spoke to a number of people with an interest in the estate adoption process. These included:

- Brian Jones, Newland Homes
- Steve McPherson, Bloor Homes
- Sarah Stimpson, Interim General Manager, Severn Trent Water
- Neil Troughton, Principal Area Manager, Development Co-ordination and Transport Planning, Gloucestershire County Council

They were asked questions on the current process for adopting estate roads, difficulties that they encountered and areas for improvement.

3.2 Rob Eaton, Head of Development Services at Gloucester City Council, was unable to attend a meeting of the task group but he was asked for his views from a development control perspective and has kindly provided comments.

3.3 Severn Trent Water was chosen as the water company to give evidence to the group as it covers the largest part of Gloucestershire although it is important to note that there are other water companies operating in the county. These include Thames Water, Welsh Water, Bristol Water and Wessex Water.

3.4 The task group considered the problems at specific sites in Gloucester, Cheltenham and Tewkesbury. This gave members a better understanding of the different issues that arise during the adoption process. It was not practicable to investigate individual cases in detail and the efforts of the task group focused on improving the process in the future.

3.5 The members would like to thank all of the people who have been involved in the review for the open and honest way in which they provided information to the task group.

## **4 WHAT DID WE LEARN?**

### **4.1 Road adoption**

- 4.1.1 An 'adopted' road is one that is maintained at the expense of the public purse. From the point at which a road is adopted, the responsibility for maintenance of the highways (including associated infrastructure like street lights, kerbs and verges) and public liability, fall to the local highway authority, which in Gloucestershire is the county council. Section 38 of the Highways Act 1980, as amended by the Local Government Act 1985 and the New Roads and Streets Act 1991, allows highway authorities to adopt by agreement roads and highways and maintain them at public expense.
- 4.1.2 As a standard part of 'section 38' agreements, the highway authority requires the developer to take out a bond to a value equivalent to the total cost of the works plus a percentage to cover possible administration and contractual costs. The highway authority can call upon the bond if the developer fails in their obligations under the agreement.
- 4.1.3 The 'advanced payment code' requires the county council, as the local highway authority, to serve notice on a developer within six weeks of approved plans being deposited with the district councils. This applies where it is proposed to erect a building subject to building regulations and the building will have a frontage on a private street, although certain exemptions apply. On occasions there had been problems with the district councils not contacting the county council in time and consequently bonds were not in place.
- 4.1.4 The road adoption process in a section 38 agreement is split into three parts. Part 1 involves basic works to make sure the road is safe for people to live adjacent to. Once these works are complete a part 1 certificate is issued and occupations can occur. Part 2 relates to the completion of all highway works (including the surfacing of the carriageway), at which point a part 2 certificate is issued. This is followed by a 12 month maintenance period (part 3) before formal adoption of the road, at which point a final certificate is issued. A clause is included in the section 38 agreement that prevents the highway authority from issuing a part 2 certificate until the drainage scheme has been built to the required specification and the relevant water company have confirmed their intention to adopt the apparatus.
- 4.1.5 The highway authority take the view that once occupations have occurred on a development site, the estate road between that dwelling and the existing public highway can be considered highway, albeit that it is not maintainable at the public expense. The public rights to use that 'highway' are from that point on protected by statute, and movement along that 'highway' can only be restricted or prohibited by way of a Traffic Regulation Order.

- 4.1.6 It is worth noting that in Gloucestershire there are a number of development sites that would include new infrastructure, including new estate roads, that the highway authority is aware of but where there has been no contact from the developer. There are currently more than 100 roads in this category. Some of these development sites may not have been granted planning permission so cannot be implemented, some may have the benefit of a planning permission but have yet to be built and others will be where the developer has commenced development but has not applied to the highway authority for an adoption agreement.
- 4.1.7 Unfortunately in some cases developers cease trading before the road adoption process is complete. In these cases no one is responsible for their upkeep though in practice the people living there often undertake some maintenance.
- 4.1.8 There are a number of other historic highways in Gloucestershire that are not maintainable at the public expense which have not been created as infrastructure requirements for new development. These are usually ancient unadopted highways and the recommendations in this report do not cover such roads.

## **4.2 Drainage and sewer adoption**

- 4.2.1 The Water Industry Act 1991 sets out the procedure for the adoption of new sewers in England and Wales. If a developer chooses, they may enter into an agreement under section 104 of this act. Water companies follow broadly similar procedures to highway authorities and require developers to take out a bond to cover the cost of remedial works if the sewer is not constructed to the required standard.
- 4.2.2 Water companies cannot refuse connection on grounds of capacity unless the issue has been addressed through the development control process. Unfortunately water companies are not statutory consultees in the planning process and are not necessarily aware of development proposals. Connections to systems with insufficient capacity can result in flooding and there have been examples of this happening in Gloucestershire.
- 4.2.3 Proposed new legislation would result in automatic adoption of private sewers regardless of age or condition. Developers will be required by law to construct sewers to a national standard unless local standards have been introduced. For new connections the sewers would be adopted from when the first bill was raised on a property. Early indications are that the new legislation will become effective from the Autumn of 2011.
- 4.2.4 Severn Trent Water are working hard to identify 'problem' sewers that have not been adopted and are taking steps to ensure that remedial work is undertaken before they become responsible for future maintenance.

### **4.3 Developers' perspective**

- 4.3.1 Gloucestershire was by no means the worst area, and the approach compared favourably to other areas, but there was scope for improvement. Most developers are anxious that roads and sewers are adopted at the earliest opportunity. Developers like to apply the final road surface as soon as possible to aid sales and reduce their liability but cannot achieve adoption until the sewers have been inspected and the water company has confirmed their suitability for adoption. The water company requires 50 per cent occupancy before they will inspect. Delays result in additional costs being incurred in maintaining estates, for example grass and hedge cutting.
- 4.3.2 The highway authority is reluctant to adopt roads when construction traffic is still on the site. This meant that residents on large developments may have a long wait for final surfacing and adoption.
- 4.3.3 There are examples of conflict between the requirements of the local highway authority and recent changes to national residential street design guidance including the aims of the 'manual for streets'. Landscaping within or adjacent to the highway can cause problems if no one is prepared to take on responsibility for maintenance. In some cases the landscape requirements of planning consents are not acceptable to the highway authority, especially where such requirements would place an additional financial burden on the local highway authority.
- 4.3.4 Some concern was expressed that the local highway authority could respond to the same technical submission three or four times, each time raising new issues. Initial sieving of submissions by technical officers was felt to be crucial to ensure that a minimum amount of information has been supplied in order to allow the local highway authority to make a comprehensive response to the submission.
- 4.3.5 The lack of a clear point of contact at Severn Trent Water sometimes led to difficulties and significant delays in the adoption process. Wessex Water who covered South Gloucestershire had a much better approach. There was a clear point of contact and their information requirements were less onerous. This meant that sewers and drainage schemes could be adopted much sooner.

## **5 WHAT CAN WE DO?**

The estate adoption process is complex but the members of the task group believe that steps can be taken to improve current practices. Action is recommended in the following areas:

### **a) Partnership working – six district councils, Gloucestershire County Council, water companies and developers**

*The task group recommends that for new developments of 10 or more houses project teams are formed as early as practicable before planning permission is*

*granted. These teams should routinely include representatives from the district council as the local planning authority, the county council as the local highway authority, the relevant water company, the developer and any other stakeholders as and when required. As the district council is likely to be the first point of contact for developers it should act as the lead authority in bringing project teams together.*

*This approach should be set out in the forthcoming Gloucestershire Manual for Streets. This document cannot be adopted as a supplementary planning document but could be given the same weight if it is adopted by the county council using the same process.*

*It is further recommended that the relevant water company is consulted at the pre-application stage of developments of 10 or more houses to ensure that their detailed input is provided at the earliest opportunity.*

This will ensure that the local planning authority, the highway authority, the water company and the developer work together from the outset. This should help avoid problems later. For example, the water company will have an opportunity to comment regarding any sewer and drainage issues and the highway authority will be able to comment on landscaping conditions. For this approach to work named contacts will need to be provided by each organisation at an early stage in the process.

The involvement of water companies will allow the cost of meeting drainage conditions to be quantified before a planning application is approved. If the cost of satisfying such a condition is disproportionate to the value of the proposed development and as such, unreasonable, the condition would fail the relevant tests of Circular 11/95 and may not be lawfully imposed. In these cases the planning application would have to be refused.

**b) Building control – six district councils**

*The task group recommends that robust arrangements are in place to ensure that each district council informs the county council when the approved plans have been deposited with building control for a new development.*

This will help to avoid any recurrence of problems when the advanced payment code has not been put in place because the county council as the highway authority has not contacted the developer within four weeks of building control approval.

**c) Staged adoptions – Gloucestershire County Council**

*The task group recommends that for larger developments, where more than one new estate road is covered in a single adoption agreement, the highway authority allows a staged adoption process. However, this offer will only be made in those circumstances where that section of the new estate road has*

*been completed to a suitable standard, links directly to an existing part of the public highway and does not provide the sole means of vehicular access to a as yet incomplete section of new estate road. This will prevent residents waiting until the whole estate is completed before the final top surfacing of roads.*

For this to happen, the highway authority will need a cash retention to be used to remedy any failure caused by abnormal loads (such as construction traffic) but this will be of much lower value than a bond. To help developers, it may also be possible to reduce the bond values for stage 2 of the adoption process as the risk to the highway authority is significantly less.

**d) Remedial issues – Gloucestershire County Council**

*The task group recommends that a quicker and more straight forward process is introduced for informing developers of remedial issues. Every effort should be made to respond to developers electronically as soon as possible following an inspection. In any event a response should be made in writing within five working days.*

It is noted that the highway authority intends to introduce handheld electronic devices to record remedial issues in an effort to improve efficiency. In the interim, it is suggested a hand written form setting out what is required is given to the developer at the time of the inspection with confirmation by letter or email afterwards.

This approach will avoid the sometimes lengthy delays between an inspecting officer visiting a site and formally notifying the developer of any remedial issues. It will ensure that momentum is not lost and the developer can begin taking action immediately to remedy any problems.

**e) ‘Commuted’ sum payments – Gloucestershire County Council**

*The task group recommends offering developers the option of making ‘commuted sum’ payments so that the county council can adopt roads even if remedial work is outstanding.*

This approach may be particularly attractive to smaller developers who have less expertise in constructing roads to the required standard. It would also allow progress to be made if a developer was struggling to resolve a particular problem.

**f) Sewer and drainage issues – Severn Trent Water and Gloucestershire County Council**

*The task group recommends acceptance of the offer from Severn Trent Water to cross reference the list of unadopted estate roads in Gloucestershire (within their area) against existing ‘section 104’ agreements.*

This will allow those estate roads where sewer adoption is the only reason that the road cannot be adopted as public highway to be identified and Severn Trent to prioritise those sites for early resolution of the outstanding sewer adoption issues.

The task group would like to thank Severn Trent Water for their offer to survey six sites in the county with known sewer problems as part of a pilot CCTV scheme. Neil Troughton from Gloucestershire County Council has undertaken to provide a list of sites.

**g) Planning ‘informatives’ – six district councils**

*The task group recommends that each district council as the local planning authority includes ‘informatives’ in planning decisions recommending that the developer erects signs at the entry point into new developments indicating that the roads are the responsibility of the developer. This should include a 24 hour telephone contact number for the developer.*

This approach will ensure that local people are clear where the responsibility lies for maintenance when they move into a new home.

**h) Local validation process – Gloucestershire County Council**

*The task group recommends that the highway authority introduces a process of validation of technical submissions against a local validation checklist. Where submissions are lacking in detail, the developer should be informed of this in writing and requested to submit further information. The developer will be informed that no further assessment will take place until such time that the missing information has been supplied.*

This approach will ensure that full and comprehensive responses can be made to technical submissions. It will also help developers in that they will not feel that they are constantly being asked for different bits of information.

**i) Monitoring progress – Gloucestershire County Council**

*The task group recommends that the highway authority provides quarterly lists to county and district councillors and Development Control Teams setting out progress on the adoption of roads.*

*This should include the following information together with notes on progress:*

- Sites that have a section 38 adoption agreement and have entered maintenance*
- Sites that have a section 38 adoption agreement*
- Sites that have been technically approved but where no agreement is in place*
- Sites that the highway authority has been contacted on but where there is no technical approval or agreement*

- *Sites that the highway authority is aware of but where no contact has been made by the developer*

This will allow members to keep an eye on progress and follow-up on issues when required. The information can be circulated to members by the Democratic Services Team in each council.

## **6 CONCLUSION**

- 6.1** This review has clearly demonstrated the value of scrutiny in providing an opportunity for members to have a fresh independent look at how things are done and suggest areas for improvement. The joint approach involving members from Gloucester City Council and Gloucestershire County Council has worked well and there may be other opportunities to involve county and district members in future joint scrutiny reviews.
- 6.2** Our recommendations have concentrated largely on improving how the various agencies work together. There is clearly scope for a more 'joined up' approach. This will not only lead to better outcomes for local people but also to more effective and efficient processes. With everyone involved from the outset those problems that take so much time to resolve later should be avoided. In overall terms there should be a significant saving as the cost of remedial work and the staff time in dealing with problems later can be considerable.
- 6.3** We know that there are ongoing problems with the adoption of roads in various parts of the county. Some of these will be difficult to resolve, particularly where developers have gone out of business, and we cannot offer any easy answers. We must, however, push to get these resolved where we can.
- 6.4** We address our recommendations to Gloucestershire County Council, the water companies operating in the county and the six district councils. In line with the county council's scrutiny monitoring process, we will seek progress reports after 6, 12 and 18 months.

***Councillor Jan Lugg  
Gloucester City Council***

***Councillor Phil McLellan  
Gloucestershire County Council***