

REGENERATION, COMMUNITY AND CULTURE OVERVIEW AND SCRUTINY

17 MARCH 2011

MEMBER'S ITEM: ADOPTION OF ROADS ON NEW DEVELOPMENT SITES

Report from: Robin Cooper, Director of Regeneration, Community and Culture

Summary

This report is in response to a request from Councillor Godwin and provides information on the adoption of roads on new development sites.

1. Budget and Policy Framework

1.1 Under Medway's Constitution, Overview and Scrutiny rules (Chapter 4, Part 5, Paragraph 9.1) Councillor Godwin has asked that an item on this issue is included on the agenda for this meeting.

2. Member's Item request

2.1 Councillor Godwin's request is:

"The Council adopts roads when they are brought up to a publicly adoptable standards on new development sites. It is for the developer to bring the roads up to an adoptable standard and on several sites in Medway roads are in a state of limbo because they have not be handed over to the Council and the developer seems to lack the will to do the necessary works.

For residents and businesses located in such streets it can be an ongoing source of frustration and inconvenience. Can officers ascertain the scale of the problem and outline what the current problems are and whether the council is in a position to solve them and whether it requires any changes in national legislation."

3. Director's comments

3.1 The guiding principle behind the adoption of roads on new developments is that they should impose no burden on the Council and its taxpayers. This means that the Council should neither spend its own money to remedy poor or uncompleted works, nor accept any inadequately designed work that will impose unusual maintenance burdens on the highway maintenance budget after adoption.

3.2 The adoption take place under powers in Section 38 of the Highways Act 1980 (S38s) and are an agreement that the Highway Authority will adopt subject to the roads being constructed to its satisfaction. The important point is that the Council does not require the developer to have the roads adopted and cannot force them to do so. The nature of the agreement is that the Council's primary response to a failure on the part of the developer is to refuse to adopt until the work has been carried out satisfactorily.

3.3 The Council does now require developers to enter into a Bond to enable completion of the works in the event that a developer goes into liquidation. However this is entered into as part of the Agreement.

There are six major sites where S38s have been prepared and are still awaiting signature by the developers. This means that there is no Bond and therefore the Council has no leverage. They are:-

- Grange Farm
- Medway Gate
- Bells Lane, Hoo
- Hoo Road, Wainscott
- All Saints, off Magpie Hall Road
- St Mary's Island.

3.4 There are three further sites where there is a S38 Agreement but where the developer repeatedly delays completion of outstanding defects and so delays adoption. Of these all are now close to completion. The reason Bush Road was delayed was because the developer was unable or unwilling to complete the drainage system as they did not control the land:-

- Bush Road, Cuxton
- Gun Tower Mews, Peacock Rise.

3.5 St Mary's Island has been a source of particular difficulty over the years. As the developer will not complete any agreements for any of the phases, no Bond exists and the Council has no power to force completion. On many occasions list of remedial works have been prepared following inspections but these are rarely completed and usually delayed. As a result of this further damage occurs to the roads which needs to be rectified. At one time, given the length of time some

of the roads had been constructed, a draft Section 37 Agreement was prepared. This is another provision of the highways Act that enables the adoption of completed roads and would have been a simpler and less onerous process. However the developer has declined to follow this route. A further proposal has been made in that the developer pays the Council the cost of remedial works which the Council would then organise and implement and then adopt on completion. This approach has worked well at Sir Evelyn Road but the overriding principle would still be that there should be no risk to the Council.

- 3.6 As a result of the continuing frustration it has been proposed that changes be made to the standard S38 agreement that would require completion of all works within a set time of full occupation, failure to do so leading to an immediate call on the Bond. This would make it easier to pressurise developers who had signed agreements to complete outstanding works and would make the calling in of the Bond much easier. However this would not apply retrospectively and would not apply to developers who delayed completion of the agreements.
- 3.7 It should be noted that when people buy houses on new developments the Land Search will tell them whether the road is adopted or whether S38 agreement exists with the Council for adoption.

4. Risk Management

- 4.1 The Council is only at risk of it takes on roads that it knows to be improperly designed or constructed. If the Council does not adopt the roads because the agreement is not signed or the works are not completed to its satisfaction it would be for the purchasers of the houses to take action against the developer if the road status was misrepresented. If the road is unadopted insurance claims for accidents, or damage to vehicles will fall on the developer not the Council.

5. Financial and Legal Implications

5.1 Financial implications

There are no financial implications associated with this report as the current practice is to recover all costs from developers.

5.2 Legal implications

As set out in the body of the report, section 38(3) of the Highways Act 1980 gives the Council the power to agree with any person to adopt as maintainable at public expense any highway constructed and owned by that person.

6. Recommendation

- 6.1 The Committee is asked to consider the Member Item and officer response.

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Background

Highways Act 1980 (S38s)