

ADOPTION OF ROADS AND SEWERS
(Report of the Overview and Scrutiny Panel (Environmental Well-Being))

1. INTRODUCTION

- 1.1 This report contains the background to, the methodology used and the findings following completion of a study on the adoption of roads and sewers in Huntingdonshire.
- 1.2 The decision to undertake the study followed discussions by the former Overview and Scrutiny Panel (Service Delivery) on problems being reported by residents concerning delays in completing adoptions of roads. It was acknowledged that this is a national problem. The Panel decided to establish a Working Group to investigate the processes and procedures involved with a view to improving the speed of the adoption process. There have been changes to the membership of the Working Group since its establishment, with the final membership being Councillors J D Ablewhite, Mrs P A Jordan, M F Shellens, J S Watt and P K Ursell. Former Councillor D A Giles was appointed on to the Working Group and assisted with the investigations until April 2008 and the late Councillor Mrs C A Godley also participated in the study during its initial stages.
- 1.3 Councillor P K Ursell has declared a personal interest in the study by virtue of his employment with a local developer.
- 1.4 Discussions have been held with relevant District Council Officers and the Working Group is grateful to them for the support provided during the course of their investigations. Further details appear in section 3.

2. AIMS OF THE STUDY

- 2.1 It was originally decided to undertake a study on the process of adopting estate roads and sewers with an aim to put measures in place that could streamline the process and make the procedures more transparent, initially by investigating the feasibility and potential benefits of introducing a District-wide register of unadopted roads and sewers.
- 2.2 Having investigated the feasibility and utility of introducing a register of unadopted roads and sewers in the District, it has been concluded that this would not be appropriate given that the County Council already has a statutory duty to maintain a register of adopted roads, a register of unadopted roads would very quickly become out of date as new developments were completed and that maintenance of a register would have resource implications for the District Council. Nevertheless, the importance of the principle that underlies such a register has been acknowledged but it has been decided that it would be more appropriate to focus on ensuring that the necessary procedures are in place so that roads and sewers are adopted as soon as they become eligible under the respective statutory procedures.
- 2.3 In light of the above, comprehensive investigations have been undertaken into the existing processes and procedures for adoption, with a view to

making recommendations to improve upon the current systems and practices, and into the wider implications of these procedures.

3. WORKING GROUP'S ACTIVITIES

3.1 The Working Group has met on a number of occasions and has been assisted in their deliberations by Councillor Peter Bucknell in his capacity as Executive Councillor for Planning Strategy and Transport. The following District Council Officers have been interviewed:-

- Mr Chris Allen – Projects and Assets Manager
- Mrs Heather Gilling – Communications and Marketing Manager
- Mr Steve Ingram – District Council's Head of Planning Services
- Mrs Lesley Kent – Land Charges Officer
- Mr Colin Meadowcroft – Head of Law, Property & Governance
- Mr Andy Moffatt – District Council's Development Control Manager
- Mr Graham Shipley – Principal Building Control Officer

The Working Group has also spoken to Mrs Sue Reynolds – Highways Development Control Manager, Cambridgeshire County Council.

3.2 In addition to interviewing the above Officers, the Working Group has undertaken comprehensive research in connection with the following:-

- Department for Environment, Food and Rural Affairs (DEFRA)
- Department for Transport (DFT)
- Anglian Water Authority
- District Council's Legal and Estates Division
- District Council's Environmental and Community Health Services Division
- District Council's Land Searches Section
- County Council's Transport Asset Management Section
- Home Insurance Providers

3.3 The section below summarises the Working Group's findings.

4. STUDY FINDINGS

4.1 As there had been a long standing agreement that the District Council would not scrutinise County Council services and *vice versa*, it was initially decided to concentrate on the adoption of sewers. This is often (but not always) a necessary precursor to road adoption.

(a) Sewer Adoption

4.2 Extensive research has been undertaken into the processes and procedures involved in the adoption of sewers, which is an important part of the study as Highways Authorities will not usually adopt roads until the associated sewers have been adopted by the body responsible for drainage. Common causes of delay in sewer adoption are as follows:-

- proposed deviations from the Sewers for Adoption Guide;
 - commencement of work by developers before technical approval has been received from the sewerage undertaker;
 - legal disputes and legal matters; and
 - developers being reluctant to complete remedial works once they have completed a site.
- 4.3 On the basis of these investigations concern has been expressed that homeowners are unaware of their current liability towards paying for drainage repairs to their property. It has become apparent that when land searches are submitted, the question of drainage is not automatically raised. The District Council's Land Charges Section have advised that any matters relating to drainage are referred to Geodysys, a provider of land and property information for the East of England, which was established by Anglian Water in June 1997 to manage its water asset information and to provide water and drainage search services to all property professionals. Solicitors therefore have to request drainage searches at an additional cost of £36 - £51 to the client. While property deeds stating whether the owner of the property is responsible for the cost of maintaining the sewer that serves it, a suggestion has been made that Solicitors should be encouraged to advise clients to undertake drainage searches when purchasing properties in order that they are fully aware of the extent of their potential liability in this respect and are able to obtain appropriate insurance cover if it is deemed necessary.
- 4.4 Enquiries have been made with home insurance providers to investigate whether policies cover drainage and sewerage repairs at a property. Advice has been received that policies are unlikely to provide cover for such repairs. This issue is also referred to within DEFRA's review of private sewers (see paragraph 4.9).
- 4.5 Various estates in the District that have experienced sewerage problems in the past have been considered, namely Kings Road, Dukes Road, Queens Gardens and Regents Road, Eaton Socon and Christie Drive, Huntingdon. It was initially intended to conduct a site visit to the estates but it was concluded that little extra information would be gained from visiting the sites. Information has been obtained from the District Council's Environmental and Community Health Services Division on the Council's powers to intervene in certain circumstances when drainage problems occur. In such cases, if the blockage is not cleared up within 28 days, the District Council may serve notice and carry out the necessary works. The cost of the works is recharged to the properties concerned or a charge is placed on the property. Although there are concerns over the 28 day period required before the District Council can intervene, Members are nevertheless satisfied that intervention processes are available and in place to address such issues as a last resort.
- 4.6 During the course of the investigations, it became evident that the estates referred to above had been constructed by public sector housing authorities but are now either privately owned or have been transferred to a registered social landlord. With regard to the latter, the terms of the Large Scale Voluntary Transfer agreement have been examined and advice has been received from the District Council's Legal and Estates Division that the District Council still has a liability to pay for drainage repairs for social housing, should maintenance costs exceed a certain sum in any year. Whilst Huntingdonshire Housing Partnership is liable for the initial costs of up to

£65,000, over this figure the District Council would then be required to contribute up to a further £65,000 towards the cost of repairs. Should total maintenance costs exceed the sum of £130,000 in any year, the District Council would still be liable, however, the matter would be referred to arbitration to establish who would be responsible for meeting the cost. These provisions will cease in 2015.

- 4.7 Investigations have been carried out into the Protocol on Design, Construction and Adoption of Sewers in England and Wales which was introduced by DEFRA in 2002 and reviewed in 2005. The Protocol was primarily intended to ensure that all new sewers constructed since then would be built to an adoptable standard. The 2005 review of the Protocol concluded that owing to the cost involved and a lack of legal powers to compel developers to construct sewers to an adoptable standard, sewers were still not being built to this standard. This point has further been reinforced by the District Council's Principal Building Control Officer, who has advised the Working Group that the Building Control Section are unable to enforce the standards to which sewers are constructed and that current Building Regulations allow developers to construct sewers to a standard that is lower than that required for adoption purposes. One of the recommendations proposed within DEFRA's review of private sewers was that the Protocol should be made mandatory and incorporated within Part H of Building Regulations. The consultant appointed by DEFRA, W S Atkins, had established that only 1% of developments built after the publication of the Protocol were built in accordance within the terms outlined within the document.
- 4.8 It appears that water authorities see little benefit in adopting sewers and they are regarded as a financial liability. Investigations have been carried out into the standards to which Anglian Water requires sewers to be constructed and it has become apparent that their standards are outlined within a publication entitled *Sewers for Adoption*. This guide specifies the industry standard and sets out the design standards and specifications, together with the procedure, legal arrangements and timescales for the adoption process. Additionally, the Principal Building Control Officer has advised that the National House-Building Council (NHBC) standards for sewer adoption are not the same as those identified by Water Authorities. It has become clear that the existence of various protocols and standards have contributed towards the delay in the adoption process. At this point in the study Members formed the view that more standardisation in this respect was required. Furthermore, in order to encourage water authorities to improve their own adoption procedures, they considered whether there would be merit in establishing a forum of local authorities to lobby water companies on this matter.
- 4.9 Whilst undertaking their investigations into sewer adoption, Members were encouraged by an announcement made by DEFRA on 15th December 2008, which stated that from April 2011, responsibility for 200,000km of privately owned sewers and lateral drains in England would be transferred to statutory water and sewerage companies. This would mean that a total of 55% of private drainage would be under the direct control of water and sewerage companies. This decision had been reached following an extensive review of private sewers which had commenced in 2001, and had been prompted by a consultation exercise in 2003. The District Council had submitted a response to the consultation, the content of which has been reviewed during the study. DEFRA has advised that the cost of the transfer will be met by an increase in

the sewerage element of bills, estimated to equate to £3 to £11 per year, dependent upon the sewerage company in question.

- 4.10 The Government intends to consult on draft regulations in Spring 2009 and to present them to Parliament in Autumn 2009. It is intended that the regulations will specify detailed arrangements for the implementation of the transfer. The Panel is keen to raise the profile of the DEFRA announcement to all Members and local residents and have suggested that a press release be issued and article be published in the District Wide magazine (see Section 5 below). It is anticipated that DEFRA's initiatives on private sewers will expedite the road adoption process.
- 4.11 Enquiries also have been made with the Department for Transport to identify whether or not there are any proposals to review the process for road adoption but no intentions in this direction have been identified.

(b) Road Adoption

- 4.12 Having completed the primary work, investigations continued on compiling evidence on road adoption procedures. Given that many District Council Members receive enquiries from residents on this subject, it was thought to be a useful exercise to make this information available to Members to help them to deal satisfactorily with such enquiries.
- 4.13 Members have been advised of the background to Section 38 Agreements, established under the Highways Act 1980, which enable developers to enter into an agreement with the Highways Authority (in this case, Cambridgeshire County Council) for the construction of new roads with a view to adopting them in the future. Under this Agreement, a developer is required to construct a road to an appropriate standard to the satisfaction of the Highways Authority and in accordance with the agreed specification. The Highways Authority is responsible for negotiating the Agreement and for the issue of guidance to developers, but the latter is often regarded as inconsistent and confusing for developers. Whilst it has become evident that developers may not always construct roads to an adoptable standard, it has been acknowledged that there is little incentive or penalty associated with completing the adoption process. It is also the case that it would be costly for Highways Authorities to take legal action against developers who fail to construct to the required standards.
- 4.14 Common reasons why there are significant delays in the road adoption process are as follows:-
- land or legal disputes;
 - remedial works being undertaken where a defect has occurred in construction;
 - the need for roads to be adopted sequentially as they cannot be adopted unless they connect directly to an adopted highway;
 - changing specifications and standards of construction – e.g. lighting; and
 - developers not building sewers to agreed plans which creates problems for their adoption with the knock-on effects for roads.

The majority of problems with the adoption process result from developers failing to complete remedial works to development sites, which usually are of a minor nature. Complaints received often relate to unsafe footways and carriageways. Delays in communication between the County Council and developers have been found, which may be attributed to the length of time taken to receive and respond to correspondence. Some progress is being made with regard to the latter.

- 4.15 Members have discussed with Mrs Sue Reynolds, County Council's Highways Development Control Manager, the County Council's procedure for road adoption. They have been advised that the County Council is dependant on developers approaching that Authority with a view to entering into Section 38 Agreements. No legislation exists to compel developers to work towards having estate roads adopted or to enter into an agreement with the County Council.
- 4.16 In terms of the Agreement process, on signing an Agreement developers are required to complete developments to which they relate within two years. This requires all carriageways, footways, drainage and lighting to be completed to a satisfactory standard. Upon completion of the initial works, a certificate is then issued.
- 4.17 All Section 38 Agreements are covered by Bonds, which are calculated on a linear metre basis. £800 per linear metre is charged under the Bonds. The Bonds are used as a precautionary measure in instances where developers fail to complete any works. To date, the County Council have only once called in a Bond.
- 4.18 Mrs Reynolds encourages all Planning Authorities within the County to use Planning Conditions (and the enforcement of them) to ensure that developers complete all infrastructure works on a site prior to the occupation of properties. However, the District Council's Head of Planning Services has stated that that the District Council does not have any powers to compel developers to construct to an adoptable standard. The Planning process stands alone from the Building Control process. Whilst it may be possible to propose related conditions on larger developments (e.g. Loves Farm, St Neots) it is often difficult to justify the imposition of such conditions on smaller scale developments. There is no legal requirement for a developer to put sites up for adoption. The adoption process is therefore treated as a separate legal matter. Interim checks on construction works at development sites are conducted by the District Council's Building Control Section.
- 4.19 There is a number of development sites in the District that have not been adopted some for a prolonged period of time. Mrs Reynolds has argued that the County Council has limited statutory powers in this area. In contrast, however, the District Council's Head of Legal and Estates has outlined the legal provisions in existence in respect of the adoption of both sewers and roads. In his view these provisions are adequate to ensure the adoption process is completed. Following enquiries with local Solicitors on conveyancing practice, the Head of Legal and Estates has advised that, during the purchasing process, purchasers and mortgage providers are made aware of the status of the roads and sewers serving properties and of their financial liabilities for paying for drainage and road repairs on estates that have not been adopted. Providing the relevant agreement between developer

and responsible body is in place, mortgage providers would not be expected to have any concerns over future liability for maintenance of roads or sewers. Where mortgage providers have concerns, retentions are still used, but usually only where there is no bond in place. The Head of Legal and Estates has further advised that insurance indemnity should be available against future liability in these areas.

- 4.20 It has become clear that there is no national consistency on Design Guides and the construction of sites. Despite this, Members have been assured by the County Council's Highways Development Control Manager that developers have not experienced any problems with regards to the construction specifications as outlined within the County Council's Design Guide. Additionally, the District Council's Head of Planning Services reported that the District Council worked closely with the County Council on the development of such guidance, so as to ensure that consistent advice is being given to applicants concerned.
- 4.21 The District Council's Head of Planning Services reported on an initiative introduced by the Land Searches Section to put notes on its system to highlight properties/areas of concern. However, the efficacy of this measure is dependant on Solicitors alerting prospective purchasers to the implications of these notes and offering advice to their clients on suitable courses of action. Mrs Reynolds has concerns over the advice being offered by Solicitors to their clients. It is felt that insufficient emphasis is placed on the financial liabilities occupiers could face should they proceed to purchase homes on unadopted sites. Members had intended to speak to a representative of the local branch of the Law Society on this; the intention being to clarify best practice and establish whether there are any steps that can be taken to ensure the status of roads and sewers is thoroughly followed up during conveyancing. Although an invitation was extended to the local branch of the Law Society to meet with Members, a meeting has not taken place. This is not perceived to be a problem as a recommendation on this subject appears at the end of this report.
- 4.22 In addition, Members have noted that there is no process in place for the automatic adoption of old estate roads. Should individuals wish these roads to be adopted, then they would be liable to meet the necessary costs of bringing them to an adoptable standard.
- 4.23 From the perspective of developers, it has been recognised that they would not want to apply the final surface to a road until all construction work has been completed. Yet it is not easy to identify why they would not want to absolve themselves of liability for future maintenance by ensuring completion of the adoption process. It has been speculated elsewhere that this is because of the difference between the construction specifications for Building Control purposes and the standards required for adoption. The latter are higher and are not a statutory requirement.

5. COMMUNICATING THE STUDY FINDINGS

- 5.1 Given the obvious need to alert the various interested parties to the information uncovered in the course of the study, the Communications and Marketing Manager has advised on the courses available to achieve this, particularly, in raising the profile of the Government's intention to transfer responsibility for privately owned sewers and lateral drains in England to the

statutory water and sewerage authorities and to publicise the need for prospective house buyers to pay sufficient regard to this important issue.

- 5.2 The Communications and Marketing Manager has presented a number of options, which might assist in achieving these aspirations. The outcome is that a communications plan has been developed (see Appendix hereto) and this is put forward for implementation.
- 5.3 With the exception of the activities entailed in implementing the communications plan the findings of the study will not have any direct operational or additional resource implications for the Council.

6. RECOMMENDATIONS

Following conclusion of its work, the Panel

RECOMMEND

- a) that the information contained in the report be noted;
- b) that, subject to consultation with Anglian Water on the proposed approach, the communications plan be implemented;
- c) that the local branch of the Law Society be formally written to with a view to ensuring that best practice is adopted throughout the conveyancing process and the status of roads and sewers thoroughly investigated and clients advised accordingly;
- d) that the study be revisited once the extent is known of the roads not under the responsibility of Anglian Water following implementation of the Government initiative referred to in paragraph 4.10; and
- e) that the Local Government Association be lobbied in order to seek the strengthening of the powers of the Highways Authority with regard to the road adoption process.

BACKGROUND INFORMATION

Notes of the meetings of the Adoption of Roads and Sewers Working Group.

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Adoption of Roads and Sewers Working Group

Communications Plan

The Adoption of Roads and Sewers Working Group was set up to investigate processes and procedures following concerns expressed by Overview and Scrutiny Panel (Service Delivery) regarding delays in adoption of roads and sewers across the district, although this is a national problem.

During the course of the study an announcement was made by DEFRA (December 2008) that from April 2011 responsibility for around 200,000 kilometres of privately owned sewers and drains in England would be transferred to the water companies. This would remove responsibility from householders, and could help speed up the process of adoption of roads, as often it is unresolved sewerage matters that cause delay in adoption of roads.

The working group wishes to communicate this message as widely as possible throughout the district.

Communications objectives

The objectives of the communications plan are:

- to create awareness of the change of responsibility to householders, and other interested parties
- to encourage positive coverage of the change of responsibility in the local and regional press and media

Audiences

Communications will need to be targeted at local residents, and other interested parties, for example developers and the legal profession. It is important to keep employees and elected members in the loop to ensure consistency in messages. County and parish councillors will also need to be informed.

Key audiences include:

- Employees
- Councillors
- Local residents and communities
- Partner organisations
- Press and media
- Relevant professionals – e.g. developers, legal, land charges.

Messages

In order to achieve a successful outcome, messages must be clear, concise and consistent. The message must be relevant to the people we are talking to. However, one size does not fit all and while the messages should be consistent, the channels of communication, and the way in which the messages are framed may be different.

The key messages to be communicated are:

- Change in responsibility. Responsibility for 200,000 kilometres of privately owned sewers and drains in England will transfer to water and sewerage companies.
- Current arrangements. Many householders may not be aware that they currently have a responsibility for sewers and drains, even those that are not actually within the boundary of their properties.
- Timescale of the implementation of the new arrangement.
- Cost implication to householders in increased water and sewerage charges.

Methods of communication

An integrated marketing communications approach will be taken to strengthen the message and to help achieve the objectives set. The methods will include:

External

- Articles and features in our publication, District Wide, and local press and media
- Website page on the council's website
- Briefing notes for partners
- Direct contact with the appropriate professional organisations

Internal

- Team News, the council's newsletter for employees and members
- Briefing notes for members

Media

Media to target will include:

Print

- Local papers – Hunts Post, News and Crier, Cambridge News and Peterborough Evening Telegraph

Broadcast

- Radio – Heart, BBC Radio Cambridgeshire
- Anglia TV

Timescales

Contact needs to be made with DEFRA and our local water and sewerage companies to establish what communications and marketing plans they have in place in order to ensure that our communications is complementary to anything they are issuing.

However our publicity can be started soon – highlighting the fact that many householders at the moment ARE responsible for private sewers and drains, and outlining what action (if any) they may be able to take.

Suggest that press and media coverage could begin in the 'quiet' period over the summer to allow a 'drip feed' approach. Internal audiences and parish councils should be provided with information at the same time.

Initial press coverage can be followed up with an item in District Wide, perhaps in the September issue, with follow-up stories nearer the transfer date, and just after implementation of the new arrangements.

Under the new bi-monthly schedule there will be issues of District Wide published in January 2011, March 2011, and May 2011 – precise dates still to be identified.

Evaluation

To determine the effectiveness and efficiency of the publicity an evaluation should be carried out. It will also help to identify whether the objectives set were achieved.

The success of the communications plan will be measured on the following:

- number of articles published in District Wide.
- monitoring of local media coverage (the amount of positive or neutral coverage and lack of negative coverage)
- feedback from members and other partners
- Evidence through feedback of raised awareness amongst all of our key audiences

Review

This communications plan should be regarded as 'a moveable feast' to be reviewed by the communications and marketing manager at regular intervals to take account of any changes in timescale.

Heather Gilling
Communications and Marketing Manager
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April 2009