

# BRIDGEND COUNTY BOROUGH COUNCIL

## REPORT TO TOWN & COMMUNITY COUNCIL FORUM

26 OCTOBER 2020

### REPORT OF THE CORPORATE DIRECTOR COMMUNITIES

#### ROAD ADOPTIONS

##### 1. Purpose of report

- 1.1 The purpose of this report is to provide an overview of the highway adoption process in Bridgend and outline the various stages involved in road adoption, the issues and problems together with the potential for improvement to the system both locally and nationally.

##### 2. Connection to corporate well-being objectives / other corporate priorities

- 2.1 This report assists in the achievement of the following corporate well-being objective/objectives under the **Well-being of Future Generations (Wales) Act 2015:-**

1. **Supporting a successful sustainable economy** –. taking steps to make the county borough a great place to do business, for people to live, work, study and visit, and to ensure that our schools are focussed on raising the skills, qualifications and ambitions for all people in the county borough.

##### 3. Background

- 3.1 The Council is responsible for overseeing the processes to secure the adoption of new highways and the modification of existing highways constructed by developers. These are more commonly known as Section 38 and Section 278 agreement highway works. The local highway authority can 'adopt' a road but there is no legal process to force developers to seek adoption.
- 3.2 The Council will only adopt a new road if it is constructed to certain standards. The Council may also adopt an existing road but in doing so takes on the ongoing maintenance liability.

##### 4. Current situation/proposal

- 4.1 The adoption process normally starts at planning pre-application stage where a developer enters into discussion with the local planning authority and the highway authority regarding a new development - planning and highway requirements are set out. The developer will submit a planning application and the relevant highway teams will be consulted.
- 4.2 During the determination of the application there may be further negotiations on the layout of the development and the Council will seek amendments to the scheme to

ensure the roads are approved to adoptable standards. Planning conditions may be used to secure further details or for certain works to be completed before the commencement of development/occupation wherever appropriate. Planning consent is usually approved subject to conditions and/or S106 agreement.

- 4.3 Development mitigation measures such as alterations or improvements to the public highway are sometimes required by the Council, for example requiring a developer to carry out highway improvement works within the existing highway network. This is done under agreement through Section 111 of the Local Government Act 1972 and 278 of the Highway Act 1980. Also, where the works are of strategic importance to that development, they may be dedicated as a new highway.
- 4.4 Once development commences and the conditions/S106 is complied with, highway officers and engineers check that submitted details are in accordance with both the approved highway layout from the planning application and technical specifications in relation to the construction of the roads. This would include various aspects from drainage, SUDS (Sustainable Drainage Schemes), open space, road safety, traffic orders, street lighting, geometry, highway structures etc.
- 4.5. During the construction phase the Council inspects site operations liaising with the developers, consultants and contractors. To commence the adoption process, the developer must submit a Section 38 application for a highway adoption agreement. Agreements under Section 38 of the Highways Act 1980 concern the adoption of new roads as highway maintainable at the public expense. A Section 38 agreement requires a complete set of drawings and calculations and submission of a bond. The process involves a series of design checks before being given technical approval. The Section 38 part 1 certificate will be issued when the works and maintenance defects items listed in part 1 of the schedule of the agreement are completed to the satisfaction of the Council (generally but not restricted to, installation of drainage, binder courses and street name signs). A part 2 certificate will then be issued when the items listed in part 2 of the schedule of the agreement are completed to the satisfaction of the Council.
- 4.6 Upon the issue of the part 2 certificate a maintenance period of not less than twelve months commences.. During the maintenance period the works that are subject to the agreement are dedicated as highway but will remain maintainable at the expense of the developer., During this period the developer, as street manager, remains fully responsible for all maintenance of the works including any damage, however caused, and may choose to take out appropriate insurance against such risks.
- 4.7 Prior to the end of the maintenance period the developer is required to contact the council in writing with a view to the Council undertaking the final inspection prior to the end of the maintenance period. In addition to completing all remedial works identified in the final inspection. commuted sums maybe required on non-standard assets. On full and satisfactory completion of these requirements, the council will issue the final certificate release the bond and assume the maintenance of and responsibility for the new highway.
- 4.8 Problems with the current road adoption procedures
  - Developers may fail to complete estate roads to satisfactory standard

- Road adoption can be delayed after the development has otherwise been completed resulting in unfinished roads and ancillary services
- Developers may go into administration leaving estate roads unfinished
- Delays in processing highway agreements and checking plans within the Council
- Delays in developers submitting required details and construction roads to standard
- It is difficult to use planning conditions to require works to be completed to adoptable standards as they cannot be used to enact other legislation
- If planning enforcement action were to be pursued against a developer for failure to complete highway works then it must produce a scheme for developer to implement

#### 4.9 Possible solutions

##### Local:

- Consider revisions to internal processes within relevant Council teams
- Developers to provide more details up front
- Consider use of planning conditions/S106 to control occupancy of dwellings without certain highway works being completed
- Look at use of standard design details to provide certainty to developers (see recommendations of Task Force below)

##### National:

- Changes to national legislation requiring estate road completion to adoptable standards

#### 4.10 Unadopted Roads Taskforce

4.11 The Unadopted Roads Taskforce was established at the Minister for Economy and Transport's request in 2018 to look at the issues in Wales and in so doing identify the extent of unadopted roads and what could be done to improve the situation.

4.12 The Taskforce membership included skilled practitioners and professionals that have been able to recognise and recommend certain actions that are leading to a better understanding of the nature and quantum of the issues across Wales. Following initial investigation, and a comprehensive consultation exercise involving key stakeholders, a [preliminary report](#) was submitted to the Minister in the Spring of 2019.

4.13 The Taskforce considered all the issues raised from the consultation which were varied and included matters to do with all types of unadopted roads, and the difficulties that arise as a result of no clear ownership or responsible bodies for particular unadopted roads.

4.14 As a result a Good Practice Guide was agreed together with the use of a set of common Common Standards. Once implemented, this approach is

considered to reduce significantly the chances of any further ‘unadopted road’ being created. Work has also progressed in establishing a database to provide a comprehensive record of all unadopted roads in Wales, which has been used to provide the quantum of unadopted roads. A final report was issued in September 2020 to build on the initial work and address the recommendations emanating from the initial report.

#### 4.15 Further Recommendations of the Taskforce

##### **RECOMMENDATION 1 –**

- that Local Authorities initially identify the priority unadopted road issues within their Council areas, and that cost estimates be provided for improvement to adoptable standards. Such proposals would need to be justified in terms of need based on national and local priorities.

##### **RECOMMENDATION 2 –**

- that consideration be made for some form of central resource to be made available to assist with the funding of necessary works to address local unadopted road priorities

##### **RECOMMENDATION 3 –**

- that the usage of the Good Practice Guide be monitored, and that further dialogue with Local Authorities takes place later in 2020 to evaluate the benefits of using the Good Practice Guide

##### **RECOMMENDATION 4 –**

- that a suite of Common Standards for use by Local Highway Authorities and Housing Developers be published

##### **RECOMMENDATION 5 –**

- that the Common Standards suite of documents are reviewed annually and amended as necessary to reflect changing requirements as a result of other emerging initiatives, and that annual funding be provided to enable this

## **5. Effect upon policy framework and procedure rules**

- 5.1 The adoptions of roads is controlled by the various legislation and policy, primarily the Highways Act 1980.

## **6. Equality Impact Assessment**

- 6.1 There are no direct implications associated with this report.

## **7. Well-being of Future Generations (Wales) Act 2015 implications**

7.1 Any changes to policy or procedure will be prepared in accordance with the 7 Wellbeing goals and the 5 ways of working as identified in the Act.

## **8. Financial implications**

8.1 The report is for noting and current procedures are carried out within existing budget heads.

## **9. Recommendation(s)**

9.1 That the Town and Community Council Forum notes the report.

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26 October 2020

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**Background documents:** None