

Regeneration, Culture and Environment Overview and Scrutiny Committee

BRIEFING NOTE – No. 05/16

Date: 10 May 2016

Briefing paper to: All Members of the Regeneration, Culture and Environment
Overview & Scrutiny Committee

Purpose:

To inform Members of the process associated with the adoption of a highway asset.

At a recent meeting of the Regeneration, Culture and Environment Overview and Scrutiny Committee it was agreed that a briefing note be produced to inform Members on the processes associated with the adoption of a highway asset.

This briefing note therefore highlights the process involved for both an approved development site (new roads) along with adoption of an existing road, where the residents or a private management company are currently responsible both for its maintenance and safety liability.

Private developer process.

Section 38 of the Highways Act 1980 enables a local highway authority to enter into a legal agreement with a Developer to adopt a highway provided the highway has been constructed to a specified standard and to the satisfaction of the local highway authority. The local highway authority is Medway Council (MC). Such agreements will enable MC to take over and maintain at the public expense (adopt), roads, footways, footpaths, structures, traffic signals, cycle lanes, cycle tracks and other areas.

The Highways service area is responsible for the securing and supervision of all Section 38 Agreements and to ensure highway works are delivered to the satisfaction of all parties.

MC is committed to working closely with Developers to achieve:

- The highest quality development possible;
- Efficient and effective delivery of projects for the benefit of all parties;
- Development that is not a financial burden or maintenance liability to MC

- highways;
- The delivery of highway works constructed to adoptable standards;
- Minimal disruption to existing highways during construction;
- Delivery in accordance with relevant legislation; and
- Consistent use of acceptable materials via the MC planning process, on the publicly maintained highway.

Applications by a developer to enter into a Section 38 Agreement should be made to MC as soon as practical during the development process; ideally straight after the pre planning application stage. Where planning permission is granted, for a phased development an Agreement can be completed for each phase before construction works commence, or a S38 Agreement can be used for the whole development.

Section 38(6) of the Highways Act states:

“An agreement under this section may contain such provisions as to the dedication as a highway of any road or way to which the agreement relates, the bearing of the expenses of the construction, maintenance or improvement of any highway, road, bridge or viaduct to which the agreement relates and other related matters as the authority making the agreement think fit”.

Where a Developer requests MC to adopt the highway assets (roads etc) in a development so that they become highways maintainable at public expense, they will be required to enter into a s38 agreement with MC. The agreement will set out the terms and conditions on which MC will adopt the roads as follows:

- Details of the proposed highways;
- Developer’s obligations;
- Arrangements for connections of existing services;
- MC access requirements;
- Scope of Part 1 and Part 2 works, inspection procedures, and certification;
- Developer’s obligation during the maintenance period.
- Grants of rights of drainage;
- Grants of easements;
- Timing of adoption;
- MC fees and charges;
- Transfer of land (if applicable);
- Indemnities and insurance; and
- Surety’s obligation.

Proof of land ownership is required to ensure that all parties with freehold or leasehold interests in the land enter into a S38 Agreements and consent to its terms.

MC may seek payment for the future maintenance of the new revised highway from the Developer, acquiring monies through “Commuted Sums” where necessary. Commuted Sums allow greater flexibility to adopt non-standard materials and other items when development increases MC’s future maintenance liability and costs.

Once the new highway network is built, MC assesses the network and any defects (Snagging) identified by a joint site visit are made good by the developer. Once any default is repaired, the scheme is placed into a 1 year maintenance period. On completion of the maintenance period, the site is again jointly inspected and if found to be in good condition with no further defects identified the road is placed on the network as Adopted. Its fair to say that some developers may delay the process when asking MC to adopt the network and this process can last over many years. Until such time that the network is adopted, the developer remains responsible for all claims and defects in the network.

Private roads.

Members will be aware that there are a number of streets within Medway that are privately owned and this number is changing as new developments come on board and some roads are adopted.

At this moment in time, in Medway there are:

- 334 private streets;
- 148 prospectively maintainable streets.

Private streets are those streets that have never been adopted for a number of reasons, whether that’s because the developer/owner never intended for them to be adopted, or indeed that the council never pursued the adoption as the asset served no “Public Utility”.

The term Public Utility is a measure whereby a decision is taken to say that the asset brings a benefit to the wider public, rather than a discrete few. For an example, an access road into a large development serves as an access point for the public at large, whereas a small cul-de-sac serving only those residents that live in the road would not have an utility element, so may not justify the public purse paying for the long term maintenance. The latter statement is subjective and is open to interpretation on new developments, however, these are normally resolved between the developer and the council amicably.

Prospectively Maintainable streets are those streets that are NOT maintained by the council, but are under a section 38 agreement at present that may be under construction or may be built imminently. Until a section 38 agreement is completed these streets remain under inspection and maintenance by the developer (or their nominated contractor/company).

Turning attention back to the **Private streets**, this means that no such Agreement was signed or indeed ever entered into between the developer and council. **Private streets** can be adopted by the council and the process involved is as follows:

The first step is for the residents and owner of the land to collectively decide that they wish to make an application to MC for their road to be adopted and thereafter maintained at public expense. The group are normally formed under the banner of a joint Residents Association.

The Association must have all owners and frontages of all properties in agreement for them to progress a joint application to MC, upon which the association will write to MC confirming that all residents are committed to the adoption of this street. Upon receipt, MC will explore the historical evidence around the "Private Street" to see if there is any evidence to prevent the asset from being adopted. If none can be found, then the residents will have to appoint a consultant who will survey the street and produce an action plan to the residents, explaining to the residents what design and building needs to be undertaken on their street to bring the asset in line with the adoptable level required by MC. All costs for consultancy and construction works need to be met by the residents group, as a developer would undertake for a new development. All residents should be fully aware of their obligation to a financial contribution in doing this. If one resident opts out, then the whole process will fall apart unless underwritten by the residents association.

Once approved the council will supervise the works to ensure the assets (Roads paths, lighting, drainage, signage structures etc) are built in accordance with our guidelines and once complete the "private Street" would be adopted by the council and thereafter maintained at public expense.

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