



## PUBLIC REALM ADOPTIONS BRIEFING NOTE

### TO: Strategic Placemaking Scrutiny Committee

- *“To scrutinise the failures in the past adoption processes for public realm*
- *To look at lessons learnt to ensure that a process is in place to ensure that the public realm in new estates can be adopted more easily.*
- *To review how the legacy issues of public realm adoptions can be resolved.”*

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### 1. **Background**

Milton Keynes, like a number of areas is seeing greatly increased development and regeneration activities, resulting in expanded numbers of residential, commercial and leisure facilities. To support these growing premises the surrounding infrastructure, such as improved and increased highways and green space is often also included within the development criteria and associated planning permissions.

The landowners of these developments can, if they wish, then seek to transfer the newly created infrastructure, and associated maintenance, into the public ownership via a legal negotiation and agreement with the Highway Authority. However, there is no legal requirement for developers to offer infrastructure for adoption.

Within Milton Keynes Council the Highway Authority (Highways Service) has the statutory responsibility for undertaking the review, negotiation and incorporation into the wider publicly owned highway asset of any newly constructed highway that is offered to the authority under the statutory Highways adoption process and legislative requirements.

On a day-to-day basis this objective is delivered through the Highways Development Management Team and the Highway Adoption Team, which sit within the wider Highways service as it requires specialist engineers to assess and process these requests.

### 2. **Current Position**

At any given time, due to the large number of developments ongoing there are numerous adoption negotiations and assessments going on. Currently this is approximately 450 individual road agreements. Each road must be assessed against a defined number of criteria to ensure that the public asset is of suitable construction and design, that it is ‘fit for purpose’ and does not unduly encumber the public purse with longer term financial

burdens. To assess these criteria there are two distinct stages of assessment delivered within the highways teams as set out below:

### **Highways Development Management Team**

The Highways Development Management Team ensures that the highway infrastructure within new developments is to an appropriate geometric standard with appropriate internal junction configurations, that connections to the existing highway network are appropriate and that sufficient parking is provided to serve the needs of residents and visitors.

- Design Guides or Transport Assessments are assessed with expert guidance obtained when necessary
- Planning applications assessed and feedback provided

*Early involvement with the council on highway issues is encouraged of developers and is available either formally for a fee through pre-planning agreements or less formally through the provision of ad-hoc advice.*

### **Highway Adoptions Team**

The Highway Adoptions Team ensures that highways are constructed to comply with planning requirements, MKC and national standards for Adoptable Roads, are constructed using appropriate materials, and constructed to an acceptable standard of workmanship, including:

- designs checked against current planning approvals
- design checks undertaken and documented through a technical audit process and technical approval certification
- Road safety audits are undertaken where is required
- construction works are regularly inspected on site
- maintenance period after completion of works applied to test new highway infrastructure under working conditions
- following remedial works interim and final works certified
- following final completion highway adopted

The Legal processes within the Highways Act 1980 that allows for an adoption to take place is done under statutory provision set out in Section 38 of 'the Act' or for connection/improvement to an existing Highway is done under Section 278 of 'The Act'.

However, these processes are only possible by agreement, are subject to conditions, and neither the us` nor the developer has a legal right to dictate terms. The legal agreements are therefore used to clearly document what has been agreed between the two parties, ideally before the works commence. *Note: works within the highway are not permitted without a Section 278 agreement in place but works on private land can be commenced 'at risk' by developers.*

The completion of the S38 agreement is often subject to legal processes over which the local authority has no control. Such processes may relate to third party, negotiations and agreements, land matters, easements, private rights, private covenants (and their removal if necessary), drainage discharge consents and agreements.

The associated costs of office administration, design review, site inspections and legal processes are built into the final agreement and are covered by the developer, however as it is never certain if agreement will be reached, they are often processed in smaller 'chunks' to minimise the financial risk exposed to the authority.

This long legal process can lead to misunderstandings and perceptions that a newly constructed road or public space is not being correctly maintained by the local authority, when in fact, it has not been offered by the developer to the authority, or negotiations are ongoing.

Whilst the process previously detailed only covers areas of Highways that will be accessible to the public, there is a similar process for adoption of open spaces undertaken using the Towns and country planning Act 1990 via S106 agreement, this is not controlled within Highways and is led by Property services/Landscaping, resulting in the adoption of areas into the Parks Trust portfolio. The process for these adoptions is set out in appendix 4, again this is a legal agreement and can be subject to the same difficulties and perceptions as highways adoptions.

### **3. Concerns – Previous failures**

As outlined in section 2 of this report there are a number of current/historic sites where residents have reported either directly to officers or via Councillors that they are dissatisfied with the upkeep of some constructed infrastructure, or that the infrastructure has not been adopted quickly enough to enable better upkeep. This can be perceived as an 'adoption failure'.

Unfortunately, because there is a statutory legal framework and indeed no requirement for a developer to even enter those legal discussions it is hard for us to address these issues with any teeth.

Matters such as surface failures, street lighting not functioning and open landscaped spaces not being maintained are amongst the issues that residents and users of unadopted roads and spaces do periodically report.

Liability and responsibility for these matters remains with the landowner/developer up until the point of adoption which can be some time after completion, if ever, depending on the desired approach of the developer.

### **4. Conclusions – lessons learned**

The existing adoption processes are detailed in the Department for Transport Advice Note on Highway Adoptions – the adoption of roads into the public highway (1980 Highways Act) dated in April 2017. Without a change in the 1980 Highways Act therefore, highway authorities and developers are limited to the practical and legal framework that has been laid down for us.

However, we continually work closely with other Local Highway Authorities to improve our processes and procedures such as Oxfordshire County Council (OCC) and Buckinghamshire County Council (BCC). We have also joined the Eastern Region DM Forum in which other local authorities share information, such as good practices, current issues and potential solutions, procedures and processes.

The legal instruction process has also been refined to allow the preparation of legal agreements to, once more, be dealt with more efficiently through in-house resources; allowing for constantly improving our internal processes and procedures, such as our

certificate system and file systems that were adopted by the council in 2016/17 to streamline any legal processes once entered in to by all parties.

Additionally, we continue to foster good relations and working practices with all developers to help to expedite adoptions (if that is the chosen route) or to at least have good communications to encourage non adopted maintenance practices.

We continue working with developers to make processes more efficient and more transparent through the introduction of new systems for document management and quality control and have been actively encouraging early council involvement with developments by providing pre-planning advice and by making in-house design services available to the developers – such as street lighting, road safety audits and traffic signal design.

Whilst we will continue to try and improve and refine the ‘adoption process’, it is a difficult and challenging process that is not controlled by us and is therefore ultimately not within our control, however the close working with developers and communications with residents over roles and responsibilities as well as the continued streamlining of processes (within the statutory framework) will help to give an improved service and greater understanding and perceptions of the challenges faced.

## **Appendices**

- Department for Transport Advice Note on Highway Adoptions - The adoption of roads into the public highway (1980 Highways Act) dated April 2017
- S278 and S38 agreements information sheets
- Staged Bond Release information sheet
- Section Duties and Responsibilities
- Open space adoption flow chart/process