



New Highway Infrastructure Adoptions

The scope, context and methodology for
adoption of new highway infrastructure

Version 2

Economy, Enterprise and Environment

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Introduction

This policy has been drawn up by the Infrastructure Asset Management team of the Transportation, Waste and Environment Service (TWE) in response to the objectives of Cornwall Council to promote strong, resilient, sustainable communities, changes to national design criteria for highways, and a need to clarify the way in which new infrastructure is considered for adoption into the estate which is maintained at the public expense.

New estate roads and their associate drainage features have long been considered for adoption via the Highways Act 1980 (The 1980 Act), most commonly through agreements under section 38. Such agreements are reached by consensus between the developer and the Council. Revision to national design criteria in the form of Manual for Streets (MfS) and Manual for Streets 2 (MfS2) have resulted in significant changes to the layout of new developments with a consequential need to review the scope and extent of what is considered appropriate to be maintained at the public expense. Likewise the recent economic down-turn has had a significant impact on developers who, in turn, have been reviewing the make up of their developments and the mix of public/private paved areas.

The creation of Cornwall Council has highlighted a need for greater integration of policies and working practices to ensure that overall goals and objectives are met. Recent experience in the implementation of the Advanced Payments Code of the Highways Act has also highlighted a need for revision and clarification of adoption policy and practice.

Purpose and aim of the policy

Among Cornwall Council's core objectives are the promotion of sustainable economic growth, a better environment, improved health and wellbeing and the provision of resilient, safe communities which provide affordable housing that meets local needs. The emerging Core Strategy and Cornwall Design Guide promote these objectives and set out a vision for sustainable vibrant communities. Central to these aims and objectives is the need to provide adequate and appropriate infrastructure.

This policy sets out the scope, context and methodology for the integration of newly created infrastructure into the Council's portfolio of highways and associated features which are maintained at the public expense – commonly referred to as adoption. The aim is to clarify the extent of what will, and will not, be considered appropriate for adoption, set out the mechanisms which will be used to carry out the adoptions, and clarify how the various strands of detailed design guidance are integrated.

Scope

This policy is applicable to all infrastructure offered to the Council for adoption by developers and defines the extent of what will eventually become highway maintainable at public expense.

Policy statement

Cornwall Council will adopt and maintain at the public expense all highway infrastructure which is deemed to offer sufficient benefit to the wider public by the provision of a through access and has been constructed to appropriate standards and in accordance with a previously approved layout and/or configuration.

Cornwall Council is unlikely to consider the adoption of highways which do not provide a through route for the general public. Criteria for consideration include, but are not limited to:

- The proposed design and use of the highway
- The type and number of properties served by the highway
- The anticipated type and volume of traffic use for the highway
- Any future potential for the highway to be used as a through route for the public to access any subsequent adjacent development and the suitability of the road design to serve that purpose.

Highways which do not meet these criteria will not be maintainable at public expense.

POLICY DETAIL

Adoption Processes

Where the criteria for adoption are met and a suitable layout and design can be agreed developers will be invited to enter into an appropriate adoption agreement as soon as possible. The Highways Act 1980 details a number of methods by which the adoption of new roads, footways and paths may be secured and these are as follows:

Agreements under Section 38

This is the preferred method of securing adoption of new highways. An Agreement under this section of the 1980 Act provides a structured robust procedure for the technical approval of the works, regular inspections and mechanisms through which the works are completed to an appropriate standard and other Council requirements. The works are secured by an appropriate Surety which ensures that the road works can be completed in the event of the developer defaulting. The technical details and specifications for the works must be in accordance with the requirements of the design guidance set out on the Council's website. The Council will not agree to the carrying out of inspections of works in the absence of real intent of the developer entering into an agreement.

Section 37 Notices

The provision of this notice allows for a builder or developer to serve notice on the Highway Authority requiring them to adopt the highway after a one year period. If the Council considers that the proposed highway is not of sufficient utility to the public to justify being maintained at public expense, The Council will refute these notices and make the appropriate complaint to a Magistrates' Court. The view of the Council is that this route to adoption results in higher costs to all parties (due to the need to provide sufficient proof of the works meeting the Council's requirements after construction without inspection by the Council).

Section 228 Notices

This section allows for the adoption of highways following works being executed in a private street by the posting an appropriate notice in the street. After the posting of such a notice and on the expiry of one calendar month, during which time no valid objections have been received, the area of highway will become adopted and maintainable at the public expense. This method is generally to be used only for small areas, and in regularizing the highway boundary to the benefit of all the users of the highway.

Agreements under Section 278

Where developments require the alteration of the existing public highway an agreement under this section of the 1980 Act may be required. Such an agreement provides a structured robust procedure for the technical approval of the works, regular inspections and also sets out the mechanisms by which the works are completed to Council requirements.

Where the scope of the works are small in nature and involve minimal disruption to the highway, the use of streetworks licences will be considered in lieu of an agreement. Where works are of a more substantial nature and there is an associated Section 38 agreement proposed, a combined agreement will be entered into as this minimises costs and streamlines the approval and construction processes. However, where the extent of the proposed works is extensive and/or potentially disruptive to the expeditious movement of traffic, a separate Section 278 agreement will be required. Such agreements will require the developer to submit a design for approval the technical details and specifications of which must be in accordance with the requirements of the design guidance set out on the Council's website; and deposit an agreed sum of money with the Council who will procure the works via existing highway maintenance arrangements. This process has been subject to a separate approval via the Portfolio holder for Transportation and Highways dated 7/12/11. No works will be permitted on the public highway without an appropriate agreement being in place.

Sections 219 to 225 – Advanced Payments Code (APC)

These sections of the Highways Act make provision for the Highway Authority to secure a payment from a developer against the cost of future roadworks on a development. The serving of a notice under the APC is triggered by Building Regulation approval and this is usually in advance of any adoption agreement being signed. Revisions to development layout guidance in the form of MfS and MfS2 have made the distinction between what may be considered to be private drives, parking courts, paved areas and private streets difficult to differentiate. Cornwall Council considers that the most appropriate use of the APC is to encourage the adoption of highways which meet the criteria for adoption set out in this policy. Therefore we will only serve APC notices on those highways which are considered suitable for adoption. It follows that those highways on which APC notices are not served will not be considered for adoption and will remain private and the responsibility of the frontagers either as a collective or as part of a management company set up by the developer. In order to make this distinction clear all APC notices will be issued with a colour coded plan outlining the portion of the street which is covered by the notice.

Sections 205 to 218 – Private Streetworks Code

These sections of the Highways Act make provision for the Highway Authority to carry out works on private streets where it is of the opinion that works are required and recover the costs of such works from the property owners fronting the street. These sections are designed to work in tandem with the Advanced Payments Code. As Cornwall Council will only be serving APC notices on those streets which it considers appropriate for adoption it follows that we will not as a matter of course be implementing the requirements of the Private Streetworks Code.

Fees and Payments relating to adoption

Commuted Sums

The nature of developments has changed over recent years with a greater emphasis being put on providing better places to live and delivering a quality environment with enhanced materials and street design. In addition to this the lack of suitable development sites has led to a need to develop more constrained and challenging sites. As a result of these challenges designs and layouts often vary from the more normal highway design upon which current funding mechanisms are based. This can lead to higher long term maintenance costs for the adopting authority.

The use of commuted sums to cover the cost of this additional maintenance liability allows the highway authority greater flexibility to adopt non standard layouts and materials without placing undue burden either on its maintenance budgets or its council tax payers. Typical values of commuted sums are shown on the Council's website.

Fees

The approval and supervision of new highway infrastructure is a complex and time consuming process and it is therefore appropriate that such costs are borne by the developer. For the sake of clarity the Council has broken down the fee structure into a number of stages which are linked to the progress of a development from initial application, through technical approval to construction, inspection and final adoption. Fees are also linked to the value of the works. The current level of fees was approved in 2009 by the former Cornwall County and is set out in annex 1 of this policy. This information is available on the Council's website

Consultation and engagement

In drafting this policy we have consulted and engaged with the Private Developers Forum – which comprises all major developers operating in the County – taking note of, and addressing, issues and concerns raised by them. We have also consulted with the Portfolio Holder for Transportation and Highways.

Performance and risk management

The adoption of new highway infrastructure has been undertaken for many years and in drafting this policy we have taken note of, and dealt with, all likely risks and performance issues.

The effectiveness and application of this policy will be regularly monitored as part of the ongoing management of the TWE Service and will be formally reviewed as part of the TWE service plan.

Communicating the policy

This policy will be made available on the Council’s website as part of the suite of documents available to developers and other interested parties. We will raise awareness of the content of the policy by engaging with the Private Developers Forum and the Cornwall Housing Partnership. We will also brief colleagues in the Planning and Regeneration Service over the implications for planning applications.

Breaches and non-compliance

None compliance with this policy will leave potential householders with no statutorily maintained means of access to their properties.

Information and training

Further information concerning this policy may be obtained from the Infrastructure Asset Management team based at Bodmin.

Evaluation and review

This policy will be reviewed 22/04/2018

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Commissioning and Asset Service

26 August 2016

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