



Environment Committee

13 July 2017

Title	Highway Adoption Policy
Report of	Strategic Director of Environment
Wards	All
Status	Public
Urgent	No
Key	No
Enclosures	Appendix A – Highway Adoption Criteria Appendix B – Highway Adoption Process / Flow Chart Appendix C – Highway Applications Checklist Appendix D – Highway Adoption Standard Details
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Summary

This report seeks approval to formalise the existing highway adoption criteria for the adoption of highway made under the Highways Act 1980 (“the 1980 Act”)

Recommendations

1. That the Environment Committee notes the current approach for Highway Adoption as set out in this report
2. That the Environment Committee approve the criteria for Highway Adoption as set out in this report and in Appendices A; B; C & D
3. That the Environment Committee approve that the Commissioning Director for Environment carry out any changes required to the appendices in item (2) above under delegated powers as a result of future updates to legislation, best practice, Council policy and/or procedure.

1. WHY THIS REPORT IS NEEDED

- 1.1 A formalised policy is required by the Council to set out existing practice for highway adoption within the Borough. This will assist the Council as local Highway Authority in the discharge of its duties in respect of highway adoption.

1.2 BACKGROUND

- 1.2.1 The Highway Authority has considerable discretion in exercising its powers to adopt highways under the Highways Act 1980. Currently, the authority adopts new highway that provides wider community benefit or has sufficient public utility. The most common way of adopting new highway is under Section 38 of the Highways Act 1980. Generally, a developer enters into an agreement with the Council to carry out specific highway works to a certain adoptable standard that will be subsequently adopted as publicly maintainable highway by the Authority.
- 1.2.2 Barnet Council is the Highways Authority for the highways in Barnet and has a responsibility to keep all highways safe and accessible for everyone to use. The “highway” in this report refers to all publicly accessible roads, footways, public areas and other public rights of way which are the responsibility of the Highways Authority.
- 1.2.3 The Highway Authority will adopt those roads and footpaths which are necessary for public access or passage subject to these being constructed entirely in accordance with the relevant adoptable specifications and built to the satisfaction of the Highway Authority. Such highways can include carriageways, footways, cycle ways and emergency links which are necessary and of real use to the general public. The Highway Authority may also adopt areas of land which are necessary to ensure stability of the highway and maintenance of highway structures such as bridges, culverts retaining walls etc. Structures supporting under-sailing or over-sailing will not be adopted. Highway verges between the footway and the carriageway will be adopted as part of the highway although this does not mean that every highway needs a verge.
- 1.2.4 An “Adopted” highway is one that is maintained at the expense of the public purse. Once the highway is adopted, the responsibility for the maintenance of the highways (including associated infrastructure like street lights, kerbs and verges etc.) and public liability, fall to the local Highway Authority.
- 1.2.5 The current adoption criteria require the highway to be of sufficient public benefit or utility before becoming publicly maintainable. These are roads

serving a public amenity such as a school, hospital, community facilities, transport hubs, bus routes etc. or the highway could form part of a greater highway network for the general public use.

1.2.6 The current practice naturally presumes against adopting roads, streets, footpaths and cycle paths unless they meet the following minimum criteria associated with public utility or wider community benefit:

1. There is a direct link with or connects to the existing public highway network
2. It must be of sufficient utility to the public and offer wider community benefits
3. The roads offered for adoption will have a wider use than simply providing access to residential or commercial properties
4. The highway will remain open to the public to pass and re-pass at all times when formally adopted
5. The carriageways and footways offer safe passage for pedestrians and vehicles
6. The carriageways and footways have an approved means of surface water drainage
7. Street Lighting must conform with current local requirements and national standards
8. Highway is constructed to satisfactory adoptable standards
9. Commuted sums are paid towards on-going maintenance of highway infrastructure assets adopted
10. Highway is a strategic part of the highway network and carries large volumes of traffic
11. Where a development has no through route, only the main access road or spine road will be considered for adoption where it serves in excess of 50 residential units.
12. It serves bus routes as well as community facilities
13. provide through route(s) (not cul-de-sacs) and that exceed 50 residential units (or mixed use equivalent in traffic generation terms)
14. are cul-de-sacs (no through roads) that lead to community facilities; schools and transport hubs
15. The freehold owner(s) of the land over which the highway is built is willing to dedicate the road to the public as a highway when it is built, at no cost to the Council, under Section 38 Agreement of the Highways Act 1980
16. Footpaths should form part of a general pedestrian network interconnecting shops, schools, public transport hubs etc. and must be available for public use on an unrestricted basis.

Footpaths should join public places and should be lit and constructed to adoptable standards. Footpaths leading to both front and rear properties will not be adopted

17. All highway offered for adoption should form a continuous system with existing public highway and should serve public need.
18. Parking areas contiguous to the carriageway will be adopted as public highway provided that their use by the general public is not restricted in any manner and considered as visitor's bays in addition to the parking requirements for the development.

In addition to the above, the highway offered for adoption needs to meet the following requirements:

19. The layout of the highway including provisions of footways / paths and turning heads meeting design standards and guidelines. The carriageway and footways are of widths and gradients that offer a safe passage for pedestrians and vehicles respectively
20. The width of the road, bends, slopes, visibilities, junctions meeting relevant design standards and guidelines
21. Provision of adequate surface water drainage to adoptable highway including an approved means of surface water drainage to the carriageways and footways
22. Provision of adequate Street Lighting. The street lighting provided meets the current local requirements and national standards
23. Highway been built to adoptable standards. The material used meet the current design and construction standards
24. Services from Utility Companies laid in accordance with National Joint Utilities Group Guidelines and Requirements
25. Needs of disabled people addressed
26. Ensuring visibility splays are provided

1.2.7 The Authority does not adopt entrances and paved areas in garage or private parking forecourts, driveways, amenity areas, footpaths that do not serve a wider public utility, roads accessing businesses and industrial areas. Surfaced areas surrounding buildings and intended for maintenance purposes will not be adopted. Private parking areas provided in lieu of garages or private drives and restricted for use by residents will not be adopted.

1.2.8 Highway adoption will not be considered where the required adoption criteria and design and construction standards are not met and do not meet the satisfaction of the Council. The applicant or the developers must ensure that any highway offered for adoption accord with the criteria prior to consulting the Council. The Council does not adopt all new highway built by housing

developers. Housing developers can choose to keep their new roads private and set up a management company to maintain if the highway do not meet above criteria.

1.2.9 The Highway Authority will not take over maintenance responsibility or adoption of highway when access roads are still being used by construction traffic to avoid unnecessary financial burden on the authority as a result of damage caused by construction activities or traffic. This will mean residents on a large development may have to wait longer for the adoption to take place.

1.2.10 The Highway Authority will use the criteria for any requests made for highway adoption regardless of the powers under which they are applied. The Highway Authority has to be satisfied that there is sufficient public benefit and that the highway has been constructed to adoptable standards. The Authority can object if the criteria are not met and follow legal route to defend its position.

1.2.11 The Council's road adoption policy and criteria equally applies to dedication of highway whether under Section 37 or Section 38 of the Highways Act.

The main difference between Section 37 and Section 38 is that there is no provision under Section 37 for the Council (Local Highways Authority) to secure commuted sums for future maintenance of the highway.

The intention of the Developer to offer highway for adoption under Section 38 is normally indicated at the planning stage. In contrast under Section 37, the Council is served with a notice proposing to dedicate a road as public highway. This may occur several years after the highway has been constructed and is in a state of significant disrepair requiring major intervention.

The process for Section 38 Agreements is outlined in the Appendix B to this report.

The provisions of Section 37 are summarised as follows:

1. A person who proposes to dedicate a highway and who wishes a highway to become maintainable at public expense must give at least 3 months' notice to the Council, prior to the date of the proposed dedication;
2. If the Council does not think that the highway will provide sufficient use to the public to justify it being maintained at public expense, the Council may apply to the Magistrates Court for an Order to that effect;
3. Alternatively, if the Council accepts that the proposed road should be a public highway and maintainable at public expense, they may certify that the highway has been properly dedicated and that it has been made up in a satisfactory manner. Thereafter at the end of 12 months from the date of the Council's certificate, provided that:
 - i. the person who is dedicating it (or his successor) keeps it in repair for 12 months from the date of the Council's certificate; and
 - ii. during the 12 months, the highway is used as such; and

- iii. no order is made to the effect that the highway is not/will not be of sufficient utility to the public to justify it being maintained at public expense,

then after 12 months it will become for the purposes of the Highways Act a highway maintainable at the public expense

- 4. If the Council does not issue a certificate, the person who has dedicated the highway (or that person's successor) may ask the Council to issue a certificate (see 3 above). If the Council refuses to issue the certificate, the person concerned may appeal to the magistrates' Court. If an appeal is made and the Court is satisfied that the Council should have issued the certificate, the Court may make an order to that effect in which event, point 3 above will apply.

The time limit for making an appeal to the Magistrates' court is 21 days from the date on which the Council serves the notice of its decision.

- 1.2.13 The Highway Authority only considers standard materials on adoptable highway to avoid undue financial burden upon the authority which will become responsible for the long term maintenance of the assets adopted. Any material used on adoptable highway must fulfil the following principles:

- Safety – Safe for purpose
- Durability
- Sustainability
- Quality
- Maintainability – Easy to Maintain
- Availability
- Suitability
- Fit for purpose
- Functionality

- 1.2.14 On any highway agreed for adoption, the developers shall pay commuted sums in respect of all infrastructure assets adopted by the Authority in accordance with Commuted Sums Policy approved on the 8th November 2016. The commuted sums for future maintenance may deter some developers from entering into Section 38 Agreements and may consider other routes for highway adoption to avoid payment of commuted sums and fees.

- 1.2.15 The adoption of this criteria would ensure that a more formalised approach to highway adoption can be applied on all highway adoption requests in the borough.

2. REASONS FOR RECOMMENDATION

- 2.1.1 Adoption of this policy will:

- Ensure that the Council has the clear policy, process and criteria for evaluating any requests to adopt a highway

- Ensure that the Council's policy is clear to both members and the public and is communicated effectively
- Ensure that the Council's policy is applied consistently and fairly in accordance with legislation
- Serve as a reference document on highway adoption matters.
- Contribute to protecting the Council from unwarranted financial encumbrance

3 ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDATION

- 3.1 A formal highway adoption policy is needed to manage and facilitate the effective highway adoption process across the borough. Without a clear and consistent policy, the Council may be subject to legal challenge should a highway not be considered for adoption and to defend Council's position on highway adoption matters.

4 POST DECISION IMPLEMENTATION

- 4.1 If the Committee is so minded to approve the recommendations set out in this report, arrangements will be made to publish and implement the adoption of highway adoption policy.
- 4.2 The appendices to this report are subject to change as a result of future updates to legislation, best practice, Council policy and/or procedure. Future updates will be carried out by the Commissioning Director for the Environment under delegated powers (full officer).

5 IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1 The Corporate Plan 2015 – 2020 is based on the core principles of fairness, responsibility and opportunity to make sure Barnet is a place:
- Of opportunity, where people can further their quality of life
 - Where people are helped to help themselves, recognising that prevention is better than cure
 - Where responsibility is shared fairly
 - Where services are delivered efficiently to get value for money for the tax payer
- 5.1.2 Manage demand for services through efficiency savings and delivering services differently ("Fairness" principle)
- 5.1.3 Driving out inefficiencies to deliver more with less ("Responsibility" principle)
- 5.1.4 Maximise guaranteed income potential from a growing economy ("Opportunity" principle)
- 5.1.5 The adoption of highway adoption policy across the borough will assist with

making the highway safer by providing consistent policy is applied on all adoption requests in the borough.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

5.2.1 The proposal in this report is to formally adopt criteria for Highway adoption under Section 38 of the Highways Act 1980, criteria that have already been operating in practise. The highway adoption policy will enable officers to deal with requests consistently, and to prevent legal challenges.

5.2.2 Should a highway be offered for adoption as a public highway, the Council becomes responsible for the on-going maintenance of the road including street lights, footpaths, trees , grass verges etc. the costs of which can vary depending on the length of highway being adopted and are assessed on a case by case basis. Following Environment Committee approval on the 8th November 2016, commuted sums (for future maintenance) will be applied for all new highway infrastructure assets adopted. Therefore, Highways adoption should have a neutral effect on Council budgets.

5.2.3 The highway adoption process itself is self-financing as the developers or applicants pay fees (in accordance with published fees and charges) to cover costs associated with the processing of the application. Any additional costs incurred by the Council by implementing this policy will be covered by the fees charged. Current staffing will be used and there is no requirement for additional staffing to enforce this policy.

5.3 Social Value

5.3.1 Not applicable as this report does not relate to the procurement of services. The adoption of highway adoption policy will ensure highways are designed and built to required standards before adoption. There are no specific negative impacts of this policy.

5.4 Legal and Constitutional References

5.4.1 Under the Council's Constitution, Annex A to Article 15 (Responsibility for Functions) provides the Environment Committee with specific responsibilities for commissioning, inter alia, the street scene including pavements and all classes of roads, street lighting, open spaces, transport and traffic management.

5.4.2 The Council has various statutory powers under the Highways Act 1980 to adopt a highway as a highway maintainable at the public expense.

5.4.3 The 1980 Act also empowers the Highway Authority to enter into an agreement with any person to undertake the maintenance of a way which that other person is willing and has the necessary power to dedicate as a highway so that the way becomes a highway maintainable at public expense (S38(3)). Such an agreement may contain such provisions as to the bearing of the

expenses of the construction, maintenance or improvement of any highway or road to which the agreement relates and other relevant matters as the authority making the agreement think fit (S38(6)).

5.5 Risk Management

- 5.5.1 The policy is introduced to minimise legal risk and challenges to decisions made on highway adoption formalise current practice.
- 5.5.2 Risk management may be required in order to manage the potential for developers to use the alternative adoption procedure under S37 of the 1980 Act to avoid payments being made to the authority as well as offer highway that do not meet the criteria.
- 5.5.3 The S37 procedure requires a developer simply to serve notice on the authority stating that “it desires the highway to be maintainable at the public expense”. Critically S37 contains no provision for the authority to call for any commuted maintenance payments to be paid by a developer.
- 5.5.4 However, the disadvantage of S37 to developer is that it would not be able to serve the requisite notice on the authority until the road / works have been actually constructed. It is possible to challenge the use of the S37 procedure in the Magistrates Court on the ground that the proposed highway would be of insufficient utility to the public to justify maintenance at the public expense.

5.6 Equalities and Diversity

- 5.6.1 Street design should be inclusive, providing for all people regardless of age or ability. There is a general duty for public authorities to promote equality under the 2010 Equality Act. There is also a specific obligation for those who design, manage and maintain buildings and public spaces to ensure that disabled people play a full part in benefiting from, and shaping, an inclusive built environment.
- 5.6.2 The 2010 Equality Act outlines the provisions of the Public Sector Equalities Duty which requires Public Bodies to have due regard to the need to:
 - 1. eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010
 - 2. advance equality of opportunity between people from different groups
 - 3. foster good relations between people from different groups
- 5.6.3 The broad purpose of this duty is to integrate considerations of equality into day to day business and keep them under review in decision making, the design of policies and the delivery of services. As part of the consultation development a separate stakeholder management plan is being developed to ensure that equalities issues are incorporated into the policy development, consultation and implementation.
- 5.6.4 Public authorities need to consider the aims of the general equality duty to

advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not to take prejudice and promote understanding when making decisions and setting policies. The protected characteristics specified under the Equality Act are age, disability, gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation.

5.7 Consultation and Engagement

- 5.7.1 The proposals outlined above are existing practices that are to be formalised. The authority will prepare new guidance notes for circulation.

6 BACKGROUND PAPERS

- 6.1 Environment Committee – 24th July 2014 – Consultation on New Highways Plans and Procedures
- 6.2 Environment Committee – 14th July 2016 – Proposed Footway Treatment Types and Traffic Calming
- 6.3 Environment Committee – 8th November 2016 – Commuted Maintenance Payments for Highways