

## CABINET ITEM COVERING SHEET PROFORMA

**AGENDA ITEM**

**REPORT TO CABINET**

**6 NOVEMBER 2008**

**REPORT OF CORPORATE  
MANAGEMENT TEAM**

### **CABINET DECISION**

***Regeneration & Transport – Lead Cabinet Member – Councillor Robert Cook***

#### **UNADOPTED STREETS – POLICY & PROCEDURE FOR ADOPTION**

1. Summary

This report details the legal status of adopted and unadopted streets together with a list of known unadopted streets in the Borough. It sets out procedures that may be considered for adoption and makes recommendations to that effect.

2. Recommendations

It is recommended that Cabinet approve the following policies:-

1. Where Streets require no additional works to become adopted, it is in the interest of the public to adopt and adoption will not have significant ongoing maintenance liabilities:-
  - the Head of Technical Services, in consultation with the Cabinet Member, are authorised to approve the adoption of such private streets.
2. Where Streets require minor works to become adopted, it is in the interest of the public to adopt and adoption will not have significant ongoing maintenance liabilities :-
  - the Head of Technical Services will seek full or partial contributions from residents or landowners to facilitate adoption,
  - the Head of Technical Services, in consultation with the Cabinet Member, are authorised to allocate limited Council funding, to assist adoption, up to a maximum of £5,000 per street, where appropriate,
  - the Head of Technical Services, in consultation with the Cabinet Member, are authorised to approve the adoption of such private streets on condition a private contribution is secured,
  - an initial allocation of £10,000 will be provisionally set aside, from the 2009/2010 Highways Maintenance Budget, to fund this activity, should this not be utilised the budget will revert to being used for general highway maintenance.
3. Where Streets require significant works to become adopted, it is in the interest of the public to adopt and adoption will have significant ongoing maintenance liabilities :-
  - the Head of Technical Services will seek costs from the landowners,
  - the Head of Technical Services in consultation with the Cabinet Member, are authorised to approve the adoption of such private streets at the expense of the landowner/frontagers in accordance with the legal requirements of the Highways Act 1980 (Private Street Works Code).

4. It is clarified to Ward Members that, subject to the agreed protocols for the use of Community Participation Budget (formerly Small Environmental Improvements Budget), private street adoption is a permissible use of that budget.
5. A further report be brought to Cabinet in November 2009 to update members on the progress of dealing with private streets and to review the policies agreed.

3. Reasons for the Recommendations/Decision(s)

The report clarifies the Council's position in relation to the legal status and maintenance obligations for private streets.

4. Members' Interests

Members (including co-opted Members with voting rights) should consider whether they have a personal interest in the item as defined in the Council's code of conduct (**paragraph 8**) and, if so, declare the existence and nature of that interest in accordance with paragraph 9 of the code.

Where a Member regards him/herself as having a personal interest in the item, he/she must then consider whether that interest is one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest (**paragraphs 10 and 11 of the code of conduct**).

A Member with a prejudicial interest in any matter must withdraw from the room where the meeting considering the business is being held -

- in a case where the Member is attending a meeting (including a meeting of a select committee) but only for the purpose of making representations, answering questions or giving evidence, provided the public are also allowed to attend the meeting for the same purpose whether under statutory right or otherwise, immediately after making representations, answering questions or giving evidence as the case may be;
- in any other case, whenever it becomes apparent that the business is being considered at the meeting;

and must not exercise executive functions in relation to the matter and not seek improperly to influence the decision about the matter (**paragraph 12 of the Code**).

**Further to the above, it should be noted that any Member attending a meeting of Cabinet, Select Committee etc; whether or not they are a Member of the Cabinet or Select Committee concerned, must declare any personal interest which they have in the business being considered at the meeting (unless the interest arises solely from the Member's membership of, or position of control or management on any other body to which the Member was appointed or nominated by the Council, or on any other body exercising functions of a public nature, when the interest only needs to be declared if and when the Member speaks on the matter), and if their interest is prejudicial, they must also leave the meeting room, subject to and in accordance with the provisions referred to above.**

**AGENDA ITEM**

**REPORT TO CABINET**

**6 NOVEMBER 2008**

**REPORT OF CORPORATE  
MANAGEMENT TEAM**

**CABINET DECISION**

**UNADOPTED STREETS – POLICY & PROCEDURE FOR ADOPTION**

**SUMMARY**

This report details the legal status of adopted and unadopted streets together with a list of known unadopted streets in the Borough. It sets out procedures that may be considered for adoption and makes recommendations to that effect.

**RECOMMENDATIONS**

It is recommended that Cabinet approve the following policies:-

1. Where Streets require no additional works to become adopted, it is in the interest of the public to adopt and adoption will not have significant ongoing maintenance liabilities:-
  - the Head of Technical Services, in consultation with the Cabinet Member, are authorised to approve the adoption of such private streets.
2. Where Streets require minor works to become adopted, it is in the interest of the public to adopt and adoption will not have significant ongoing maintenance liabilities:-
  - the Head of Technical Services will seek full or partial contributions from residents or landowners to facilitate adoption,
  - the Head of Technical Services, in consultation with the Cabinet Member, are authorised to allocate limited Council funding, to assist adoption, up to a maximum of £5,000 per street, where appropriate,
  - the Head of Technical Services, in consultation with the Cabinet Member, are authorised to approve the adoption of such private streets on condition a private contribution is secured,
  - an initial allocation of £10,000 will be provisionally set aside, from the 2009/2010 Highways Maintenance Budget, to fund this activity, should this not be utilised the budget will revert to being used for general highway maintenance.
3. Where Streets require significant works to become adopted, it is in the interest of the public to adopt and adoption will have significant ongoing maintenance liabilities:-
  - the Head of Technical Services will seek costs from the landowners,
  - the Head of Technical Services in consultation with the Cabinet Member, are authorised to approve the adoption of such private streets at the expense of the landowner/frontagers in accordance with the legal requirements of the Highways Act 1980 (Private Street Works Code).

4. It is clarified to Ward Members that, subject to the agreed protocols for the use of Community Participation Budget (formerly Small Environmental Improvements Budget), private street adoption is a permissible use of that budget.
5. A further report be brought to Cabinet in November 2009 to update members on the progress of dealing with private streets and to review the policies agreed.

## DETAIL

### Background

1. The condition and maintenance of some private streets within the Borough has been a source for concern by residents for many years. Many residents do not, generally, appreciate that some streets are private and that the Council has no obligation or legal rights, without landowner permission, to repair or maintain private streets. It is also highly likely that this issue also has a negative impact upon public satisfaction with roads and footpaths.
2. Furthermore, in recent years, the Council has allocated Ward Members a Community Participation Budget for small environmental improvements. This has generated enquiries from some members regarding maintenance or improvement works, funded from this budget, to be undertaken on some private streets. This occurs when the street's condition, through lack of maintenance, is a source of concern to local residents.
3. This report sets out the legal situation and proposes policies for dealing with private streets. The definitions associated with the adoption of highways are included in **Appendix A** of this report.

### **Why are some streets not adopted?**

4. Streets (highways of all kinds) that existed as highways before 31<sup>st</sup> August 1835 are all classed as "adopted". Footpaths and bridleways in existence before December 1949 are also all adopted. After these respective dates, any street to become adopted would have gone through a legal process. Today, for example, notices can be given by an owner proposing to dedicate a street as a highway or an agreement may be made with the Highway Authority under the Highways Act 1980 to adopt new streets - ie a new development.
5. Therefore, for a street to be adopted and have public money used for its future upkeep, it needs to have been considered by the highway authority under a proper process for its suitability for adoption. This normally relates to the sizes, layout and construction techniques used. In some cases a legal situation might arise whereby a Private Street could be challenged as being a public highway. However, this does not mean it would cease to be a private street and become an adopted street, it simply means that the public might have "highway rights" to use the street.
6. There are reasons why streets may not be adopted:
  - most commonly, the streets may not have been constructed by the developer to the highway authority's adoption standards. As such, it remains the responsibility of a private street manager, frontagers or landowner;
  - other streets may have become highways through prolonged usage (20 years or more) without being formally adopted;

- there are also examples of historical anomalies which have resulted in unadopted areas.

8. Even though most streets in the Borough are adopted, there do remain many unadopted streets. A schedule of known unadopted streets is currently being finalised and Ward Members have been invited to comment on a draft schedule, a copy is available in the Members Library.
9. The schedule of streets currently includes broad indicative costs for bringing the streets up to adoptable standards. Such works have been estimated to be in the region of £1.5M. However, it must be noted that this record of unadopted streets is not completed, but work in progress.

#### **Maintenance of unadopted streets**

10. The Council as Highway Authority has no duty or funding to maintain the surface of streets that are not adopted.
11. Neither the owners of the unadopted street, nor the owners of land having a right of access along it, are under any automatic obligation to maintain the street. However, owners do have some rights to undertake repairs and make improvements to the street.
12. Where repairs are necessary to obviate danger to traffic using an unadopted street, the Council has powers to serve notice upon the owner (frontagers) to all or part of an unadopted street requiring them to undertake necessary repairs within a specified period.
13. The Council can undertake such repairs in default and recover the costs from the frontagers. However, these powers are used very rarely, due to the difficulty of recovering costs and the potential financial difficulties caused to frontagers.

#### **Maintenance of adopted streets**

14. The Council has a statutory duty under section 41 of the Highways Act to maintain adopted streets, the Council allocates a Highway Maintenance Budget each year, as a part of the Medium Term Financial Plan process to meet this duty.

#### **Adopting private streets**

15. The Council may consider adopting privately maintained streets (unadopted) that meet certain criteria. This is a discretion and subject to legal process.
16. Where the benefits of adopting a street contribute to the Council's wider objectives and subject to resources, it may be possible to include the adoption of private streets in a particular area as part of a broader scheme.
17. Where new development takes place, adoption of the new streets is negotiated with the developer.
18. All owners of properties in a private street should be consulted regarding any proposals to adopt. If any objections are received then it may not be appropriate to pursue adoption.
19. The Council can consider the application of legal powers under the Private Street Works Code to carry out works necessary for adoption, and recover costs when there is evidence that it is in the public interest to do so.

#### **Policy**

20. It is recommended that the following policy be used when considering the adoption of private streets:
- 1/. Where Streets require no additional works to become adopted, it is in the interest of the public to adopt and adoption will not have significant ongoing maintenance liabilities:-
    - the Head of Technical Services, in consultation with the Cabinet Member, are authorised to approve the adoption of such private streets.
  - 2/. Where Streets require minor works to become adopted, it is in the interest of the public to adopt and adoption will not have significant ongoing maintenance liabilities :-
    - the Head of Technical Services will seek full or partial contributions from residents or landowners to facilitate adoption,
    - the Head of Technical Services, in consultation with the Cabinet Member, are authorised to allocate limited Council funding, to assist adoption, up to a maximum of £5,000 per street, where appropriate,
    - the Head of Technical Services, in consultation with the Cabinet Member, are authorised to approve the adoption of such private streets on condition a private contribution is secured,
    - An initial allocation of £10,000 will be provisionally set aside, from the 2009/2010 Highways Maintenance Budget, to fund this activity, should this not be utilised the budget will revert to being used for general highway maintenance.
  - 3/. Where Streets require significant works to become adopted, it is in the interest of the public to adopt and adoption will have significant ongoing maintenance liabilities :-
    - the Head of Technical Services will seek costs from the landowners,
    - the Head of Technical Services in consultation with the Cabinet Member, are authorised to approve the adoption of such private streets at the expense of the landowner/frontagers in accordance with the legal requirements of the Highways Act 1980 (Private Street Works Code).

### **Examples of current Unadopted Areas**

21. Back Alley to rear of Linden Avenue: - this area is an example of a historical anomaly, as there seems no reason why half of the alley is adopted and half remains private. In this case there would be minimal cost to tidy up and maintain the unadopted area and formally adopt the private section.
22. Linton Close parking court: - this is an example of an area which didn't conform to the authority's adoption standards as a refuge vehicle is unable to turn round within the parking court. The Developer or landowner/frontagers are responsible for maintenance of this area but over time nothing has been done. Although this area could never be brought up to adoptable standards given the current layout, in the interest of the public, the carriageway could possibly be repaired and maintained with only minor costs, contributions may then be sought.
23. Teesdale Footpaths and Walkways – on the Teesdale Business Park area in Thornaby, there are significant lengths of footpaths and canal walkways that remain in private ownership and in need of maintenance. The Council is currently negotiating with the landowner for works to bring these areas up to standard for adoption. This will form a part of a future update report to Cabinet, early in 2009.
24. Railway Terrace: - this is an example of a 150 metre long private street serving 25 properties. This street has no footway or street lighting and the road surface is in very poor condition. It would be difficult to bring this street up to an adoptable standard due to the need to fit in a suitable size carriageway, footway and vehicular turning area and it may also require a retaining wall. This would require a significant expense and there

would also be difficulties in connecting the street to the existing adopted network as currently it is accessed through a private car park at Eaglescliffe station. Therefore adoption in this case is highly unlikely to be achievable.

## **FINANCIAL IMPLICATIONS**

25. There are no grants or other central government sources of funding specifically for the making up of private streets and it, therefore, remains the case that it is considered that the potential scale of costs is such that the Council is not in the financial position to be able to undertake to adopt all streets. It is estimated that to adopt all streets currently identified in the Borough would cost in the region of £1.5M.
26. The current Highways budget is allocated for the maintenance of adopted highways and allocating £10,000 from this area to assist with unadopted streets will have a minor impact upon our highway maintenance programmes.
27. Current and recent practice now ensures that the majority of new highways are built to adoptable standard. As a result future financial implications should be minimised. However, the Council does not have the statutory power to insist developers build to adoptable standards. Agreement is usually reached through negotiation and influence.
28. The financial responsibility for the maintenance and making up of private streets clearly rests with the owners of the properties fronting the street. This responsibility is generally reflected in the value of properties.

## **LEGAL IMPLICATIONS**

The adoption of private streets would be in accordance with the Highways Act 1980.

## **RISK ASSESSMENT**

The adoption of this policy is assessed as a low risk to the Council.

## **COMMUNITY STRATEGY IMPLICATIONS**

### **Economic Regeneration and Transport**

The adoption of private streets has the potential to improve the overall quality of the Highway network.

### **Safer Communities**

An improved Highway network together with enhanced street lighting will provide a safer community.

### **Children and Young People**

An improved Highway network will provide a safer environment and enhanced streetscape.

### **Healthier Communities and Adults**

Streets maintained by the Highway authority should provide a regular inspection and maintenance regime to improve conditions and reduce the potential of trips and falls.

### **Liveability**

The adoption of private streets has the potential to improve the overall quality of the Highway network and provide a regime of regular inspection and maintenance to reduce the potential of trips and falls leading to a safer environment.

## **EQUALITIES IMPACT ASSESSMENT**

This policy relates to the legal status of a highway and as such has no direct effect on any individual or community.

## **CONSULTATION INCLUDING WARD/COUNCILLORS**

Details of all current known unadopted highways have been passed to all Members for consideration. These are contained within **Appendix B** of the report which is available for viewing in the Members' Library.

**Name of Contact Officer: Brian Buckley**  
**Post Title: Highway Network Manager**  
**Telephone No. 01642 526703**  
**Email Address: [brian.buckley@stockton.gov.uk](mailto:brian.buckley@stockton.gov.uk)**

### Background Papers

None.

### Ward(s) and Ward Councillors:

Not ward specific.

### Property

N/A



### THE DEFINITIONS ASSOCIATED WITH THE ADOPTION OF HIGHWAYS

#### **What is a Highway?**

The legal status of a highway is defined in the Highways Act 1980. In the Act, a 'Highway' is defined as a way over which all members of the public have the right to pass and repass. Their use of the way must be as of right, not on sufferance or by licence. A highway must normally have a destination (for the public at large) at each end.

#### **What is a street?**

The legal status of streets is defined in the Highways Act 1980. In the Act, a 'street' is defined as any highway and any road, lane, footway, square, court, alley or passage and any land laid out as a way, whether it is formed as a way or not. Therefore, a 'street' can be a footpath, cycle track, bridleway or full vehicular highway.

#### **What does adopted mean?**

The Council, as a highway authority, maintains streets that are "highways maintainable at public expense" as defined by the Highways Act 1980. Statute requires that the Highway Authority keeps a list of highways maintainable at public expense.

#### **What does unadopted mean?**

As above, a highway can be in public use, however remain in private ownership. These are defined as "highways NOT maintainable at Public expense" and therefore the Highway Authority does not maintain them.