

By: Nick Chard, Cabinet Member, Environment, Highways & Waste

To: Environment, Highways & Waste Policy Overview Committee  
16 July 2009

**Subject: Highway Adoptions – Cold Case Project**

Classification: Unrestricted

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Summary: This paper provides Members with an update on the progress of the Highway Adoption Cold Case Project. 138 of the original 175 cases have now been adopted which represents good progress.

**FOR APPROVAL**

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Recommendation

The Committee's approval is sought to request the Cabinet Member for Environment, Highways and Waste to approve the proposed changes to the Section 38 Model Agreement outlined in section 7 of this report.

**1. Introduction**

- 1.1 A Report was considered by this Committee on 6<sup>th</sup> November 2008 which described the backlog in the adoption of newly constructed streets under Section 38 of the Highways Act 1980. This Report sets out how most of these cases have now been resolved and the roads adopted.
- 1.2 Under a "Section 38 Agreement", developers design and construct the streets in accordance with KCC's guidance and standards. All stages are audit-checked by KCC such that upon satisfactory completion of all relevant works and legal processes the streets become maintainable at the public expense.

**2. Adoption Problems**

- 2.1 Not all Section 38 Agreements run smoothly. Inadequate standards of construction and land ownership complications are among the reasons why some streets are not adopted in good time. The failure of developers to complete remedial works, confirm drainage easements and transfer land can make adoption inappropriate. Occasionally, developers have gone into liquidation, leaving no reasonable means by which the Agreements can be seen through to completion.
- 2.2 All Section 38 Agreements include a bond, or equivalent, through which funds for KCC to see the works through to completion can be called upon in the event of the developer defaulting. Unfortunately, for older schemes the bond situation is not always straightforward and can become a lengthy and resource intensive process.

### **3. The Cold Case project**

- 3.1 A significant number of Section 38 Agreements dating back over many years remained unadopted across the County. These schemes were started during the “Agency Agreement” and “Kent Highways Partnership” periods when many of KCC’s highway functions, including highway adoptions, were carried out by the District Council’s Highway Units. The formation of Kent Highway Services (KHS) in April 2005 brought all of these functions under KCC’s direct control.
- 3.2 The outstanding schemes have been called “Cold Cases”. Phase 1 of the project has concentrated on 175 schemes that started before 2002 (information available on display). The project was initiated in Spring 2008 with the aim of dealing with these schemes by the end of March 2009.
- 3.3 Unfortunately, the quantity and quality of historical information relating to the Cold Cases is variable. Phase 1 has therefore been particularly challenging, but we have laid a firm foundation for the next phase by clearing a substantial proportion of the schemes and establishing a robust method which can be used for tackling the remaining outstanding schemes, as well as learning lessons that will make KHS more efficient in its approach to post KHS agreements. Phase 2 will deal with all outstanding schemes between 2002-2005 (information available on display).

### **4. Project methods**

- 4.1 A composite schedule of the pre-2002 incomplete Section 38 Agreement schemes was compiled from records which enabled research, review and investigation. It included some historical information, including legal positions and engineers’ notes. The schedule has been used to maintain control and keep a record of progress, correspondence, site visits, telephone conversations and meetings. They are accessible to all relevant parties.
- 4.2 A large mailshot operation was used to establish initial contact with developers, a few of which have gone into liquidation or are trading under new names. These letters advised of a specific point of contact. This was particularly helpful to developers already seeking to progress their Cold Case schemes. Meetings were then held with the relevant KHS Agreements Engineers, albeit some of these had little historical knowledge of schemes they had inherited since 2005. Direct contact with developers followed, with some keen to meet and to agree corrective actions. Problems with land transfer and easements were taken up with KCC Legal Services, with whom close liaison has been established.
- 4.3 Flexible criteria for adoption have been established with a specific focus on safety, future maintenance/financial liability, historical information, justification in the absence of full completion, and the general appearance of the development taking into account reasonable wear and tear in relation to the length of time that adoptable areas have been in public use. Without such criteria, many schemes would remain unadopted.

- 4.4 In the early months, progress to complete adoptions appeared to be slow. As each case required investigation, contact with the developer, remedial works on the site as well as legal work it became inevitable that more time would be needed to fulfil targets.
- 4.5 One of the major issues holding up the completion of schemes was the requirement for transfer of the freehold of land for the road to the County Council. This requires close co-operation between the County Council, the developer and the legal teams involved, but can result in significant delay where the transfer cannot or has not been satisfactorily completed. In consultation with the KCC Legal team and the Cabinet Member, it was agreed that where the land transfer was underway and likely to proceed without further complication and providing the roads were in acceptable condition, adoption could take place whilst formalities of land transfer were being completed. This has enabled a number of cases to be adopted without further delay.
- 4.6 There are some cases where the developer has gone into liquidation or has sold the site on. It was agreed that these cases would be adopted without the transfer of the land to the County Council. A number of cases have been adopted in this way and this means that although the sub-soil of the road is not registered with us, the surface has been adopted as highway. Some schemes will however remain open due to circumstances beyond the control of KHS. Work on these schemes will continue until a satisfactory resolution is reached.

## **5. Adoption Records**

- 5.1 When a road is adopted the developer is required to provide detailed “as-built” and adoption records which are passed throughout KHS for record and maintenance purposes. It is often time consuming and sometimes impossible to obtain these records from developers and in order to move some cases along arrangements have been made for highway inspectors to pick up the detail in the course of their routine site visits.
- 5.2 In addition, where we were unable to obtain an adoption drawing (essential for Highway Definition and Local Land Charges), these are also being produced in house.

## **6. Lessons Learnt**

- 6.1 Once the Cold Cases Project is completed, a backlog of adoptions is less likely to occur in future. However, there will still be a dependency on the co-operation of developers.
- 6.2 Adoption policies and procedures have also been reviewed. Changes are proposed to KCC’s Standard Model Section 38 Agreement to enable officers to have better control over the adoption procedure, whilst maintaining due regard for the most effective way to serve the various interests of residents, developers and the people of Kent.

## **7. Modifications to the Model Agreement**

7.1 In order to deal with agreements more expeditiously in future, the following modifications are proposed to KCC's Standard Model Section 38 Agreement:

- Remove the requirement to transfer the freehold of land under which the highway exists. This requirement was essentially seen as a way of ensuring better control over junction visibility splay areas, however recent advice from Government included in the "Manual for Streets" means there is less emphasis on the need to provide large amounts of visibility areas. A comparison with other authorities (see Appendix 1) shows that Kent acts unilaterally in the requirement to transfer the freehold of the land. Given that there are few problems associated with not having the freehold, it is recommended that this requirement should be removed to expedite the adoption process.
- Increasing Officer authority to exercise discretion with regard to use of the performance bond, and allowing recovery of all costs involved, including legal fees.

## **8. Measuring and Monitoring Performance**

8.1 To ensure that KHS improves its performance in terms of outputs, the strategy to tackle future agreements has also been reviewed. A new performance indicator has been introduced that will require all agreements to be processed through to final adoption within 12 months of the expiry of the maintenance period.

8.2 KHS management will monitor this indicator at regular intervals to decide whether resources should be focused to target problem areas, or whether extra resources are required to maintain performance improvement.

## **9. Conclusions**

9.1 Despite significant effort and resources being put into Phase 1 of the project, a number of cases remain which cannot currently be adopted, some of which are particularly complicated and may never be suitable for adoption.

9.2 At the time of writing, of the original 176 cases, 138 have now been adopted. Work is continuing on some of the remainder and it is envisaged that a total of 149 will be adopted by the end of June, 2009 and 160 by the end of July 2009.

9.3 A further 10 cases are nearing completion and work on these will continue by the agreement teams, leaving 6 schemes with fundamental unresolved issues. These schemes will require dialogue with all parties to achieve satisfactory resolution.

9.4 The current status of all schemes within Phase 1 of the project is available on display.

9.5 There are 98 outstanding schemes which were signed between 2002 and 2005. These have now been assessed and rated utilising the experience gained and methods used in Phase 1. It is proposed that these will form Phase 2 of the project and work will continue, initially to the end of March 2010, to resolve issues and adopt as many as possible in that period. It is anticipated that 75 schemes will be completed within this period. Work on Phase 2 of the project will be reviewed at the end of the period to decide how to proceed with any remaining cases.

- 9.6 Performance Indicators are in place to monitor future performance and ensure that resources are effectively deployed to improve levels of service.
- 9.7 Amendments to KCC's Standard Model Section 38 Agreement should improve the process of adoption and facilitate timely completion.

## **10 Recommendations**

### **Subject to the views of this Board;**

The Committee's approval is sought to request the Cabinet Member for Environment, Highways and Waste to approve the proposed changes to the Section 38 Model Agreement outlined in section 7 of this report.

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Background documents: none

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