



Date of Meeting	23 rd January 2019
Portfolio	Cabinet Member for Environment
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Public/Private Document	Private

Development at Dean Street, Rochdale - Adoption of highways under Section 228 Highways Act 1980

Executive Summary

1. Adoption of the roads within the completed Dean Street, Rochdale residential development as highways to be maintained at public expense in accordance with Section 228 of the Highways Act 1980.

Recommendation

2. That the Head of Legal Services be authorised in conjunction with the Head of Capital Projects and Highways: -

to take all necessary steps pursuant to the provisions of S228 of the Highways Act 1980 to declare the highways shown hatched on the attached Drawing QD543-16-01 to be highways maintainable at the public expense.

to prepare the appropriate notices pursuant to the provisions of S228 of the Highways Act 1980 declaring that the roads shown hatched on the attached Drawing JG/DS/1234 to be highways maintainable at the public expense.

Reason for Recommendation

3. To seek approval for advertising notices pursuant to Section 228 of the Highways Act 1980 with a view to adopting the roads known as The Foothills, Lower Roch Road and Mill View Lane, as highways to be maintained at public expense.

Key Points for Consideration

4. Agreements made under Section 38 of the Highways Act 1980 are the most common method of achieving road adoption. The 'Section 38 Agreement' is made between a developer and the Council in its capacity as Highway Authority. Developers require the Section 38 Agreement where developers have included roads within a new residential or commercial development.
 - 4.1

Section 38 of the Highways Act 1980 provides the Council with the powers to enter into an agreement to take over (adopt) and thereafter maintain at public expense a newly constructed road.

Only an owner of land is able to dedicate the land for highway purposes. Therefore, if the developer is not the landowner or the landowner is unable to be identified or, in this case, the landowner is actually the Council itself, the land cannot be dedicated appropriately for highway purposes under S38 of the Highways Act 1980 and the roads may well remain private streets (not be adopted into the public highway to be maintained at public expense). However, a developer can ask the local authority to adopt the private street on completion of the development pursuant to Section 228 of the highways Act 1980.

Pursuant to the provisions of Section 228 of the Highways Act 1980, the Council, as Highway Authority, is able to declare a road to be a highway maintainable at public expense provided that a developer has carried out the works to a satisfactory standard.

When considering whether to adopt a road, the Council considers whether the works have been brought up to adoptable standards and that the development contains any relevant drainage, street lighting, traffic signals or any other special features required in connection with the development.

The Council is satisfied following inspection by Council's Highway Officers that the roads are suitable for adoption and that the developer has constructed them to the required standard.

It has always been the intention for the Council to adopt the roads within this development and the development progressed on this understanding. Residents have purchased houses also on that understanding.

Until the Council adopt the roads, routine maintenance will not commence.

Pursuant to Section 228 of the Highways Act 1980, the Council will erect a Notice on site stating that the roads will become a highway maintained at public expense after a "one month" period.

Alternatives Considered

If the Council decides not to adopt, the Council will still own the land forming the roads within the development in its capacity as estate owner and will retain liability. However, the roads will not be subject to routine maintenance and will therefore degrade at a quicker rate with resulting costs to the Council.

Costs and Budget Summary

5. The developer has met all the reasonable costs of the Council in connection with the development and adoption of the roads including supervision and

legal fees.

The adoptions of new roads are added to the network and are taken into account when maintenance funding is allocated.

Risk and Policy Implications

6. The Council is responsible for the maintenance of all adopted roads and they are maintained in accordance with the Council's maintenance programmes. Owners/developers or house frontages are responsible for the maintenance of roads which are un-adopted.

If the Council refuses to adopt the roads, the Council as landowner will retain the liability. Since the roads will not be maintained in accordance with the Council's maintenance programmes, it is likely that they will deteriorate more quickly. This could bring objections from the frontagers of the houses over the state of the roads and the Council could incur costs associated with claims from the public.

Consultation

7. The developer has requested the Council to adopt the roads within the development in accordance with Section 228 of the Highways Act 1980 and completed the development on that principle.

Background Papers	Place of Inspection
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8. Highways Layout	Floor 2 Number 1 Riverside Desk 3262
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