

**North East Derbyshire District Council**

**Cabinet**

**25 October 2017**

**Report of Councillor M Gordon, Portfolio Holder with Responsibility for Environment**

**Streetscene Service Arrangements – Access to Private Unadopted Residential Carriageways**

This report is public

**Purpose of the Report**

- To update Cabinet, further to their meeting on 30<sup>th</sup> August 2017, in regard to:
  - (a) Derbyshire County Council's (Highway Authority) position in their adoption of highway infrastructure at new-build developments with up to 25 housing units.
  - (b) Feedback received from other Derbyshire Authorities further to writing to them on the matter of Highway Adoption.
- To further seek Member authority to enter in to 'indemnity agreements' with developers and/or their management company/successors in title to facilitate access over roads at new housing developments which the Highway Authority (Derbyshire County Council) do not adopt for maintenance at public expense.

**1 Report Details**

- 1.1 As part of new housing development planning process, Streetscene is consulted in respect of service delivery arrangements; in particular, to ensure suitable access is in place to undertake waste collection arrangements.
- 1.2 Carriageways and footways at new developments are constructed to meet the Highway Authority's '6C's Highway Design Standards; and, following a period of maintenance by developers, adopted for maintenance at public expense.
- 1.3 The Highway Authority has reviewed their approach in adopting estate roads; in particular, at developments of 25 or fewer properties. In future, it is unlikely they will adopt estate roads on small developments for maintenance at public expense.
- 1.4 Further to Cabinet's prior meeting (30<sup>th</sup> August 2017) Derbyshire County Council have re-affirmed that their future approach in the adoption of estate roads will be in accordance with '6C's Highway Design Standards' and therefore likely that structural highway infrastructure at such developments may not be adopted for maintenance at public expense in future.
- 1.5 The Joint Chief Executive Officer has raised the issue wider with Derbyshire Chief Executives. Responses received share the Council's concerns; further to which, it is recommended that the JCEO writes to the County Council asking that they review

their policy position in light of a revised '6C's Design Guide' named 'Delivering Streets and Places' which recommends that streets at development serving 6 or more dwellings are adopted.

- 1.6 With increasing number of small developments, Streetscene is receiving requests from housing developers to undertake bin collections from un-adopted roads as an alternative to nominating collection\presentation points on the edge of developments, which in some instances can be of lengthy distance.
- 1.7 Due to the size of these developments, it often emerges that carriageways are small and may require multiple reversing and\or turning manoeuvres in cul-de-sacs which present potential for high wear points and complaints and\or claims against the Council. Therefore, to safeguard the Council against complaints and\or claims for potential repairs, it is proposed that developers or their successor in title provide the Council with an 'indemnity' to ensure that the Council is not held liable for future repair and renewal costs on un-adopted roads\footways on new developments; that is, where the Highway Authority refuse to adopt them for maintenance at public expense.
- 1.8 Streetscene will assess each development based on access, construction materials and the weight and size of vehicles so not to cause damage to the road surface. In entering into such agreements, the Council would still require that roads\footways be constructed to recognised '6C's Highway Design Standards', as would be required by the Highway Authority, to ensure that un-adopted roads are suitable to accommodate the weight and turning of the large service vehicles.
- 1.9 The Council's waste collection, street cleansing and grounds maintenance service delivery is predominantly revenue budget funded from Council Tax payments; therefore, this approach presents no revenue financial risk implications as revenue will increase to reflect housing growth.
- 1.10 Highway verge grass cutting is funded by way of the Council's Agency Agreement with Derbyshire County Council; and, in the event roads are un-adopted, the County Council may not wish to meet such costs. However, given the size of these developments there is a low likelihood that grass verges will be incorporated; however, where these are, they may be 'designed out' following Streetscene consultation at the planning stage; or, commuted sums agreed to secure future maintenance; or, they are conveyed to neighbouring properties in which it is now usual that developers form a management company to undertake maintenance of the un-adopted areas.

## **2 Conclusions and Reasons for Recommendation**

- 2.1 This report proposes the Council's future policy position in regard to service delivery arrangements on new housing estates; at which, some roads may be un-adopted; and, seeks Cabinet's approval to enter in to 'indemnity agreements' with developers to ensure like standards and access to service delivery is afforded to residents as enjoyed by households residing along adopted roads.
- 2.2 The Joint Chief Executive Officer has raised the issue with wider Derbyshire Chief Executive who shares the Council's concerns; further to which, it is recommended he writes to the County Council asking they review their policy position in light of revised '6C's Design Guide standards.

- 2.3 The Assistant Director Streetscene (ADS) has delegated authority (9.14 Constitution) to acquire, dispose of, grant and obtain rights in land and premises on such terms and conditions as considered appropriate. This report seeks Cabinet's approval for the ADS to enter in to agreements to ensure uniform standards and access to service delivery is afforded to residents.

### **3 Consultation and Equality Impact**

- 3.1 The Council provides residents with street cleansing, grounds maintenance and '3 bin' kerbside waste collection services. Residents on collection day, present bins at the kerbside outside their property curtilage.
- 3.2 Proposals set out in this report aim to ensure as consistent and equitable approach as possible is maintained when undertaking kerbside waste collections to negate need of nominating bin collection\presentation points of lengthy distance on developments where roads may be un-adopted; also, that these roads enjoy the same level of street cleansing and\or grounds maintenance services.

### **4.0 Alternative Options and Reasons for Rejection**

- 4.1 In the absence of 'indemnity agreements' the Council may have need to designate collection points at the nearest public highway; this of which, may require residents to present bins over lengthy distances and result in obstruction to the highway\footway through multiple bin presentation and resulting in complaints.

## **5 Implications**

### **5.1 Finance and Risk Implications**

- 5.1.1 There are no financial implications arising from this report other than internal administrative costs to enter into an indemnity agreement with developer and\or their management company.

### **5.2 Risk Considerations**

- 5.2.1 In the absence entering in to 'indemnity agreements, the Council may have need to nominate bin collection points which may result in resident complaints, dissatisfaction and present obstruction to the public highway on collection days.
- 5.2.2 The provision of street cleansing and grounds maintenance services on un-adopted roads on new developments will ensure a seamless standard of Streetscene Service is delivered across adopted and un-adopted roads on new developments.
- 5.2.3 Where streets are not adopted in future and require the Council to access such to deliver services, the entering of 'indemnity agreements' provides the Council with a safeguard against future claims against wear and tear on such estate roads. It further provides clarity of Council and Developer responsibilities facilitating some degree of surety by way of developers that physical maintenance and repair of such estate roads will be undertaken to meet their customer (households) future needs.

### **5.3 Legal Implications including Data Protection**

- 5.3.1 There are no data protection issues arising from this report.
- 5.3.2 The Council is a Waste Collection Authority (WCA) as defined by the Environmental Protection Act 1990. Section 45(1)(a) requiring the Council to arrange for the collection of household waste from any premises and require the occupier, by notice served (s.46(1)) on them, to place the waste for collection in a receptacle of a kind and number specified and on a day and at a position or place.
- 5.3.3 The kind and number of receptacles required to be used must be such as are reasonable but, subject to that, separate receptacles or compartments of receptacles may be required to be used for waste which is to be recycled and waste which is not (s.46(2)).
- 5.3.4 The authority may make provision with respect to the size, construction, and maintenance of the receptacles; the placing of the receptacles for the purpose of facilitating the emptying of them; and the substances or articles which may or may not be put into the receptacles or compartments of receptacles (s46(3) and (4)).
- 5.3.5 The Council's statutory duty to collect household waste is not discharged regardless of whether a carriageway is adopted or un-adopted.
- 5.3.6 The Council is defined as a 'Principal Litter Authority' by way of the Environmental Protection Act 1990 and must ensure, so far as is practicable, clearance of litter and refuse from "relevant land" (s89(1)(c)).
- 5.3.7 "Relevant land" is land that is open to the air (notwithstanding that it is covered if it is open to the air on at least one side) but not a highway, which is under direct control of a local authority to which the public are entitled or permitted to have access with or without payment (s86(4)). A "relevant highway" is one that is maintainable at public expense (s86(9)) but not a trunk road which is a special road.
- 5.3.8 This report proposes the Council seeks 'indemnity agreements' from developers or their successors in title to safeguard the Council when accessing roads on new developments which are not adopted for maintenance by the Highway Authority; also, that un-adopted roads receive street cleansing and grounds maintenance services like that of adopted roads; in particular, due to the Council receiving revenue income from Council Tax to meet service costs, thus ensuring a uniform level of Streetscene standards throughout developments.
- 5.3.9 In the absence of 'indemnity agreements' with developers, future maintenance of un-adopted estate roads, may lay with adjoining households. Therefore, agreements may act as a future safeguard for residents as well as the Council.
- 5.3.10 Subject to Cabinet approving recommendations set out in this report, the Council's Joint Waste Collection and Recycling Policy is updated to reflect these proposals.

### **5.4 Human Resources Implications**

- 5.4.1 There are no human resource implications arising from this report.

## 6 Recommendations

### 6.1 That Cabinet:

- (a) Note the County Council's continued position in the adoption of highway infrastructure at new-build housing developments is in accordance with the '6C's Highway Design Standards'.
- (b) The Joint Chief Executive writes to the County Council urging them to review their policy position in light of revised the '6C's Design Guide'.
- (c) Approves the policy approach of entering in to 'indemnity agreements' with developers or their successors in title at new housing developments, in particular at developments where streets are not adopted and where the Council has need to access such to deliver local services.
- (d) The Assistant Director of Streetscene exercises delegated authority to enter in to 'indemnity agreements' with developers and/or their management company/successors in title to facilitate Streetscene service delivery arrangements.
- (e) The Joint Waste Collection and Recycling Policy is updated to reflect the Council policy position as set out in this report.

## 7 Decision Information

<p><b>Is the decision a Key Decision?</b>  A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds:  <i>BDC: Revenue - £75,000</i> <input type="checkbox"/>  <i>Capital - £150,000</i> <input type="checkbox"/>  <i>NEDDC: Revenue - £100,000</i> <input type="checkbox"/>  <i>Capital - £250,000</i> <input type="checkbox"/>  <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i></p>	<p>Yes</p>
<p><b>Is the decision subject to Call-In?</b>  (Only Key Decisions are subject to Call-In)</p>	<p>Yes</p>
<p><b>District Wards Affected</b></p>	<p>All</p>
<p><b>Links to Corporate Plan priorities or Policy Framework</b></p>	<ul style="list-style-type: none"> <li>• Providing our <b>Customers</b> with Excellent Service</li> <li>• Supporting our <b>Communities</b> to be Healthier, Safer, Cleaner and Greener</li> </ul>

**8 Document Information**

<b>Appendix No</b>	<b>Title</b>
N/a	N/a
<b>Background Papers</b> (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)	
N/a	
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AGIN 7 (CAB 1027) 2017 – Streetscene Service Arrangements/AJD