



Hinckley & Bosworth
Borough Council

Scrutiny review of adoption of infrastructure associated with housing development

Report of the Task & Finish Group

1. Purpose of the review

- 1.1 The purpose of the review was to consider how items of infrastructure (such as public open space or roads) associated with housing development projects were adopted and by what bodies, ensuring the management of the infrastructure was balanced in the long-term interests of both the public and residents associated with new developments, within reasonable timeframes.

2. Background to the subject of the review

- 2.1 Within the Borough over the last few years there had been a growing tendency for new open space, play equipment and public highways to not be adopted by public bodies and this infrastructure was therefore managed by commercial companies.
- 2.2 Members had received concerns relating to difficulties associated with services not being delivered to the necessary standard, and also many cases of uncertainty as to the responsibilities for maintenance of some assets (for example streetlights).
- 2.3 Concerns had been raised with members about the speed of the adoption of assets where an agreement to adopt assets had been made, however, in all cases this would require the developer to demonstrate that the infrastructure had been delivered/built to an acceptable standard or in accordance with approved plans for transfer. In some cases, this period had been over twenty years and issues of responsibility always arose during the period between occupation and adoption.
- 2.4 Members of the borough, town and parish councils were driven to ensure developers' contributions were appropriate amounts for public bodies to take on the responsibility for maintenance of open spaces in perpetuity.

3. Key points for the review

3.1 It was agreed that the review would explore;

- the process for the adoption of infrastructure associated with large developments
- the powers the council had at its disposal through the planning process to mandate outcomes and understand what decisions were ultimately in the gift of the developer
- what the long-term issues were in respect of infrastructure managed by commercial management companies
- how decision making on the adoption of infrastructure by the borough, town & parish councils could be made more transparent, less intimidating and could be taken with full knowledge of the consequences
- benefits that could be achieved from the concept of stewardship schemes and how they might be promoted
- how infrastructure adoption timescales could be reduced once development had been completed.

3.2 Outcomes expected from the review included;

- a working understanding of the planning process for infrastructure
- an understanding of the long-term impacts of the management of infrastructure
- recommendations relating to a stewardship style of management
- recommendations for new guidance/briefing information for Town & Parish Councils
- recommendations for matters that could be addressed in the new Local Plan
- recommendations to the government relating to outcomes of the review.

4. Process for the review

- 4.1 The group agreed that the first stage of the review would be to ask planning officers to outline the process by which infrastructure was progressed through the planning process and outline their understanding of the options available to them to influence the options presented by developers.
- 4.2 Building on this initial position and learning from case studies, it was agreed that witnesses would be requested from key stakeholders to inform the groups review of drivers, implementation and outcomes. Witnesses attended on behalf of a developer, a management company and a stewardship scheme.
- 4.3 A glossary of terms would be prepared to aid members' understanding and support the final recommendations.
- 4.4 The group would consider the potential updates in the revised open spaces study being prepared as part of the Local Plan and consider how this would modify the current consideration and adoption process.
- 4.5 The final report would be drafted at the conclusion of the review, to include both reflective and forward-looking content, and agreed with the group before being presented to the Scrutiny Commission. There would be both Member and officer involvement in the scrutiny process.
- 4.6 Group leaders were invited to nominate members to the group to ensure cross-party representation. The following members were appointed:
 - Councillor RG Allen
 - Councillor DS Cope
 - Councillor CE Green
 - Councillor C Harris
 - Councillor C Lambert
 - Councillor P Williams.
- 4.7 The task & finish group was supported by Becky Owen, Democratic Services Manager, Ed Stacey, Planning Manager and Lesley Keal, Compliance and Monitoring Officer. Chris Brown, who at the time was Head of Planning, attended the initial meeting.
- 4.8 Councillor Williams was appointed chair at the first meeting.
- 4.9 Meetings of the group took place on 20 January, 10 April, 10 June, 2 July and 12 August 2025. The first meeting considered the approach to the review, including the information required and whether any witnesses would be called.
- 4.10 The task & finish group met as an informal, non-statutory body operating under its own procedures. Meetings were not open to the public and the minutes were not circulated beyond the group members.

5. Information presented and considered by the Review

5.1 **2024 Competition and Markets Authority (CMA) report on the housebuilding market**

5.1.1 The group gave consideration to the [CMA report](#) on the housebuilding market study which covered many of the issues which the review was to consider.

5.1.2 The CMA report, published in 2024 concluded:

“In light of the evidence that we have reviewed, it is our emerging view that consumers subject to private estate management arrangements are experiencing poor outcomes, and in some cases potentially serious detriment, and are in many cases powerless to address this. As the private estate management model risks becoming the default for new estates, if the model is left unchecked, such problems are likely to exacerbate over time.

We consider that, at the root of the problems we see, are the falling levels of adoption of amenities on housing estates by local authorities, which appears to be driven by the discretionary nature of adoption, housebuilders’ incentives not to pursue adoption and by local authority concerns about the future ongoing costs of maintaining amenities, in the context of pressures on local authority resources and finances. While this appears to be a particular and growing issue for public open spaces, and possibly also for roads, the lack of adoption of amenities in general is driving the growth of a private model which – without satisfactory protections for consumers – is leading to poor outcomes for consumers.

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5.1.3 Whilst the Government had accepted ‘in principle’ a number of the remedies recommended by the CMA, others were flagged as requiring ‘further work’. At the time of writing this report, none of the remedies have been actioned by government.

5.1.4 The CMA did not specifically target remedies which local planning authorities could implement.

5.1.5 The remedies went to the heart of concerns being raised by the task & finish group, namely the increasing prevalence for public infrastructure not being

adopted by public bodies, which was not seen to be in the long-term public interest.

5.2 **Flow Charts**

5.2.1 The group was presented with two flowcharts:

- S106 adoption process
- Highway adoptions process.

5.2.2 The charts are appended to this report, along with an additional flowchart documenting the earlier stage of the process of adopting open space.

5.3 **Stewardship Schemes**

5.3.1 A representative of Community Stewardship Solutions gave a presentation on stewardship and placemaking, covering:

- Stewardship roles and responsibilities
- Relationships with stakeholders and building cohesive communities
- Requirements of a stewardship strategy
- Stewardship challenges
- Stewardship governance options
- Criteria for options appraisal
- Case studies for Graylingwell Park, Caddington Woods, Ebbsfleet Garden
- City and Broadnook Garden Village
- Considerations for a new approach to stewardship.
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5.3.2 During discussion, the following points were noted:

- An HBBC policy could be implemented to require an options appraisal or to indicate that the preference would be stewardship
- The task & finish group could lobby government in relation to planning policy to encourage stewardship.

5.3.3 The group heard that long-term stewardship was an approach to delivering and managing developments that could ensure they remained in place to enable people and the environment to flourish in perpetuity. Stewardship was one of the core garden city principles and the right approach would provide an opportunity to create places which people would be proud to live in for years to come. The Town and County Planning Association had a wealth of information on long-term stewardship.

5.3.4 Compared to traditional management companies, long-term stewardship sought to create a more bespoke management arrangement to traditional management companies, often with an aim of delivering heightened and long-term place-making ambitions. Stewardship 'vehicles' were created to manage, maintain and enhance community assets including public spaces,

green infrastructure and communal facilities alongside placemaking responsibilities such as community events. There were a range of governance options including transferring responsibilities for adoption by local councils, creating a bespoke management company or local stewardship trust, or outsourcing to a third party such as The Land Trust, Greenbelt or a local body.

5.3.5 Members felt there was scope to action some of the learning on stewardship in the upcoming local plan:

- an options appraisal at an early stage
- scale of development was discussed and the possibility of setting this as low as ten houses
- it was suggested that the question could be asked of the SUE developers about their plans and that they be recommended to consider stewardship.

5.4 ***Recreational open space***

5.4.1 The open space of a residential development, which included any land laid out as a public garden, or land used for the purposes of public recreation, was secured in a planning permission through any relevant conditions of the planning permission and the section 106 agreement (S106 agreement). Sustainable Urban Drainage Systems were sometimes classed as accessible natural open space.

5.4.2 The S106 agreement typically detailed the type and amount of open space to be provided on site and how it would be implemented, managed and maintained. If the open space included play equipment, it would also set out the method of agreeing the equipment together with the amount to be spent on it.

5.4.3 In relation to the management and maintenance of open space, S106 agreements used to generally require the developer to offer the open space to Hinckley and Bosworth Borough Council or its nominee (usually the parish / town council) before it could be managed by a management company. More recently, however, applications were being submitted by developers with the presumption that infrastructure would be handed to a management company with no option for public adoption.

5.4.4 If the open space was to be adopted by the borough or parish / town council, or the developer elects for the open space to be managed and maintained by a management company after completion, a visit would be made by the borough council and remediation works requested should the implemented scheme vary unacceptably from that previously agreed in the planning permission. Once acceptable, in the majority of legal agreements the 12-month maintenance period would begin.

5.4.5 Following the 12-month maintenance period, the borough council would make a visit to check that the site had been acceptably maintained. If this has

not happened, remediation works would be required until the open space was acceptable. Once acceptable, a final certificate would be provided.

- 5.4.6 If the open space was to be maintained by a management company, the developer would provide details of the company along with a management and maintenance plan to ensure that the open space would be properly maintained in perpetuity.
- 5.4.7 Management companies were usually funded by the future occupiers of the development who would have entered into an agreement when purchasing the property to pay regular maintenance fees (a service charge). The borough council would not be involved in this process.
- 5.4.8 If the open space was to be adopted by the borough, parish or town council, and presuming it was suitable (for example it had received its final certificate), a plan to show the areas of transfer and their land titles would be provided. Legal representatives would then be instructed to complete the transfer of the land.
- 5.4.9 Once the transfer was completed the borough, parish or town council would manage and maintain the open space in perpetuity, initially using the maintenance sum which was usually designed to last for a 20 year period.

5.5 ***Play Equipment & Sports Space***

- 5.5.1 The process for play equipment and sports space would be the same as that for open space above.

5.6 ***Community Orchards***

- 5.6.1 The matter of community orchards was raised during the review but was not included in the scope. Further investigation outside this review may be of benefit in the context of the Local Plan.

5.7 ***Allotments***

The subject of allotments was raised during the review but was not included in the scope. Further investigation outside this review may be of benefit in the context of the Local Plan.

5.8 ***Highway adoptions***

- 5.8.1 Leicestershire County Council (LCC) was the Local Highway Authority for the Borough. Policy 5 of The Leicestershire Highways Design Guide (LHDG), written by LCC, set out when a road would be adopted. Policy 5 stated that LCC would adopt new roads that:

- Directly link to an existing adopted street (proposed Section 38 agreements would be reviewed if they connected to an existing road that was subject to a Section 38 agreement)

- Directly served/fronted a minimum of six residential dwellings, served employment and commercial sites with more than one building or a single commercial building with multiple occupancy employment
- Accorded with local and national policy, guidance and standards relating to environmental sustainability of new highway proposals. The Local Highway Authority may consult with planning, forestry and environment services at the borough council during the assessment of proposals
- Met the requirements of LCC's Materials Palettes document, specification for highway works and standard drawings. Proposals for the use of alternative materials to those within the Materials Palettes must be agreed with LCC
- Had been demonstrably designed and constructed to an adoptable standard, as defined in the LHDG
- Were not linked by through private roads
- Had associated legal agreements signed by all relevant parties; and
- Were acceptable in all other highways and transportation respects in accordance with LHDG, other borough council policies and national planning policy and guidance.

5.8.2 In broad terms, LCC's adoption process started with the approval of a planning permission that they would have usually advised on. Following this, the developer would submit an application, called a Section 38 Agreement (S38 Agreement), to LCC that would include technical plans of the roads and / or footways to be adopted. Once these plans had been deemed acceptable, the S38 Agreement would be signed between the Local Highways Authority and the developer and construction of the development would commence. LCC would inspect the site once the open space had been constructed and at the end of a maintenance period, issue a final certificate of completion if acceptable. The highway would then be adopted.

5.8.3 Highways works outside the develop site would be agreed and approved through a Section 278 Agreement.

5.8.4 The task and finish group had wished to invite a representative of Leicestershire County Council to discuss their processes, considerations and limitation, but it was noted that county council policy prevented engagement with district scrutiny. Members felt that this restricted the group in understanding the issues associated with highway adoptions and ancillary assets such as streetlights, pavements and grass verges, within new developments. Members sought to gain the necessary understanding via other methods.

5.8.5 Members wished to ask the percentage of roads adopted and whether that percentage was increasing. They considered looking at the status of roads on all large schemes approved since September 2022 but this equated to too large a number. Using the housing numbers monitoring reports was also suggested, however a list of S38 agreements was obtained from Leicestershire County Council.

- 5.8.6 In relation to adoption of highways, it was noted that there were three different categories of roads – those adopted, those “adopted to be maintained at public expense commensurate with their use” (which meant the need for repairs was subjective) and unadopted. It was acknowledged that, even when built to adoptable standards, there was no compulsion on the developer or Leicestershire County Council to ensure the road was adopted within a particular timeframe.
- 5.8.7 The difficulty for residents on unadopted roads in relation to waste collections was also discussed due to the policy of waste collection vehicles not traversing private roads. It was highlighted that this issue would become more prevalent due to the increasing number of roads remaining unadopted which would have an impact on residents on those roads who would not receive the service to which they were entitled as a result.

5.9 ***Sustainable Urban Draining Systems (SuDS)***

- 5.9.1 Drainage attenuation and balancing ponds were increasingly common to reduce the rate of flow away from a development of storm water. Many of these schemes were embedded within the open space elements of development design. The responsibility for these schemes was concerning to many town & parish councils, due to the potential risks associated with the management of open water and the long-term responsibility for maintenance and adequate channel clearance. Often these concerns were sufficient for the councils to decline to adopt the whole of the open space.
- 5.9.2 Underground SuDS were even more concerning as they posed medium to long term financial risks in the event of failure. Pumped schemes increased this concern to levels where adoption was unlikely to ever be considered, unless the pumping stations were not included and remained the responsibility of the developer or transferred to the water authority.

5.10 ***Sewers and drains***

- 5.10.1 Sewers and drains were briefly discussed but it was acknowledged that they were not included in the scope of the review.

5.11 ***Biodiversity Net Gain (BNG)***

- 5.11.1 It was noted that for future developments BNG management responsibilities may become a key consideration in the adoption of open space.

5.12 ***Financial Considerations***

- 5.12.1 Discussion took place on the unfair situation of residents of a development paying a precept for facilities in their town or parish and also paying a management fee, for example open space on the site that any resident of the wider area could access and benefit.

- 5.12.2 Members were informed of marketing pressures to inform potential buyers of service charges at an early stage which resulted in the management arrangements for the site needing to be agreed prior to marketing the properties.

5.13 *Town & Parish Council Considerations*

- 5.13.1 Members discussed the offer of adoption of open space to parish councils and it was noted that parish councils should express an interest during the consultation process, following which the developer would be informed. Members were informed, however, that if the borough council included the option of adoption by the parish council as part of the S106 agreement, the developer could refuse to sign the agreement. Members considered whether a process whereby the default position was to offer the site to the parish council rather than expect them to express an interest would be preferable. Officers informed members that a form was now sent to parish councils which specifically asked whether they wished to adopt the open space.
- 5.13.2 The review noted that conflict of intentions could cause problems where a locality was not in support of a development, which compromised a decision to adopt infrastructure if development did proceed to getting planning approval.

5.14 *Long Term Implications*

- 5.14.1 Members discussed land ownership where a management company was in place, and how to deal with unregistered land – particularly historic situations which arose when there was less consideration given to future management. It was suggested that land ownership may be a question for the developer. The payment of fees to housing associations was also discussed and it was noted that these were not necessarily fees for management of public open space, but rather a “service charge” levied by affordable housing providers.

6. Conclusions

- 6.1 The concerns, expressed by members of the Scrutiny Commission when promoting this topic for investigation have proved well founded and equally raised by the CMA as an inequity for some residents already where services are either inadequate or expensive and possibly both. The consumer protection to address such issues is not sufficient and the increasing occurrence of infrastructure not being adopted by public bodies is not in the public interest.
- 6.2 The power to resolve the key issues lies with government, therefore a key outcome from this review should include lobbying government.
- 6.3 There are actions which could be taken to increase the confidence of town and parish councils to more actively consider adopting infrastructure when it is offered by developers, by giving further guidance about the process and risks, by ensuring they are considering the long-term benefits of adoption for their communities.
- 6.4 Assistance is required to separate the comments made on housing developments at the time of hearing about the development from any decision to adopt infrastructure should developments proceed.
- 6.5 The principles, so well-articulated by our speaker on stewardship arrangements, are excellent principles to guide decision making through the planning process, ensuring transparency of the final decision.

7. Recommendations

National and county council matters:

- 7.1 The principles of the findings within the CMA report be endorsed and the Executive be requested to write to the appropriate minister urging action on recommendations 1 and 2 of the CMA report (standardisation of standards and requirements and requiring mandatory adoption of public infrastructure) and to encourage mandating of stewardship schemes.
- 7.2 Concerns be raised about public adoption of roads with Leicestershire County Council highways and they be asked to address the concerns raised.

Legal

- 7.3 Model standardised wording of legal agreements be incorporated in order to ensure:
- Wording covers additional open space areas for maintenance
 - Open spaces are always offered to the town / parish or borough council in the first instance
 - 20 years' maintenance is always paid by the developer regardless of who will be undertaking the management / maintenance
 - There is a set timeframe for transfers of open space
 - There is a set timeframe for transfers of adopted roads through the legal agreement.
- 7.4 S106 agreements be required to include an options appraisal section to justify the approach taken and the make public adoption / stewardship more likely.

Local Plan

- 7.5 The new local plan makes room for any future government approach to adoption of infrastructure (for example mandated public adoption or stewardship style approach on large and small scales).
- 7.6 The new local plan mandates that new large scale major schemes require stewardship / parish council to be approached to adopt infrastructure.
- 7.7 The new local plan makes room for a stewardship approach for small major housebuilding schemes.

HBBC

- 7.8 The website be updated to include expectations for developers.
- 7.9 The developers for sustainable urban extensions be encouraged to consider a stewardship approach.

- 7.10 The realities of private roads be raised with the waste management team to ensure bins are collected.
- 7.11 Changes be sought to the council's waste strategy and a less precautionary approach to driving bin lorries on private roads be recommended in the interests of public service so as not to disadvantage residents.

Parish councils

- 7.12 Parish councils be encouraged and supported to adopt public open space.
- 7.13 A briefing pack on the findings of the task & finish group be prepared, aimed at reducing reluctance of town and parish councils to adopt open space and highlighting longer term problems that non-adoption can lead to for their residents.