

Adoption policies and processes on current and new developments in Milton Keynes

January 2024

Findings of the Task and Finish Group



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Note: Throughout this report, the “Adoption policies and processes on current and new developments in Milton Keynes Task and Finish Group” will be referred to as the “Group” or the “TFG”, and Milton Keynes City Council will be referred to as “MKCC”, or “the Council”.

Report of the Task and Finish Group

Introduction

- 1** We were appointed by the Corporate Oversight and Scrutiny Management Committee to whom, with the Cabinet, this report is addressed. Our first, of seven, meetings was held on 5 September at which we confirmed our terms of reference, membership and officer support as in Annex A.
- 2** On 30 October we held a workshop with residents. Subsequently we met or otherwise communicated with a number of Milton Keynes' leading developers, house builders and management companies, and also with the Parks Trust. A list of these participants is provided in Annex B.
- 3** The legislation governing the adoption of new developments by local authorities and other bodies is complex and summarised in Annex C. This Annex includes links to the most recent Department of Transport Advice Note on Highways Adoption and to the Council's Highways Guide for Developers.
- 4** The Council's own Highway Adoption procedures for roads that service 6 or more residential properties are included in Annex C.
- 5** There was a feeling at the outset of our work that the Task Force might have been established to criticise the ongoing work of the Council's Adoptions Team. This was – emphatically – not the case. We have focussed on the impact on our residents of living in an estate or part estate that has not been adopted, effectively the first of our terms of reference.
- 6** Our recommendations follow. Their presentation will conclude our work. We suggest that scrutiny of the issue of adoption in its widest sense *viz* the integration of a new estate into the borough become the responsibility of the Public Realm and Environment Scrutiny Committee. We would encourage that committee to visit adoption issues annually, starting with a review of progress on the implementation of our recommendations in September 2024 (*see paragraph 11 and R12 below*).

Recommendations

Communication with residents: Recommendations 1 – 5

7 The majority of residents do not realise that their new estate is – in effect – private land until its part or total completion. They find it confusing that the Council is responsible for (*e.g.*) waste collection, planning applications and – often – the local primary school but not for roads, pavements, drains, street lighting or landscaping. We recommend:

- (R1) that the Council’s website include a page(s) providing a guide to the overall process of creating a new estate with a clear delineation of responsibilities among developer, housebuilder, the Council, parish and town councils, the Parks Trust and other bodies. The enhanced website should also include unambiguous advice about school admissions.
- (R2) that clear guidance should be provided on the website concerning local email addresses and telephone numbers of current developers, house builders and management companies.
- (R3) that the website should also signpost residents to national bodies concerned with good practice in housebuilding including the National Home Building Council (NHBC), the National Housing Federation (HWF), the Regulator for Social Housing (RSH) and the Ombudsman.
- (R4) that the current Interactive Mapping System on the Council’s website which shows adopted areas should be adjusted to include highways and open spaces that are subject to a section 38 agreement *i.e.* awaiting adoption. We understand that this is technically possible. If feasible we would like it to go further and show approximate timescales towards adoption for specific phases of estates, and be related to relevant Parks Trust mapping.
- (R5) that a review be undertaken of all automated responses sent by the Council or contractors formally associated with the Council such as Ringway and Glendale in response to online reports from residents about repairs in unadopted areas.

Resource allocation & finance: Recommendations 6 – 8

8 Without exception those developers and housebuilders to whom we spoke praised the Council as one of the better local authorities with whom they dealt on adoption matters. We hope that this will remain the case, particularly when the demands of MK East begin to come on stream. We were pleased therefore that the recent Government approved 35% increase in major planning application fees (indexed

annually for inflation) has been fully allocated to planning and related functions. We recommend:

- (R6) that consideration be given to how best the adoption process can be even further streamlined in such a way as to minimise the possibility of any inadvertent holdups. In this respect we commend the use of the telephone or face to face meetings, rather than solely by email, as a means of progressing difficult issues.
- (R7) that, as the Council has a central role in the planning and development of the borough, it should use its influence and weight to ensure that highways and public areas on new estates are completed in a timely manner and well maintained thereafter to the benefit of residents. The Council should continue to provide appropriate levels of support to housebuilders to facilitate the construction of quality residential developments within the borough.
- (R8) that where the Council runs procurement processes for its own land or housing it gives due consideration to the health and safety standards, and the practices, of companies seeking to do business with it.

The Council's adoptable standards: Recommendations 9 & 10

- 9** The Council sets clearly defined adoptable standards. Intuitively we want to endorse these, and, in any case, we are not qualified to make a professional judgement. But we are aware that a developer – reluctant to comply with the required standards – may opt not to offer land for adoption and, instead, to establish a management company to maintain the area, which can pass on its costs to residents.
- 10** No other issue has caused more hostility among residents. This is partly on principle - they object to paying a charge for (*e.g.*) landscaping which is paid for through council tax elsewhere in the city. And partly on practice – the charges levied by such companies for what is widely regarded as an inadequate level of service causes significant resentment. We thought at first that this issue might be addressed through conditions attached to a planning approval but have been advised that this is not legally possible. We then considered whether it might be addressed by a very strong negotiating stance on the part of the Council *e.g.* by refusing to consider developers for contracts unless they undertook to offer everything for adoption. But the construction industry is not so weak that developers have to work in Milton Keynes, come what may. The Council runs the risk – financial and other - of land lying undeveloped and houses unbuilt if it seeks to drive too hard a bargain. As an alternative therefore we recommend:

(R9) that, in respect of early contract negotiations with developers, and between developers and their sub-contractors, the Council makes clear that the permanent use of a management company is not its preferred option for the future maintenance of land within an estate. Where possible It seeks compliance with its adoptable standards.

(R10) that, where a developer has indicated their preference for the use of a management company, consideration be given by the larger parish and town councils within the borough, who have new or upcoming developments within their area, as to whether they might be willing to take on a management company type role.

Monitoring adoption: Recommendations 11 - 13

11 We hope that this report has highlighted the scale of the new development now encircling our city. When complete *circa* 2048 MK East will be nearly the size of present-day Newport Pagnell. It will be essential that the adoption process as a whole, and specific developments such as MK East, Brooklands, Fairfields, Whitehouse, Tattenhoe Park and Eagle Farm, be monitored appropriately. We recommend:

(R11) that the Council continue to develop Key Performance Indicators (KPIs) with regard to specific adoption-related activities that can be measured such as timescales and ratios, and which will allow comparison with other local authorities.

(R12) that it also develop an Annual Statement to be presented to the Public Realm and Environment Scrutiny Committee (*see paragraph 6 above*) highlighting the impact on residents of living on a new estate prior to adoption while not fully benefitting from all the Council's services.

(R13) that the same Statement include a commentary and anticipated timescales about each of the estates listed above, looked at as an integrated whole and covering the totality of the Council's services, both current and prospective on each estate.

Making it work on the ground: Recommendation 14

12 While the Council understandably thinks of adoption in terms of highways and open spaces, residents have a much broader view. They look on the Council as the maker of the place where they will live, and the provider of services and facilities to suit all ages. It is essential therefore that the Council continue its crucial place-making function, including lobbying other agencies such as the Integrated Care Board, the Police and

local bus companies to work with it in doing so. Better communication as suggested in Recommendation (1) will help manage expectations. But we would like to go further. We recommend:

(R14) that the Council encourage relevant parish or town councils, as the most local statutory bodies, to engage in whatever way they think most appropriate with all of the stakeholders, whether public, commercial or voluntary, who are influencing the development of a new area in their parish. We see this role as key to the exchange of reliable information, to troubleshooting, and to the anticipation of the needs and aspirations of future residents not yet resident in the parish.

Conclusion

13 A large number of people have contributed to this report, listed in Annexes A and B. We extend our thanks to all of them for their time and ideas.

Councillor Sam Crooks
Chair of the Task and Finish Group

January 2024

Annex A Terms of Reference and Membership of the TFG

Members

Councillor Sam Crooks (Chair)

Councillor Alison Andrew (Vice Chair)

Councillor Tracey Bailey

Councillor Kerrie Bradburn

Councillor Joe Hearnshaw

Councillor Manish Verma

Advisors to the TFG

Paul Thomas (Director of Planning and Placemaking), Officer Lead to the TFG

Catherine Stephens (Head of Legal Services and Deputy Monitoring Officer)

Graham Cox (Head of Highways)

Chris Nash (Development Management Manager)

Administrative Support

Andrew Clayton (Overview and Scrutiny Officer)

Terms of Reference

1. To investigate the complexities of adoption policies and processes on current and new developments in Milton Keynes, and the problems caused to residents as a result.
2. In concert with developers and other adoption agencies to consider how best to support residents currently experiencing these problems and what can be done for the future to improve the situation in the planned expansion areas of our growing city.
3. To report its recommendations to the Cabinet on 6 February 2024 having consulted the Corporate Oversight and Scrutiny Management Committee on a draft version beforehand.

The Task and Finish Group will review any national legislation, local policy and practice with regard to adoption policies and processes.

An enhanced knowledge and understanding of the Council's adoption policies and processes together with practical and achievable recommendations to improve their operation and to mitigate any adverse impact on residents.

Annex B Participation in the Task and Finish Group

Residents and parishes

Residents from Oxley Park, Brooklands, Broughton, Broughton Gate, Oakgrove, Castlethorpe, Hanslope, Tattenhoe Park, Woburn Sands, Atterbury, Whitehouse.

Fairfields Parish Council, Hanslope Parish Council, Castlethorpe Parish Council

Developers and Management Companies

Bloor Homes, Places for People and The Parks Trust Milton Keynes met with the TFG on 23 November 2023

Representatives of Crest Nicholson, L&Q Estates and Residential Management Group (RMG), were also consulted by the Group

Annex C The legislative and financial framework of adoption

The legal framework for the adoption of roads, drainage and sustainable drainage systems (SuDS) in England comprises several laws. The Highways Act 1980 governs the adoption of roads and some associated amenities (eg trees, street lighting, traffic signals), and adoption is usually effected under Sections 37 and 38. These provide that local authorities can, with the agreement of the owner, adopt highways and maintain them at public expense thereafter.

Drainage for new developments is governed by either the Highways Act 1980 as above, or via a Section 104 agreement under the Water Industry Act 1991. (depending on who adopts the drainage system). Sustainable drainage systems (SuDS) can be adopted by a local authority, a water company, or a private company under the Flood and Water Management Act 2010. This is likely to change in the new future, when it is expected that Schedule 3 of this Act will be implemented in England. This will involve the creation of a SuDS Approval Body for England, with a remit to require compliant systems to be included in all new developments.

Public open spaces refers to play areas, wildlife and biodiversity areas, woodland, watercourses, ditches, and ecological feature, as well as hardstanding areas such as bin collection points not otherwise adopted as a part of a highway. In the public realm, amenities such as sculptures are generally adopted via Section 106 of the Town and Country Planning Act 1990 (as amended).

Legislation includes provisions to protect local authorities from unexpected costs arising from a new development, e.g. local authorities have the power to require a road or sewer bond as a guarantee. Under the Highways Act 1980 and the Water Industry Act 1991 developers can agree to put in place a bond or cash deposit to the value of the works in the event that, for example, the developer fails to complete the project satisfactorily.

Although not explicitly set out in legislation local authorities, in their capacity as highways and local planning authorities, can request the payment of “commuted sums” as a condition of adoption, that is, a financial contribution made by developers as compensation for taking on future maintenance responsibilities. These are typically secured through a legally binding agreement. This was confirmed by the Court of Appeal in its decision in *R (Redrow Homes Ltd) v Knowsley Metropolitan Borough Council* [2014] EWCA Civ 1433.

Planning obligations are legal obligations designed to mitigate the effects of a new development and are used to require developers to contribute to the cost of local infrastructure, such as road improvements, schools and affordable housing. In England, section 106 of the Town and Country Planning Act 1990 provides the mechanism for this. Such contributions are generally known as Section 106 agreements. Alongside s106 agreements the Community Infrastructure Levy (CIL) also allows Local Planning Authorities (LPA) to require new developments to help pay for the supporting infrastructure.

Further Reading:

[Adoption of roads by highway authorities - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/guidance/adoption-of-roads-by-highway-authorities)

Policies and Procedures used in Milton Keynes

[New roads in Milton Keynes | Milton Keynes City Council \(milton-keynes.gov.uk\)](https://www.milton-keynes.gov.uk/council-and-councillors/council/policies-and-procedures/new-roads-in-milton-keynes)

[Highway Adoption Procedures \(milton-keynes.gov.uk\)](https://www.milton-keynes.gov.uk/council-and-councillors/council/policies-and-procedures/highway-adoption-procedures)

Annex D The evidence gathering sessions of the TFG

The Group met on seven occasions during the period September to December 2023.

Evidence from Officers

Our initial priority was to properly understand the legal and policy framework underpinning the adoption of roads, drainage and public spaces, so we met with senior officers, including the Head of Legal Services, the Head of Highways and the Development Management Manager to discuss this. We learned that the adoption process was governed by legislation alongside national and local policy, but it was not something that happened automatically as a part of the development process.

These adoptions are subject to individual agreement between developers and the local authority,. Where adopted, highways are adopted and maintained by MKCC who will only adopt a highway where that highway is constructed to an “adoptable standard”. This means that the highway must be built to a specified construction design, which includes appropriate levels of drainage and water runoff. Mains sewers, water pipes and other infrastructure under the road surface must be adopted by the appropriate body before the highway can be adopted by the Council, and this can be a cause of delay to timely adoption. Public open spaces are also adopted by the Council and then with generally leased to the Parks Trust.

Not all highways are adopted for a multiplicity of reasons. A developer might wish to build a road to a different construction standard for example, or might want to incorporate designated on-road parking (which is outside of the expected standard). It may be that the road surface itself is not “adoptable”, for example by being finished using block paving instead of tarmac. Sometimes a developer’s plans do not include adoption for commercial reasons, and so they do not apply for the highways to be adopted at all.

Ultimately adoptions only take place where both the developer and the Council want it to happen, neither party can force adoption on the other. As a matter of general policy, MKCC do adopt highways and public spaces where asked to do so, although there are exceptions, such as for very small spaces and roads where the cost of adoption cannot be justified.

Different legal measures are required for different situations. Roads generally meet the public highway at some point, and this requires a legal agreement known as a section 38 agreement. However, the precise legal mechanisms vary depending on what is being adopted. It is established law that MKCC cannot not use its powers as a planning authority to insist that a highway was adopted, although it is generally the case that the Council will discuss adoption with developers at an early stage of the planning process.

Where parts of new estates do not become adopted the ongoing maintenance and repair remains the responsibility of the developer. This is generally accomplished through a management company, although the makeup of these companies vary, for example such they can be resident-owned and managed, or they can be a commercial enterprise.

Evidence from residents

Once the group had established these legal and policy frameworks it held a workshop with residents of new estates, to help it understand and evidence the problem areas.

These were many and varied, but a key issue that arose time and again was that residents felt left in the dark about what was happening to the roads and parks, amongst other areas, on their estates. Even where adoption was scheduled it could take many years to be effected, with residents living with uncompleted roads and messy, unkempt open spaces. During icy and snowy weather the roads and paths went ungritted, creating potential safety issues. There was no single source of information for residents to find out whether areas would be adopted, and if they were, when they might be adopted. The problems for those reliant on management companies could be worse, they were often paying significant sums of money to managing agents, much of which seemed to be spent on “insurance” or “administration”, with little or no work undertaken on their estate to show for the expenditure. Residents described areas on their estates, often for example access routes to car parks or main thoroughfares, that nobody seemed to be responsible for, that were falling into very poor states of disrepair. It was difficult and at times impossible to get management companies to respond and to make good these problems.

Many residents described their feeling of frustration, having spent hundreds of thousands of pounds on a house on the basis of pictures showing lush green spaces and playgrounds, only to find that they were living in a building site for many years, and seemingly unable to take any effective action to put things right. It did not seem fair that some residents of the city paid council tax and lived on well-maintained, tidy estates, where others paid the same council tax as well as management fees, yet lived on poorly maintained estates.

Follow up with Officers

Following the meeting with residents the group met again with senior officers to present their findings to date and to consider how and whether the problems experienced by residents could be alleviated through enforcement powers, i.e. to what extent could MKCC “force” developers and management companies to attend to problems in unadopted areas, and what was the extent of the problem.

There appeared to be uncertainty whether road traffic issues, such as parking and speeding, could be enforced by the Police on unadopted highways, and where the cooperation of the developer might be required. Where land remained in private hands the ability of the Council to enforce matters such as litter or dog fouling were limited, and it was the responsibility of the landowner to grit roads, repair potholes and fences and so on. Similarly with streetlighting, unless the highway was adopted the Council had no role in maintenance and repair. These were problems affecting both residents living in unadopted areas, and areas where adoption was scheduled at some time in the future. The council had no powers to compel developers or management companies to maintain and repair what is effectively private land, nor to moderate the management charges levied.

It was noted that some developers and management companies had better track records than others, and the group queried whether this was a factor that could be taken into account

in future decision-making and contract award. Public sector procurement rules did not on the whole allow for parties to be excluded on the basis of past performance, although this may play a role in a determination on a bidder's ability to perform in the future. The group also discussed whether a code of conduct could be put in place, setting out expectations for future performance and including issues such as keeping resident informed as to future plans on their estates. The Council's GIS system was also discussed, and the group learned that plans to enhance this system to provide a greater level of detail on future adoption plans, and this would be accessible by residents.

Evidence from developers and the Parks Trust

To conclude its investigations the group met with developers operating in Milton Keynes, and the Parks Trust which managed many areas of parkland in the city, including parks and open spaces on estates. The chair followed up these sessions through telephone conversations with other developers who had not been able to attend in person, and received further written feedback from the Parks Trust.

Developers explained that for many new developments, at least for the larger ones, several housebuilders might be working on a new estate at the same time, generally with one company working as the lead developer. Once a lead developer had contracted a portion of the estate to a housebuilder they might cease to have any significant responsibility for that area. Development could take many years before it would be considered to be complete, and the timetable was driven largely by market conditions. Although different developers had different priorities, it was the experience of our witnesses that most were keen to see highways adopted rather than remaining in their possession and therefore an ongoing liability. However, it remained the case that adoptions generally took years to complete. This was not due to the fault of any particular party, but resulted from a number of factors.

First, it might be the case that all developers needed to have their particular section of road completed before adoption of the whole could take place, i.e. the Council could not adopt one section of road on an estate unless another section that already joined to the existing public highway was ready.

Second, as was the case with the Parks Trust, several bodies were working together to complete a complex legal transaction and even relatively small obstacles could take a long time to resolve. This included bodies such as the water companies, who need to approve drainage and pipe systems under the highway and formally adopt those before road adoption could proceed. Co-ordinating the work on these larger estates was compared to working on a jigsaw, it took a lot of work on individual parts before the whole could come together.

Developers told us that in their experience MKCC were a good Council to work with, much better than many others. They were proactive, responded to queries and correspondence in a timely manner, and sought to work in partnership to overcome obstacles. However it was recognised that residents might wait many years until adoptions were completed, and that there would often remain unadopted areas that were then handed over to management companies. This was particularly true with flats, where communal areas and parking spaces

for example remained with a third party management company, but it could also be the case that other estate areas were not amenable to adoption.

Developers had recognised that communications with residents should and could be improved, and they were increasingly improving the information provided to residents at the point of sale, for example through completion timetables. They were also providing updates to residents to keep them informed of progress with highways, parks and playgrounds.

The Parks Trust explained that those areas that came under their control were legally adopted by MKCC, who became the landowner, who then leased these on very long leases to the Parks Trust, a charity. The Parks Trust maintained and developed these areas in accordance with the lease agreement. On the whole, the adoption process worked smoothly and the Trust had good relationships with MKCC and developers. It could take a long time; in the final analysis several parties were involved in a complex legal land transaction to effect the adoption. Even if everybody was agreed and timetables were adhered to it would likely take many years between agreeing the adoption in principle and the transaction completing.

From time to time the Parks Trust encountered obstacles, for example developers not undertaking works as agreed, and this could lead to very lengthy delays. They were a fairly small charity and did not have an abundance of staff to engage in protracted negotiations. They felt that MKCC were in a much better position to manage these obstacles as and when they did occur, and would be grateful for that support in the future.

Annex E The findings of the TFG

The adoption of highways and open spaces is a complex process and one that has evolved over recent decades. At an earlier stage of the city's evolution most roads and green spaces were adopted and subsequently maintained by the local authority as a matter of course. Unless a park or road was clearly signposted "Private", it was assumed that any maintenance and repair would be carried out by the relevant local authority, initially Buckinghamshire County Council.

This situation has changed over the intervening years, with the demise of the Milton Keynes Development Corporation and, later, Milton Keynes becoming a unitary authority. Building assets to an "adoptable standard" comes at a cost for developers and they sometimes choose not to offer them for adoption. At the same time the Council's budget has shrunk and it has become more aware of the cost of maintaining and repairing roads and playgrounds into the indefinite future.

This has led to a situation where some new residential developments will include elements that remain in private ownership, and often looked after by management companies. Where that happens residents currently have no regulated system of redress to ensure that maintenance and repairs are carried out in a timely and efficient manner. The process is governed by national legislation and therefore a national solution is required to put it right, the scope to address these problems at a local level is limited. The Group are aware that the Government is cognisant of these issues and has recently put Leasehold and Freehold Reform Bill before Parliament, which will create regulations and an ombudsman service to support residents in dispute with their management companies. We welcomed this, and hope that parliamentary time can be found to enable this Bill become law

As a Council MKCC applies a policy that is generally in favour of adopting highways and public spaces where a developer agrees. Developers themselves have explained that MKCC is amongst the best local authorities to work with, delivering its part of the process in a timely fashion, without undue complication or cost. It can still take a long time to adopt, and residents frequently feel left in the dark as to who they can turn to for support and help to maintain their roads and parks.

An important focus of our recommendations therefore has been to promote better communications to residents and to keep them informed, through the use of accessible online information and systems such as the publicly available Geographic Information System (GIS) employed by the Council. Where highways and parks are planned for adoption it is important that residents understand when this is likely to happen. Where adoption is not planned, it is important that residents understand who they should be contacting, and are signposted to further sources of help and advice.

We have also recommended that MKCC further embed this positive approach to adoption and uses its weight and influence to promote adoption on new developments at the earliest stages of planning discussions with developers.

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