



WOKINGHAM BOROUGH COUNCIL

OVERVIEW AND SCRUTINY MANAGEMENT COMMITTEE

ADOPTION OF ESTATE INFRASTRUCTURE TASK & FINISH GROUP

REPORT AND RECOMMENDATIONS

JANUARY 2020

Task & Finish Group Members:

Councillor Andy Croy (Chair)

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ADOPTION OF ESTATE INFRASTRUCTURE

Foreword by Councillor Andy Croy

Buying a new home is one of the most important decisions that many people have to make in a lifetime. This is especially true in areas like Wokingham Borough where the average house price is currently around £440,000. The Borough is delivering a large amount of new homes, especially in the four Strategic Development Locations – North and South Wokingham, Arborfield Garrison and South of the M4 (Shinfield). Further sites will also be identified in the ongoing Local Plan Update.

In addition to building new homes, housing developers are also responsible for delivering new infrastructure such as roads, drains, landscaping, open space, SANGs (natural green space) and play areas as conditioned in the planning permission and associated Section 106 planning legal agreements. Each type of infrastructure is delivered in the context of different legislation, statutory guidance and local standards.

Members were aware of both local and national situations when, for various reasons, estate infrastructure was not delivered to the correct standard and/or within the agreed timeframe, thereby causing anger and frustration for residents. As a result, the Overview and Scrutiny Management Committee decided to set up the Task and Finish Group.

The primary objective of the Task and Finish Group was to produce recommendations for improvement which resulted in the adoption of high quality estate infrastructure and positive outcomes for residents across the Borough. In so doing, Members were informed of the excellent work which already took place and the high level of expertise and commitment demonstrated by Council staff. However, as always, there may be scope for further improvements.

The Task and Finish Group received evidence from a wide range of stakeholders including residents, Town and Parish Councils, Borough Council Officers and Members, housing developers, Thames Water and national housing and engineering bodies.

In preparing the report, the Task and Finish Group sought to understand the adoption process and the roles and responsibilities of the key players. Our recommendations aim to bring greater transparency and ensure that each individual or group can access accurate information and advice in a timely manner.

Finally, I would like to thank the residents, Officers, Members, housing developers and outside bodies who gave up their time and contributed to the Task and Finish Group's work in such a positive and constructive manner.

Andy Croy,
January 2020

Section 1 - Executive Summary

- 1.1 In recent years the Wokingham Borough has seen a significant amount of new housing development, much of it contained in the four Strategic Development Locations – North and South Wokingham, Arborfield Garrison and South of the M4 (Shinfield). The ongoing Local Plan Update will identify more sites for housing as the Council seeks to deliver on the Government requirement for over 800 new homes each year.
- 1.2 Much of the new housing is being delivered by housing developers, ranging from major FTSE companies to smaller local businesses. In addition to building new homes the developers are required to deliver new estate infrastructure such as roads, drainage, open space, landscaping, play areas and SANG (suitable alternative natural greenspace), as set out in the relevant planning permission. The process for delivering the new infrastructure is governed by legislation, statutory guidance and legal agreements between the Council and housing developers. Developers have a choice between handing the new infrastructure over to the Council for future management and maintenance (adoption) and managing it themselves, typically by establishing a management company.
- 1.3 If the developer decides not to have infrastructure adopted the Council has only limited powers to intervene if things go wrong, for example delays or sub-standard work. It is important, therefore, that homebuyers have a clear understanding of the adoption process and any potential legal and financial issues which may arise following their purchase. It is apparent, however, that some residents are not fully aware of the potential risks.
- 1.4 In order to look at the process for adopting new infrastructure, the Overview and Scrutiny Management Committee established the Task and Finish Group. The primary objective of the Group was to make recommendations for improvement which delivered high quality infrastructure and positive outcomes for new and existing residents.
- 1.5 In order to understand the local and national picture, the Task and Finish Group received evidence from residents, Town and Parish Councils, housing developers, Thames Water and a number of professional bodies. The evidence highlighted a number of themes including:
 - Could the Council provide better information and guidance to help new and existing residents to understand the adoption process, including their own rights and responsibilities?
 - Were there opportunities for improved communication and more joined up working between the Borough Council, Town and Parish Councils, housing developers and other local stakeholders?

- Were there opportunities to strengthen the Council’s resources available for addressing issues with smaller developers in non-SDL areas, to deliver a consistent approach across the Borough?
 - Could financial incentives or penalty clauses be introduced into S106 agreements for open space to align more with the process for highways adoption?
 - Was it possible to improve the Planning process to ensure that approved plans and drawings could be translated to buildings and infrastructure on the ground with less technical changes?
 - In light of the negative visual impact and growing awareness of Climate Emergency issues, were there any potential measures which could reduce the number of trees and shrubs which had to be replaced on new housing developments?
 - What steps could be taken to improve WBC Members’ understanding of the key issues surrounding the adoption of roads and open space, to enable them to support residents in their wards?
- 1.6 The Task and Finish Group also carried out a site visit to look at a number of adoption sites across the Borough. The sites visited demonstrated a range of outcomes from high quality design with good communication to poor design linked to delays and poor communication with residents and Town and Parish Councils.
- 1.7 Discussions with housing developers indicated that the majority were committed to partnership working and engagement with local communities. Developers working on SDL sites were likely to be present for a number of years as their developments went through a number of phases. As a result they were able to commit resources for engagement and community development. Conversely, smaller developers, typically building less than 100 homes did not have the same resources or motivation. It was felt that the actions of a minority of developers (including some of the big players) damaged the reputation of all housing developers across the industry.
- 1.8 Overall, we were impressed by the knowledge, experience and commitment of Council staff working on the adoption process. We recognised that the ongoing financial pressures placed on the Council made it harder to maintain high standards, especially in services facing increasing demand and high levels of public scrutiny. We also welcomed the initiative shown by staff in delivering service improvements that brought greater clarity, rigour and accountability to the process.
- 1.9 We hope that the recommendations in the report will help to drive further improvements and increase awareness amongst residents and other stakeholders. The report will be submitted to the Overview and Scrutiny Management Committee for approval and will then be submitted to the Council’s Executive for consideration of the recommendations.

Section 2 - Recommendations

- 2.1 That the Council considers measures to increase public awareness about the adoption of new estate infrastructure, for example through the provision of general advice and Frequently Asked Questions on the New Residents section of the Council website. It also underlines the onus on homeowners to take expert legal advice to ensure that they are aware of the risks and responsibilities involved.
- 2.2 That the Council considers measures to improve and expand the current interactive maps on its website, for example by including more details on S38 roads and roads not due to be adopted.
- 2.3 That the Council considers measures to provide more regular briefings for Town and Parish Councils, especially in relation to new housing developments in their areas and the rights and responsibilities of different stakeholders.
- 2.4 That WBC Officers provide regular updates to the Borough Parish Liaison Forum on the process for adopting new estate infrastructure and the impact of new development arising out of the Local Plan Update.
- 2.5 That the Council considers the resources available for managing the adoption process in non-SDL areas in order to ensure a consistency of outcomes for residents across the Borough.
- 2.6 That the Council reviews the process for developing and agreeing S106 agreements relating to the adoption of open space, specifically to:
 - ensure that agreements are more detailed, specific and rigorous;
 - explore the potential for including financial penalty clauses linked to key milestones, with any penalties being added to agreed commuted sums;
 - encourage high quality design for new play facilities.
- 2.7 That Officers consider potential improvements to secure earlier engagement from Highways at the initial planning or pre-application stages of the process.
- 2.8 That the Council works with developers to build on the proactive work of Officers in improving the level of tree survival rates on new housing developments.
- 2.9 That the residents and Town and Parish Councils who responded to the Call for Evidence (Annex B) receive feedback and responses to the issues raised.
- 2.10 That the Council consider measures to ensure the recruitment and retention of key staff working on the adoption process, with appropriate succession planning.
- 2.11 That WBC Members receive annual training on the adoption process for new roads and open space linked to updates on the emerging Local Plan.
- 2.12 That an annual update on the adoption process be submitted to the Overview and Scrutiny Management Committee.

3. Section 3 - Background

3.1 The Task and Finish Group was established at the meeting of the Overview and Scrutiny Management Committee on 17 July 2019. This followed feedback provided to Members from residents about a number of delays and frustrations relating to the adoption of new roads and open space. The Task and Finish Group’s Terms of Reference are set out at Annex A. The prime objective of the Group was defined as:

“To review existing policies and procedures and develop recommendations for improvement which result in the adoption of high quality estate infrastructure and positive outcomes for residents across the Borough”.

3.2 The Task and Finish Group received feedback about a number of local developments including Sibly Hall, Folly Court and Montague Park. Members were also aware of national media coverage, typically about new homeowners who were living on unfinished housing developments. Many local residents had expressed surprise and frustration at the process involved in finishing new roads and open spaces.

3.3 Estimates assess the number of new homes needed in England at between 240,000 and 340,000 per annum, accounting for new household formation and the backlog of existing need. In 2017/18, the total housing stock in England increased by 222,000 homes. Clearly, the Government’s priority is to deliver new homes as quickly as possible, especially in areas of high demand such as Wokingham Borough.

3.4 The contribution to the housing supply made by housebuilding companies is illustrated in the table below. This shows the number of completions reported by each of the Financial Times Stock Exchange (FTSE) 350 housebuilding companies in 2018.

Table: 2018 Housing Completions by FTSE 350 Housebuilders

Housing Developer	Total Housing Completions	Affordable Completions	Average Private Selling Price £
Barratt Developments	17,579	3,241	328,800
Persimmon	16,449	3,333	238,800
Taylor Wimpey	14,933	3,416	301,800
Bellway	10,307	NA	323,400
Galliford Try (Linden Homes)	6,193	NA	367,000
Redrow	5,913	1,102	NA
Countryside Properties	4,295	1,491	402,000
Bovis Homes Group	3,759	1,192	337,400
Berkeley Group Holdings	3,698	NA	NA
Crest Nicholson Holdings	3,020	637	393,000

Source: House of Commons Library – calculations from data in company annual reports and accounts.

- 3.5 Wokingham Borough has seen a significant impact arising out of the Government's plans for additional housing. The Council has responded strategically to the demand for new housing by promoting Strategic Development Locations for North Wokingham (1,500 homes), South Wokingham (2,500 homes), Arborfield Garrison (3,500 homes) and South of the M4 (Shinfield) (2,500 homes). The emerging Local Plan Update will also identify a number of new sites for development up to 2036. To date, over 260 potential sites have been submitted for consideration by landowners. The Government's assessment of the housing need for the Borough is currently 864 dwellings per annum. This will be recalculated each year as new data on house prices, incomes and household growth is published.
- 3.6 As developers build new homes they are also required to build new infrastructure (roads, open space and play areas, etc.) to support the new communities. For example, estate roads are constructed and then linked to the existing highway to enable access to new estates. Each type of infrastructure is controlled by different legal and contractual frameworks and local/national standards. The process for each type of infrastructure is set out below.

Adoption of Roads

- 3.7 New roads are adopted under Section 38 of the Highways Act 1980. Under S38 developers enter into a voluntary agreement with the Council which sets out their obligations to construct roads to an agreed standard, maintain the roads for an agreed maintenance period and provide a financial bond to cover the cost of the works in the event that the developer goes bust. Once these obligations are discharged, the Council adopts the road as publicly maintained highway. It must be stressed that the 1980 Act does not give Councils any power to compel developers to enter into adoption agreements.
- 3.8 The Council aims to adopt new roads fronting more than five housing units. Planning approval is required prior to entering into a S38 agreement. The requirement for adoptable road construction details is secured by a planning condition. The S38 process involves checks, inspections and road safety audits to ensure that each stage of construction meets the Council's standards. Technical acceptance, based on submitted plans which can be revised in discussion with the S38 Officer, must also be given by the Council before an agreement application can be progressed.
- 3.9 Once satisfied that a new road and associated features, including footpaths and verges, are constructed to an acceptable standard, the Council issues a Provisional Certificate of Completion which triggers a reduction in the financial bond and initiates the maintenance period (a minimum of 12 months). During this period, the developer retains responsibility for maintaining the highway and carrying out remedial works identified by the S38 Officer. Once the maintenance period is completed satisfactorily, a Final Certificate of Completion is issued confirming adoption and the remaining bond value is released.

- 3.10 For some items, a commuted sum may be required from the developer. This is a one-off payment towards the maintenance of assets such as traffic signals, culverts and other items. Where a commuted sum is deemed necessary, it is discussed with the developer and set out in the S38 agreement.
- 3.11 The construction of new estate infrastructure may also involve works on the existing highway, for example creating accesses into new developments or works on public highway to mitigate the impact during or after construction. In these cases, developers may enter into a separate Section 278 agreement or a combined S38/S278 agreement. The process for these agreements is similar to that for S38 agreements in terms of technical checks and inspections, the provision of a bond, and payment of commuted sums where necessary. The requirement to undergo a maintenance period before adoption by the Council also applies. However, no S278 works on public highway may commence until the agreement is signed and the necessary Streetworks Licence is applied for and approved. Some minor highway works may instead be covered by a Minor Works Agreement or licence arrangement, if acceptable to WBC. The maintenance period for Minor Works Agreements is a minimum of 24 months rather than 12.
- 3.12 In the event that a developer does not wish to enter into a Section 38 agreement, the Council secures the completion of an agreement under Section 106 of the Town and Country Planning Act 1990. This obliges the developer to construct the road to a satisfactory standard, pay for the Council to inspect the site and provide for a Management Company to be set up to manage the ongoing maintenance of the estate roads, footways and verges to an agreed maintenance regime once complete.
- 3.13 The Council also operates the Advance Payments Code (APC) under S219-225 of the Highways Act 1980. The APC applies if the developer requests “building regulation approval” and the plans are passed for the buildings on the development prior to the signing of the S38 agreement for adoption of new roads. Within six weeks of a developer submitting a building regulations application, the Council serves notice requesting a bond to cover the cost of the new road works in the event that the developer cannot complete the works. This protects property purchasers from incurring costs in such a scenario, and applies to sites of more than five units regardless of whether the developer intends to enter into a S38 agreement or not. The obligation to secure the bond is triggered by the commencement of works to the buildings fronted by the highway. Failing to provide a bond at this point constitutes a criminal offence. The completion of a S38 agreement discharges the obligation to secure an APC bond. For roads intended to remain private, the obligation can be discharged under Section 219(4) of the Act once the Council is satisfied that the road has been constructed to the required standard.
- 3.14 In July 2019 the Council was managing 79 ongoing S38 agreement applications. Some of these were for individual land parcels within the same development, for example Shinfield West and Arborfield Garrison. The status of these 79 agreements was:

- 17 Not Instructed – a Section 38 application had been submitted, but the plans had not yet achieved technical acceptance and Legal Services had not been instructed to take any action.
 - 32 Instructed – Legal Services had been instructed to progress with drafting the agreement and preparing engrossments (final version of the legal agreement) in communication with the developers’ solicitors.
 - 9 Signed – the S38 agreement had been signed by all parties and sealed by the Council. The works had not yet been completed to the point where a Provisional Certificate of Completion could be issued.
 - 21 On Maintenance – a Provisional Certificate had been issued. The minimum twelve-month maintenance period during which the developer retained responsibility for the site was underway, or the Council was awaiting the completion of remedial works/sewer adoption/other outstanding issues requiring attention ahead of adoption.
- 3.15 From September 2018 to March 2019, an Officer Taskforce was set up with a specific focus to progress outstanding S38 agreements towards highways adoption by identifying actions that needed to be taken. As a result, three of these sites, with S38 agreements dating from 2004, 2009 and 2013, had now been adopted, and progress was continuing to be made with others. Issues preventing adoption had included delays to the adoption of the sewers and outstanding street lighting and remedial works.
- 3.16 A number of measures and improvements have recently been implemented with a view to streamlining the adoption process for new roads:
- An upfront deposit of £20,000 or 2% of the overall fee, whichever is higher, has been introduced for applicants to enter into S38 and S278 agreements, ahead of any technical review. This ensures that Officer time taken to conduct these reviews has been paid for even if the agreement is later abandoned. This acts as an incentive for developers to complete agreements.
 - The application form has been updated and continues to be reviewed to request more details from developers. This will result in higher quality applications at the outset and save time through removing the need to go back and forth with the developer for further drawings and information.
 - All agreement applications are monitored and tracked. This has recently been revised to include target dates to flag where parts of the process are stalling and require attention. Agreement progress is also reviewed in monthly team meetings where any issues are highlighted, discussed, and escalated as appropriate.

- A formalised APC policy with input from Legal Services has also been included in the updated Highways Design Guide. The updated design guide is due to be the subject of public consultation and adoption as part of the Local Plan Update. Increased emphasis on the code has already led to bonds being secured for two developments. Implementing the code also acts as leverage where Section 38 agreements have stalled, as the completion of a S38 agreement discharges the obligation to provide an APC bond.

Adoption of Drains and Sewers

- 3.17 WBC policy states that drains and sewers must also be adopted by the local Water Authority (usually Thames Water) before or at the same time as the road adoption. Sewers are adopted under S104 of the Water Industry Act 1991. This involves an initial flood risk assessment and takes account of the drainage requirements for the entire site to ensure that local sewerage and surface water drainage systems are considered and not overwhelmed.
- 3.18 Thames Water encourages developers to make a pre-planning enquiry setting out their requirements for clean, foul and surface water infrastructure. On receipt of the enquiry, Thames Water carries out a capacity check. If there are no concerns, Thames Water confirms the position to the Council as part of the planning process. If there are concerns, Thames Water will confirm this as part of the planning process. Once outline or full planning permission is granted Thames Water then carries out modelling and designs and implements appropriate reinforcements to the system. Any works are funded by the infrastructure charges which all customers pay.
- 3.19 In line with other aspects of the process, Thames Water told us that a key issue was the lack of awareness amongst homebuyers about the adoption of drains and sewers adjacent to their property and the potential financial risk they faced if problems arose in future years. Thames Water felt that greater certainty would be provided if plot sale transfers for new homes stated that the housing developer “would adopt” new sewers rather than “would seek to adopt” new sewers. Thames Water also confirmed that each Council held public data on the state of local sewers. This data could be inspected on request by residents or conveyancers.

Adoption of Open Space and Play Areas

- 3.20 Open spaces within new housing developments are adopted under the terms of an agreement made under S106 of the Town and Country Planning Act 1990. This provides for the construction of the scheme to WBC specification and sets out the procedure for adoption. The developer notifies the Council when the works are completed. The Council then inspects to confirm that construction has followed planning approval and meets the obligations of the S106 agreement. If the scheme has not been built in line with planning approval or if remedial work is required, this can delay the adoption process significantly.

- 3.21 Once the Council is satisfied that there are no outstanding issues, an independent safety audit for play areas is required from the developer, and, where necessary, a water safety risk assessment for Sustainable Drainage Systems (SuDS) within the public open space. SuDS encompass a range of techniques which manage water run-off in order to reduce the quantity and increase the quality of surface water that drains into sewers. Any items flagged up by these audits and assessments then need to be addressed. At this stage, allotments are normally transferred to the relevant Town or Parish Council.
- 3.22 Once open space schemes are deemed complete, the commencement of a twelve-month maintenance period is agreed, during which time the developer remains responsible for maintaining the scheme in accordance with a planning approved Landscape Management Plan and carrying out any necessary remedial work. At the end of the twelve months the Council inspects again to confirm that the scheme has been adequately maintained and that no further remedial work is needed. A further safety audit is required for play areas at the end of the maintenance period. Once satisfied the Council commences the legal transfer. At this point, a final commuted sum figure for ongoing maintenance is also confirmed. A back-to-back 12 month maintenance phase is standard practice in landscaping contracts.
- 3.23 In order to strengthen the process for adopting open space and play areas, an Adoption Checklist has been developed based on industry best practice. The checklist sets out the different stages of the adoption process and the steps to be taken to monitor progress. The aim is to ensure that, in liaison with other services, the completed scheme is handed over to the Council with the following agreed features:
- A land transfer map;
 - A Maintenance and Management Plan;
 - A Health and Safety File (including as-built drawings);
 - A Playground Inspection Report (if applicable);
 - A commuted sum figure covering a minimum of 20 years.

Adoption of SANG (Suitable Alternative Natural Greenspace)

- 3.24 SANGs are areas of open space identified for developer-funded enhancement, in order to make them more accessible and attractive for residents to use. By enhancing local areas it is hoped to lessen the impact of new housing developments on the Thames Basin Heaths and its protected bird species.
- 3.25 Mitigation zones for the Thames Basin Heaths cover areas in the south of the Borough. SANGs are negotiated through S106 agreements. As an example, the Council negotiated the Rooks Nest Farm SANG (18.5 hectares) in order to mitigate the impact of 964 dwellings. The legal framework for SANGs is much stronger than other open space in that SANGs have to be approved and adopted before the commencement of house building on any new development.

Council Powers and Sanctions

- 3.26 As outlined above, the adoption process for new estate infrastructure is governed by statute, statutory guidance and legal agreements. Housing development is usually undertaken on private land and as the developers are private organisations, there is no obligation for them to seek that the Council adopt new roads and open spaces. If, for example, a road is not adopted then the Council has no powers to undertake works on the road itself.
- 3.27 The law sets out that it is the responsibility of homebuyers to ensure they take the necessary steps when purchasing and fully understand the risks involved. Many developers devote resources to build trust and ensure good communication channels with existing and potential homeowners. However, there are numerous examples where this does not happen.
- 3.28 As the adoption process is controlled by legal agreements, the Council has the power to pursue enforcement action when breaches of planning conditions occur. However, this can be a lengthy legal process with the maximum penalty being a fine of £2.5k. It is usually more effective to work with developers to exert pressure on them to meet their agreed commitments rather than undertaking formal enforcement proceedings.

Section 4 – Evidence and Issues

4.1 The Task and Finish Group met between August and November 2019. It set out to identify a wide range of stakeholders who could contribute to its work. In order to gather evidence the Task and Finish Group used a range of measures, set out below:

Call for Evidence – a notice in local print and social media setting out the aims of the Task and Finish Group, encouraging residents to share their views and submit evidence, comments and questions. The submissions received are set out at Annex B.

Site Visits – the Task and Finish Group spent an afternoon visiting a number of sites across the Borough, with the aim of seeing both positive and negative examples and outcomes. The sites included:

- Folly Court, off Blagrove Lane – highways and open space. Highways issues relating to delays in the adoption of drainage by Thames Water. Also, street lighting issues still unresolved. Open space issues relating to poorly designed SuDS scheme – waterlogged ground conditions. Also, poor quality implementation/maintenance of hard and soft landscape works and poor customer service from the developer.
- Hazebrouck Meadows, Pear Tree Close off Biggs Lane – open space. Well-designed open space and SuDS scheme. Good standard of implementation and maintenance. Effective communication and relationship building between the developer and residents.
- Arborfield Parcels F and G, Ambler Drive off Weavers Avenue. A 60 unit development forming part of the Arborfield Garrison SDL - highways. S38 process worked well (bond value £600,000). Good working relationship between the developer and stakeholders. High quality design.
- Ladbroke Close, off Vauxhall Drive – highways. Extension of existing road to front five houses and four apartments. Bond value £49,000. Thames Water had approved the drainage. High quality site with positive relationship between the developer and local residents.
- Parklands, Faringdon Road, off Woodlands Avenue – open space. Conflicting proposals approved at planning stage. Poor quality proposals prepared by the developer’s planning technician rather than a suitably qualified designer. Poor customer service and outcomes for residents.

Meeting with Housing Developers – the Task and Finish Group met with representatives of Bovis Homes, Crest Nicholson, Legal and General Homes and Taylor Wimpey. Members agreed Key Lines of Enquiry in order to structure the debate.

Thames Water – the Task and Finish Group received evidence from Thames Water’s Technical and Regulatory Advisor. This included an update on the new Ofwat regulated Code for Sewer Adoptions, which was due to be implemented in April 2020. Under the new Code, all water companies will have to follow a consistent process with standardised documentation and technical advice.

Specialist Organisations – the Task and Finish Group requested written evidence from:

- The National House Building Council (NHBC).
- The Home Builders Federation (HBF).
- The Chartered Institute of Highways and Transportation (CIHT).

Officers and Members – the Task and Finish Group produced a draft report which was discussed with WBC Officers (Assistant Directors for Planning, Highways, Green Infrastructure and Localities) and the Director of Locality and Customer Services. A draft of the report was also shared with the relevant Executive Members for comment.

4.2 Call for Evidence – the Call for Evidence generated a number of responses from residents and Town and Parish Councils. These included the following issues:

- Enforcement of planning conditions prior to occupation – it was harder to enforce when the developers had moved off site.
- Tree planting – a major concern that trees and shrubs were planted at the wrong time of year and were not maintained properly.
- Unforeseen consequences – issues relating to roads and/or open space arose after residents had moved in – it was then hard to challenge/enforce.
- Need for better liaison and early communication with Town and Parish Councils – especially when the Town or Parish would be taking over control/maintenance of the site.
- Frequently, homebuyers were not aware of additional charges relating to their new property – who was responsible for informing residents?
- Could communication be improved – for example, about the process for adoption in different phases of large developments?
- Management companies – WBC had no legal control – so how could residents and the Council influence their governance and work?

- The situation changed from the planning stage to completion of new homes and infrastructure on the ground. How could WBC ensure that stakeholders were kept up to date about changes?

More details of the Call for Evidence responses are set out at Annex B.

4.3 In preparation for the meeting with housing developers, the Task and Finish Group developed Key Lines of Enquiry (KLOEs) in order to frame the discussion. The KLOEs, together with the housing developers' responses are set out below.

KLOE 1: How can the Council and developers support and motivate new house buyers to carry out the appropriate checks prior to purchasing a property.

Response: It is the developer's responsibility to provide information to a purchaser about their specific plot as well as the development in general. Ideally, this will include adoption agreements being in place but unfortunately, it is more common for these to follow on later. Sales Teams have a process that guides purchasers through all the relevant details. So they should be fully informed. This includes information on street lighting, roads, drainage, planting, open space, play areas and waste collection rounds.

Some of the new developments were very large and would be implemented over a number of years. For example, the development at Finchwood Park (Hogwood Lane) had 15 phases. The developer would have received detailed planning permission (including S38, S106 and SANG) for the first phase only. So at that stage it would not be possible to give detailed assurances about the shape and timing of later phases. Details of adoptable and managed areas were provided as each phase came on stream. It was likely that roads on the site would not be adopted for a number of years.

There were particular issues with single access sites, such as Woodley Airfield, where roads could not be adopted until construction traffic had ceased on site.

It was very important for new homebuyers to use an experienced solicitor, preferably with local knowledge. This always resulted in better outcomes for residents. There was a significant amount of information to take on board as part of a new home purchase. However, new purchasers were strongly advised to take expert advice and to understand the detail in order to minimise later disputes.

KLOE 2: The legislation sets out the framework for attaching bonds to highway infrastructure. Is there scope for attaching bonds or penalty clauses to open space/play area schemes.

Response: Through the S106 process, developers were tasked with providing open spaces, play areas and SANGS by a certain number of

occupations. This usually allowed at least one season so works could be programmed to align with the better weather/planting seasons, so should be achievable.

There were mixed views on the potential for adding bonds/penalty clauses to open space adoptions. Developers felt the S106 process already provided a mechanism for tackling developers who failed to deliver on time. Each development project had a fixed budget, so adding additional bond/financial penalties could lead to other outcomes such as greater use of management companies and/or passing on additional costs to new homebuyers.

It was recognised that a small number of developers failed to meet their obligations in relation to open space adoptions, which caused frustration for residents and negative publicity for the whole housebuilding industry.

When problems arose, responsible developers were happy to take a pragmatic approach, for example by renegotiating S106 agreements and agreeing to more suitable timelines.

KLOE 3: What steps could be taken to ensure that plans/drawings agreed at the planning stage are consistent with plans/drawings used on development sites.

Response: During the Reserved Matters or Full Planning Application process, the developer would ideally have engaged with both the Highways Planning/Highways Adoptions Teams to ensure there is a unified approach from the Council as to the highways layout.

Developers felt that, during that process, there was potential for greater buy in from the Landscaping Team/Tree Officer in regards to trees and general planting within the proposed highways offering.

There is often a conflict between the Planning Team request and what the Highways Adoption Team will allow at the S38 technical appraisal stage, usually on the grounds of maintenance issues and highways safety. Developers believed that a more unified approach from the Council, with buy in from all parties at the planning or pre-application stage, would ensure an improvement on what is finally delivered on the ground.

There were often issues relating to proposed trees adjacent to new roads and/or adjacent to new buildings. Again, earlier involvement from the Highways team would help to clarify what was realistic and develop pragmatic solutions.

Developers recognised the benefit of working with Unitary Authorities in that all the key Officers were under one roof. Working with County and District Councils was often more problematic. The importance of early contact with the relevant Water Company (Thames Water) was also stressed.

KLOE 4: Are there any potential measures for increasing public influence over management companies and contractors.

Response: Management Companies are set up initially by developers but, over time, the aim is to bring residents onto the company board. New residents are made aware of the existence of the management company as part of their introductory information pack. Management fees for early homebuyers are held in an account until the management company is up and running.

KLOE 5: Is there scope for greater use of social media to highlight changes and upcoming events.

Response: In principle yes, this was a good idea but it was important to ensure buy in and transparency for all stakeholders. There was a risk, for example, that posting on social media would only reach a limited number of local stakeholders who had access to a particular platform. It was, therefore, important to use social media carefully.

Developers were keen to contact new/potential homebuyers. Their websites contained a large amount of information and they sought to raise awareness through leafletting, public meetings and social events. There was also a question of scale. The big developers on large sites were able to deploy PR staff and create visitor centres which made it easier to communicate with local stakeholders. There was clearly a critical mass in respect of the size of housing developments in terms of generating interest and involvement from residents.

KLOE 6: Linked to Climate Emergency, what could be done to reduce the loss of newly planted trees and shrubs on development sites?

Response: With the benefit of a Landscape Management Plan being in place, high quality planting should be installed at the best time in the year to ensure survival. More attention to watering at the earlier stages, following planting, would help.

WBC Officers told us that developers used Landscape Architects at the planning stage, but some then relied on the site manager to supervise the landscape contractor who planted the trees. Site managers were often not up to speed on the detailed Landscape Management Plan.

It was recognised that a proportion of new trees/planting would fail and would need to be replaced. The more responsible developers factored this into their plans and arranged for replacement. Developers felt that a more pragmatic approach, for example in relation to trigger points, would help to deliver better outcomes.

We noted that WBC encouraged developers to carry out landscape audits using landscape architects to ensure that planting was consistent with the original approvals. The Council also included the requirement to replace

trees that fall within five years of the grant of planning permission. This was secured by conditions relating to planning consents.

KLOE 7: WBC has recently published an updated Highways Design Guide and also publishes standards for open space and play areas. Could the Council do more to clarify its approach and the relevant standards required?

Response: There was some concern that the Highways Design Guide had not been the subject of public consultation and was not yet an adopted document. It was subsequently confirmed that the document was the result of internal work and consultation over the last couple of years. Its status was draft policy, or emerging guidance, and the Council intended for it to be consulted upon and adopted as formal policy through the ongoing Local Plan Update process. In the meantime, developers may challenge some of the proposed standards, for example in relation to the provision of electric vehicle charging points.

KLOE 8: Overall, which elements of the adoption process work well and which elements could be improved – are there any ideas for improvement.

Response: In working with WBC, there has always been a pragmatic approach in dealing with design/site issues in a timely fashion. It is very important that good working relationships are developed and maintained. With reference to earlier comments, developers would welcome a more aligned approach from the Council to avoid the developers being unable to satisfy all parties. This would require compromise and a pragmatic approach from the relevant parties. Early dialogue at the planning stage with all stakeholders should achieve proposals that all parties could work towards.

As discussed earlier the experience of working with a Unitary Authority was a positive. WBC Officers were felt to be approachable, knowledgeable and experienced. Ongoing discussions with Officers, Borough Members and Town and Parish Councils were felt to be generally positive and more frequent dialogue would be welcomed.

It was felt that the adoption process for highways was clear and effective. The adoption of open space was less formulaic and affected by issues such as growing seasons and changing weather patterns. As a result, compliance could be more challenging and timelines could be stretched.

Overall, compared to working with other authorities, the developer experience at WBC was positive. However, it was recognised that smaller developers did not have the same resources to put into communication, public relations and trouble shooting. As a result, the experience of WBC and local stakeholders in working with these developers may well be different.

- 4.4 In relation to a review of road adoption procedures, being undertaken by Lancashire County Council, the National Homebuilders Federation made the following comments:

“Developers securing highway approvals to commence works is a key to the whole delivery process – therefore a significant amount of resource is generally expended via professional consulting engineers and specialists at pre-application stage to ensure that submissions are correct and in the form they should be, in an attempt to speed up and smooth the highway approval process.

What is experienced more often than not is poorly resourced and inexperienced highway authority teams, inundated with applications and, as a result, failing to deliver. There are also common scenarios with inconsistency of staff within some County Councils and also contradictions in requirements for the highway design from members of the same highway authority teams which stalls the process significantly”.

Section 5 - What Does the Evidence Tell Us?

- 5.1 Wokingham Borough is regularly reported as being one of the best places to live in the country. The combination of a strong local economy, low crime, good schools and access to London and the motorway network result in a strong demand for housing. At the same time, the Government is determined to increase house building, currently requiring the Borough to accommodate 864 new homes each year. The emerging Local Plan Update will set out proposals for further new housing development with over 260 sites under consideration.
- 5.2 As we have seen, a large proportion of new housing across the Borough is provided by major housing developers. Housing developers are profit making organisations. The largest developer, Barratts, built over 17,500 new homes in 2018 and made a record annual profit of £910m. The second largest housebuilder, Persimmon, announced profits of £1.096bn, with nearly half its sales coming from the Help to Buy scheme. It is important to note that housing developers are not philanthropic organisations. They are profit making bodies, often with large legal and technical teams. This means that legal agreements relating to the adoption process must be as watertight as possible.
- 5.3 As set out in the report, housing developers, in addition to building new homes are also responsible for the provision of infrastructure to support new developments. The provision of new roads, drains, open space, SANGs and play areas is governed by statute, statutory guidance and legal agreements. This means that the Council's powers to act when something goes wrong are limited. We heard that new homebuyers receive a large amount of information from developers and that much of this information is technical and legalistic. It is vital, therefore, that they take appropriate legal advice before completing the purchase. However, in relation to their potential responsibilities relating to new infrastructure, it is clear that many homebuyers are not aware of the potential risks involved.
- 5.4 Some Councils provide assistance through guidance and frequently asked questions on websites (see Annex C). We concluded that a similar approach would assist residents of the Borough. The Council already has a section on the website providing information for new residents. We felt that this may be a useful webpage for the inclusion of guidance on adoption issues.

Recommendation 1 - That the Council considers measures to increase public awareness about the adoption of new infrastructure, for example through the provision of general advice and Frequently Asked Questions on the New Residents section of the Council website.

- 5.5 We heard that the Council already provides interactive maps on the website relating to the four SDL locations. These maps show what is happening on each of the sites and the site plans for each phase of the developments as they are approved. In addition Officers were currently looking at ways to improve the range of information available, for example in relation to the progress of new roads and details of roads which were not earmarked for adoption. We felt that

further improvements to the interactive maps would be useful for new and existing residents.

Recommendation 2 - That the Council considers measures to improve and expand the current interactive maps on its website, for example by including more details on S38 roads and roads not due to be adopted.

- 5.6 We received feedback from Town and Parish Councils (Annex B) which indicated a lack of clarity and effective communication about the adoption process, especially when the Town or Parish was expecting to take over the management of a new asset such as Sibly Park. In order to deliver more joined up working, we concluded that WBC should seek to provide more information and guidance to the 17 Town and Parish Councils. This could be delivered through more regular general briefings and specific discussions on local issues. We felt that the newly formed Localities team may be able to play a role in greater networking and joining up on infrastructure adoption issues.

Recommendation 3 - That the Council considers measures to provide more regular briefings for Town and Parish Councils, especially in relation to new housing developments in their areas and the rights and responsibilities of different stakeholders.

- 5.7 We also noted the role of the Borough Parish Liaison Forum. The Forum was established as a quarterly meeting involving representatives from the Borough and Town/Parish Councils. Its purpose was to share knowledge and promote improved joint working. As such, we felt that the Forum could provide a useful sounding board for discussion on infrastructure adoption issues and new housing development, including new sites arising out of the Local Plan Update.

Recommendation 4 - That WBC Officers provide regular updates to the Borough Parish Liaison Forum on the process for adopting new estate infrastructure and the impact of new development arising out of the Local Plan Update.

- 5.8 In relation to the resourcing of teams involved in the management of the adoption process, we heard that the Council had a strong team focussing on the four SDLs. This included Enforcement and Compliance Officers who carried out unannounced visits to development sites in order to check on the works being carried out. Similarly, we heard about the work carried out by the corporate Communications team who had a dedicated Officer working on SDL issues, often in liaison with Town and Parish Councils.
- 5.9 We were also informed that the bigger developers working on the SDL sites had the resources and long-term commitment to ensure that there was strong communication and engagement with local stakeholders. Conversely, smaller developers working on non-SDL sites had fewer resources and less capacity/motivation to engage effectively. We concluded that WBC should give further consideration to the resourcing for non-SDL sites to ensure a consistency of outcomes for residents across the Borough. Obviously, we were aware that

this had to be seen in the context of the significant ongoing financial challenges facing the Council.

Recommendation 5 – That the Council considers the resources available for managing the adoption process in non-SDL areas in order to ensure a consistency of outcomes for residents across the Borough.

- 5.10 In relation to the compliance and enforcement sanctions open to the Council, we heard that there was a different framework for highways (S38, S278, etc.) compared to open space (S106). It was felt that the process for highways was more formulaic with the use of financial bonds providing more certainty that developers would meet their obligations. Sanctions relating to the adoption of open space appeared to be less robust. Although S106 agreements were formal legal agreements, enforcement action for non-compliance could result in a lengthy process and a maximum fine of £2.5k. There were also examples of poorly drafted legal agreements with inconsistent clauses which made enforcement more challenging.
- 5.11 We also heard that open space adoptions often happened at the end of the building process and were affected by changing ground and weather conditions. We discussed the potential for introducing bonds or penalty clauses (potentially added to commuted sum payments) in relation to open space adoptions with housing developers. Their feedback was that such measures would be resisted as they would add financial pressures as each development site was managed within a set budget. However, on balance, we felt that there was scope for further consideration of penalty clauses within open space S106 agreements.
- 5.12 In relation to the development of new play areas within open space provision, our site visits demonstrated the difference between high quality facilities created by qualified designers and lower quality play areas often designed by planning technicians. We felt that the Council should seek to use any powers at its disposal to ensure that, wherever possible, new play areas benefitted from high quality design.

Recommendation 6 – That the Council reviews the process for developing and agreeing S106 agreements relating to the adoption of open space, specifically to:

- **ensure that agreements are more detailed, specific and rigorous;**
 - **explore the potential for including financial penalty clauses linked to key milestones, with any penalties being added to agreed commuted sums;**
 - **encourage high quality design for new play facilities.**
- 5.13 In our discussions with housing developers we heard positive feedback about Council Officers and their pragmatic, positive approach to negotiations. One issue raised by developers related to the different phases of the development process. They reported frequent differences between the requirements of Planning Officers at the planning stage and the requirements of Highways Officers at the S38 technical appraisal stage. They suggested that greater

technical input earlier in the planning process would benefit both the Council and developers. WBC Officers told us that joined up working was key but, in some instances, the level of technical detail submitted at the planning stage was not sufficient to support a S38 technical review. Having noted that viewpoint, we felt that the feedback from developers was still worthy of further consideration.

Recommendation 7 - That Officers consider potential improvements to secure earlier engagement from Highways at the initial planning or pre-application stages of the process.

- 5.14 We heard evidence about the significant amount of newly planted trees and shrubs which had to be replaced during the development process. As the Borough Council has declared a Climate Emergency we considered possible measures to minimise the loss of, often expensive, trees and shrubs. Housing developers told us that they recognised this issue and referred to the use of Landscape Management Plans and landscape audits to demonstrate best practice. Again the question arose of the motivation and resources available to smaller developers to employ qualified landscape architects. There were also occasions when planting took place at unsuitable times in order to comply with trigger points in S106 agreements. We also heard about the work of Officers, in liaison with developers, to identify potential issues relating to the conflict between trigger points and the most effective tree planting season.
- 5.15 We were informed that developers were responsible for replacing dead trees and shrubs for a five year period after adoption. Understandably perhaps, it could be difficult to get developers to carry out this work long after they had left the site and it was local residents who felt the negative impact on the local area. We discussed the possibility of increasing commuted sums in order to fund the anticipated future cost of replacing trees and shrubs on new developments.

Recommendation 8 – That the Council works with developers to build on the proactive work of Officers in improving the level of tree survival rates on new housing developments.

- 5.16 As stated in the report, we issued a Call for Evidence which generated a number of responses from residents and several Town and Parish Councils. The detailed submissions are set out in Annex B. We suggest that each of the individuals and Town and Parish Councils receive a response to the issues raised in their submissions. This will a) provide feedback on their specific concerns and b) demonstrate the value of the Call for Evidence process.

Recommendation 9 - That the residents and Town and Parish Councils who responded to the Call for Evidence (Annex B) receive feedback and responses to the issues raised.

- 5.17 We recognised the hard work and commitment displayed by Council Officers in the context of severe funding restrictions over a number of years. We hope that the report provides reassurance that much of what the Council does is effective and in line with best practice. We also heard about the challenges of recruiting to

key posts and the need for effective succession planning to ensure the future development of the service.

Recommendation 10 – That the Council considers measures to ensure the recruitment and retention of key staff working on the adoption process, with appropriate succession planning.

- 5.18 In order to ensure that WBC Members are able to assist the Officers and provide effective support for residents in their wards, we believe that appropriate training should be provided. We felt that the training should also be made available to Town and Parish Council Members.

Recommendation 11 - That WBC Members receive annual training on the adoption process for new roads and open space linked to updates on the emerging Local Plan.

- 5.19 Finally, in line with best practice, we suggest that the Overview and Scrutiny Management Committee receives an annual update report, commencing in 2020/21, setting out progress and any outstanding issues following the implementation of the Task and Finish Group's recommendations.

Recommendation 12 – That an annual update on the adoption process be submitted to the Overview and Scrutiny Management Committee.

Section 6 - Conclusions and Next Steps

- 6.1 The Task and Finish Group report will be submitted to the Overview and Scrutiny Management Committee for discussion and approval. Subject to any amendments it will then be submitted to the Council's Executive for consideration. We hope that the report will help to demonstrate the value of the Scrutiny process in providing a voice for local communities.
- 6.2 The role of Scrutiny is to make recommendations to the Executive based on the evidence received and considered. The Council's Constitution requires the Executive to agree which recommendations are acceptable (with a timeframe for implementation) and which ones are not (with reasons).
- 6.3 We hope that the report's recommendations will be accepted and will lead to improvements in the adoption process for new roads and open space. We also believe that implementation of the recommendations will lead to more effective working between the key stakeholders outlined in the report and more positive outcomes for residents across the Borough.

Wokingham Borough Council - Overview and Scrutiny
Adoption of Estate Infrastructure Task and Finish Group

Terms of Reference

To review existing policies and procedures and develop recommendations for improvement which result in the adoption of high quality estate infrastructure and positive outcomes for residents across the Borough.

1. To consider the Council's current approach to the adoption of estate infrastructure (new and historic).
2. To consider the legal framework and planning process within which the Council operates.
3. To consider the views of local stakeholders – residents, community groups and Town and Parish Councils.
4. To consider the views of housing developers.
5. To consider examples of best practice across the country.
6. To consider how progress on adoption is monitored, reported and communicated to Members and local stakeholders (including new residents).
7. To produce a final report to the Executive with recommendations for improvement.

Proposed Witnesses

- WBC Members and Officers;
- Residents and community groups;
- Town and Parish Councils;
- Best practice examples from other local authorities;
- Housing Developers
- Thames Water
- Specialist Bodies: the Home Builders Federation, National House Building Council and the Chartered Institute of Highways and Transportation

Table: Call for Evidence Submissions

Evidence from	Evidence submitted
<p>Councillor Jim Frewin Shinfield South</p>	<p>Enforcement – through the planning process, conditions are often applied. These conditions are only any good if enforced and are deemed to be of a suitable quality. For example:</p> <ul style="list-style-type: none"> • Flats Basingstoke Road Spencers Wood – condition that prior to occupation a communal garden be provided. This has not been done yet flats are up for sale. • Shinfield Eastern Relief Road (not yet adopted) Condition significant tree planting. This condition was ‘satisfied’ by putting in place a number of trees that were left lying on the ground and subsequently died. If landscaping is a condition it must be a proven to be a long term solution not a quick fix and dies later solution. • Traffic conditions – Weight limit access, speed limits conditions if not enforced are seen as meaningless by residents. <p>After build experiences - if during the after-build period, prior to adoption, it becomes apparent that there are issues and concerns these should be investigated and remedied prior to adoption. E.g. Blackboy roundabout (not yet adopted), significant resident feedback on safety and traffic flow issues. Council are restricted to stating it is in line with design. It is true that reported accidents are few but residents’ feedback is not counted after build. Issues:</p> <ul style="list-style-type: none"> • Leaving concerns to after adoption results in costs to WBC. Example Blackboy roundabout lane lineage. • Footpath Hyde End Road was found to be needed due to user safety issues post build. After Officer, Cllr, Parish Council and developer collaboration this was provided. The point is it should have been picked up by the adoption process. <p>Quality - there are examples where build quality is not as good as it should be. We should not adopt until quality has been assured by experience. E.g. ground water issues Shinfield Meadows, Shinfield Langley Mead SANG regularly floods making it unusable and multiple examples relating to trees.</p> <p>General observations:</p> <ul style="list-style-type: none"> • Seek local stakeholder feedback prior to adoption – user experience is more powerful feedback than a simple ‘does it meet design’ review. • Parking – again user feedback prior to adoption. • Could we consult prior to adoption? • Post build traffic and other planning criteria should be checked against application assumptions, i.e. if application states additional 50 journeys per day we should verify this before adoption. Air quality impacts, ecology assumptions etc. should be verified post build.
<p>Councillor Shirley Boyt Bulmershe and Whitegates</p>	<p>An issue in my ward has highlighted some areas for concern around issues of road adoption in relation to developments which include ‘affordable housing’ in the form of shared ownership or social rent. These are:</p> <ul style="list-style-type: none"> • Maintenance charges payable to the freeholder (in addition to council tax) for upkeep of roads, verges, refuse collection etc. places an additional burden on those who can least afford it.

	<ul style="list-style-type: none"> • Future maintenance issues in respect of road surfacing, drain maintenance etc. could place an intolerable burden on a low income family. • Sometimes developers know at an early stage that the Council will not adopt due to road or drain construction but do not advise prospective purchasers / tenants. • In some instances, the Council may choose not to adopt some years after the sale of the properties. Residents are stuck in a property with higher outgoings and which may be more difficult to sell. • My concern is that prospective purchasers/tenants are not being made fully aware of the implications that non-adoption can bring about. I believe the Council has a duty to highlight the issues arising from non-adoption or put pressure on developers to do so.
<p>Councillor Richard Dolinski Loddon</p>	<p>In Loddon Ward we have a large development, Loddon Park. The main developer is Taylor Wimpey with Antler Homes who are building houses on two smaller sites within the Park.</p> <p>My understanding is that WBC is or has adopted roads in Phases 1 and 2. If so this has not been communicated effectively to residents. This has caused confusion as to who is responsible for the maintenance of the roads. Residents are also asking if some roads will have yellow lines added and speeding restrictions, once adopted.</p> <p>The other potential problem is that the residents pay Chamonix, a service company to maintain the green spaces, ponds and play areas. Recently there have been a number of complaints regarding lack of maintenance work. There is also confusion amongst residents as to the green boundary between the Airfield and the Loddon development, namely who is responsible for maintaining the green corridor along Beggars Hill Road and the Perimeter Road.</p> <p>In addition, there is some confusion as to who is responsible for the newly established adjoining country park including, the access bridges over the River Loddon.</p>
<p>Earley Town Council</p>	<p>The one recent, and ongoing, adoption experience has been the Sibly Park development by Persimmon Homes. Associated with these planning approvals are four S106 agreements, see below, two dealing with affordable housing, one dealing with the provision of a telecoms mast and the main agreement dealing with items such as the adoption of open space.</p> <p>The Town Council is aware that there can also be problems with time taken for the adoption of highways within developments, but we have had no direct experience of this in recent years, although Sibly Park will presumably present some.</p> <p>Earley Town Council are particularly interested in the main agreement at Sibly Park as the intention was for the open space to be transferred to the Borough Council who would then transfer it to the Town Council, along with the commuted sums, for long term management. The open space includes Redhatch Copse with a Conservation Margin, a kick about area, a play area, an Ecological Area and a Green Link.</p> <p>The Town Council has been frustrated in its attempts to take transfer of the open spaces, due to a number of factors. Firstly, it is felt that the S106 was poorly drafted with ambiguity as to the limits of each area designated, with the developer's layout not following any defined limits and no mechanism for agreeing the final boundaries.</p> <p>Secondly, the developer has consistently been unable to deliver an acceptable level of finish to the open space for adoption, such that they have now agreed the payment of additional funds for the Town Council to complete the works to a satisfactory standard. Earley Town Council is in an advantageous position when compared to other Councils in that it has the resources to carry out such remedial works, unlike many other smaller councils.</p>

Thirdly, there appears to be a lack of understanding of the principles of development on the part of both the developer and the Borough Council, such that we believe a robust S106 has not been delivered, as detailed below:

The developer has sought to include private paths serving individual groups of dwellings within the open space transfer, even though they serve no purpose as part of that open space. The paths not being constructed to an adoptable standard, nor offered with a commuted sum. As a result, the transfer of such paths has been, not unreasonably, resisted by the Town Council. On other developments such paths have normally been conveyed in short lengths to the adjoining dwellings with cross rights of access and cross maintenance obligations.

There are four footpath links shown crossing the Ecological Area, also referred to as the Linear Park, to provide pedestrian links from the footpath/cyclepath running parallel with the watercourse along the eastern boundary of the development into the housing area. However, these footpath links do not appear to connect to any form of adopted pedestrian access within the development and would appear to be at risk of closure by the owners of the dwellings over whose land the pedestrians would have to pass.

The kick about area and play area in the Green Link appear to have been poorly designed and yet approved by the Borough Council. The play area has equipment with what appears to be inadequate safety zones, inappropriate landscaping and an inadequate enclosing fence. Whilst the fence could contain children it fails in the other purpose of such fences of keeping out dogs. The RoSPA report for this play area does raise concerns and yet the area is open to the public. Whilst the developer has carried out some stone picking of the kickabout area they have failed to clear many stones, leaving a safety hazard for children playing on this area, a fact highlighted by a number of residents

With regards to the landscaping of the open areas, the developer appears to have used inappropriate planting such as rose bushes, particularly in the play area, and has failed to maintain the planting in an adequate condition prior to adoption. Instead of completing the works to an acceptable standard, the Town Council has negotiated payments from the developer to carry out a number of remediation works itself.

The concern is that the Borough Council appear to have approved some details that the Town Council consider as inappropriate and whilst the Town Council has raised concerns about the quality of the product the developer is actually in compliance with these approved details.

In seeking to address the shortcomings of the developer in terms of the delivery of the open space, the Town Council believe that the Borough Council have failed to use the sanctions that were available to it whilst the developer was still selling properties, only apparently deciding to act once the developer had completed their sales.

In conclusion, the Town Council believe that there are a number of problems that have manifested themselves on this development:

1) The management practices of the developer, who appears to be only fixed on maximising their profit margin and minimising their obligations. The suggestion is that S106 agreements should be more tightly written to hold developers to specific timetable with sanctions to prevent them completing a site before the majority of their obligations are delivered.

2) A lack of understanding of the principles of development in detail, by both the developer, in this case, and by Planning and Highways officers at the Borough Council. It will be difficult to address a developer's shortcomings but Officers could be offered some additional training to ensure that what they are seeking to be adopted can be, without the minutiae causing difficulties.

	<p>3) Whilst the transfer of an asset as large as Sibly Park to a Parish or Town Council is quite unusual it may become more common in the future as Borough Councils focus on other service areas. To assist Parish and Town Councils address such a move it is felt that there should be more support and advice available to them during negotiations, and it would be helpful if Parish and Towns Councils were able to rely on the knowledge and experience of Borough Councils. In addition, the relevant Town or Parish Council should be involved in the negotiations of the relevant part of the agreement. Also, Borough Councils expect their reasonable legal expenses arising from the drafting an agreement to be covered by the applicant, it is felt that the legal expenses of a Town or Parish in regard to a S106 should also be covered.</p> <p>4) The Borough needs to develop a more robust approach to enforcing delivery of developments as approved using their powers in a more timely manner.</p> <p>5) A developer's main purpose is to make a profit, they are not a philanthropic business. This fact should be at the forefront of all agreements, they need to be watertight as developers have access to a full range of legal and planning advisors and have the resources to fund any challenge to the interpretation of agreements</p>
<p>Finchampstead Parish Council</p>	<p>We feel that much of the issue here is about communication, coupled with understanding about responsibilities. It is imperative that it is clear which body is responsible for a new facility or feature, and for how long, and that appropriate maintenance is undertaken so that the feature or facility is in good condition when it comes to the responsibility being passed to another body. Checks need to be undertaken at appropriate stages and follow up action taken if required.</p> <p>Arborfield Green (the SDL) is an example of where the process has not worked well with the landscaping, including tree planting. It is clear that some of the planting on this very new development has not been maintained, evidenced by weedy beds and dead trees and shrubs.</p> <p>I happened to be at Kingsley Park (Redrow) last week on another matter and took the opportunity to ask a representative of the Property Management Company about the responsibility for some of the landscaped areas. I was told they were the responsibility of the residents, which I do not believe is correct and we plan to arrange a separate meeting with the Company about this. As a Parish Council we would welcome clarification of the responsibilities here, the last thing anyone wants is a new development devoid of planting. I know you are already aware of the dead trees alongside the new Winnersh Relief Road.</p>
<p>Swallowfield Parish Council</p>	<p>Swallowfield Parish Council has experience of a site which has not been adopted by the Borough Council, The Pippins (37 homes) developed by Bellway Homes. Residents and non-residents of such sites are often confused about what rights each has.</p> <ul style="list-style-type: none"> • Open Space: who has a right to walk on the open space? In this instance Bellway confirmed that a condition of planning permission was public access to the open space, however, the residents are not aware and given that they are paying for its maintenance feel they have a right to ask non-residents to leave. We have had instances of residents of the development shouting at other local residents, telling them to "get off, we pay for this". This causes bad feeling and splits the community. • Management Fee: Residents pay an annual management fee, but many are not clear what that covers or that they may be responsible for damage to any facilities on the site. • Flood attenuation features: At The Pippins maintenance of flood attenuation features is critical for the village, e.g. balancing pond and filter drains which run across the end of some gardens, these must be cleared periodically, as a Parish Council it is not easy for us to establish what is being done. This issue has been raised recently

	<p>as residents living behind the new development can see that a ditch/drain which should be cleared regularly has not been touched. It is believed that the drain is on land which belongs to each of the new houses whose gardens back onto it, but do the new residents know that? Who is responsible for liaising with the management company to ensure that this critical drain is clear periodically?</p> <ul style="list-style-type: none"> • Affordable Housing: the council also understands that the affordable houses built on this site, a few houses on a cul-de-sac called Scarlet Mews, are not part of the management agreement, again this causes confusion and bad feeling, e.g. who maintains the road outside those houses, can those residents park on The Pippins. At the time the roads were named Swallowfield Council was only told there would be one road, not two. • Road condition: it is the council's understanding that the roads on unadopted sites may not be laid to such a high standard as required by the local authority. What happens when these deteriorate? • Parking: there are arguments about who can park where, again residents shouting at each other and getting annoyed. • Swallowfield Parish Council would like to understand how decisions are made regarding adoption, does the borough council have any influence or is the decision down to developer preference. What mitigation is in place if the management company appointed to look after the site does not fulfil its obligations, ceases to trade or does not have the funds to effect necessary repairs? Who monitors the effectiveness of those management companies? • Swallowfield Council would ask that Wokingham Borough Council adopts the appropriate infrastructure on all sites to avoid creating split communities and a two-tiered system.
Winnersh Parish Council	<p>Green Lane Winnersh - this site was intended to be adopted under section 38 of the Highways Act but it took the developer many years to bring the road and drainage up to a satisfactory standard for adoption. Residents raised their concerns over this difficult period. We are aware that Officers continued to put pressure on the developer and the road was adopted in March 2019.</p> <p>Alder Mews - we understand that this site has a long history of issues, ranging from works that do not come up to specification, built incorrectly and a drainage system that cannot be taken over by Thames Water and, therefore, the road has not been adopted. The developer (Hodson Developments) has now disappeared together with the supposedly secure bond.</p> <p>When residents originally purchased their homes in Alder Mews they expected the road and drainage system to be adopted. At present they are in 'limbo' with no official Street Manager and are expecting the Borough Council and Thames Water to take over responsibility for these assets. With this in mind the Borough Council together with Thames Water will need to find a way for adoption.</p> <p>Hatchwood Mill Development - this development is being carried out in phases and the site is still under construction by developers Bovis Homes and Persimmons. Not all the roads will be adopted but they include Hatch Farm Way (Winnersh Relief Road Phase 1) and the main internal roads through the development.</p> <p>There are large parts of the development that will NOT be adopted but handed over to a Managing Agent at some time in the future. Residents, some of whom have lived on the estate for over 2 years, were not made aware of this until very recently and it has raised many concerns about how it will operate, and how maintenance of the asset will be funded. The present condition of the roads that will not be adopted are NOT</p>

	<p>currently at a suitable standard to be taken over by the Managing Agent. The Parish Council have been represented at recent meetings with the developers, ward Borough Councillors and representatives of the residents and there has been and continue to be some major issues with both the roads and open spaces. However, there are some improvements now taking place.</p> <p>It is quite clear that there has been a lack of communication with residents and ward Borough Councillors/Parish Council as well as prospective buyers of homes on the estate, with false information being presented for example about a Primary School being constructed within the development.</p> <p>As recently as July 2019, the developers' goal appeared to be to place all available resources into building more homes and not completing the infrastructure, whether intended for adoption or not in the areas that had already been constructed. Some examples of these were lack of Street Name Plates, street lighting, unfinished footways, verges, kerbing and the clearance of surplus materials. It is unknown what the condition of the drainage systems were like as these are hidden underground. Many trees were planted on the development including the area of Open Space, of which around 80% have died. These will require re-planting and looking after properly especially in the first two years after planting. In addition, some trees are in small front gardens but planted close to the back footway edging where there are likely to cause issues in the future as the tree grows. There is an access point off Hatch Farm Way into the Open Space where a gate has been missing for several months. This has been reported to the developers but with no action.</p> <p>The developers have had little control over their contractors who have broken the planning conditions on many occasions working outside of regulated hours. The persistence of the ward Borough Councillors / Parish Council and residents in reporting these incidents seems to have brought this issue to a close. Several homes have been built at the wrong level with air bricks too low and back of footway edgings 'cut around' them into the footway to allow these to function. Other similar cases are in front gardens.</p> <p>The Sustainable Urban Drainage System on the north side of Hatch Farm Way and between Glasspool Road and Potter Way where the wet 'ditch' is quite deep and requires life buoys was not fenced and the developer had no intention of fencing it. The developer finally agreed to fence it following pressure from the ward Borough Councillors/Parish Council and the residents' group.</p> <p>There are still several phases of the development to be constructed and more roads to be adopted or handed over to the Managing Agent. Overall, the development does not give the appearance of a high standard.</p> <p>Summary - although some of the issues raised above are around the quality and timing of the road / open space construction and tree planting, the common error is the lack of communication by the developer and the Borough Council. What would be helpful going forward is an agreed Communications Management Plan between the developer and the Borough Council that is updated on a regular basis setting out for example who is constructing the roads and open spaces / play parks and indicating what roads are intended to be adopted and which are not together with open spaces / play parks and how these will be managed in the future. Bonds must be paid into a secure system to avoid a repeat of the Alder Mews situation and bonds must also be collected for Open Spaces/play parks along with commuted sums.</p>
Wokingham Town Council	The Town Council would like clarification on the relevant standards and process for adoption of new roads and open space. When does the Council (WBC) take on responsibility from developer and what is the adoption timeframe?

	<p>Also, on sites where there is public access, for example a need for School crossing at Montague Park development, when is this adopted by the Council (WBC)?</p>
<p>A resident of Woosehill</p>	<p>Although not new housing there is an issue on Woosehill re footpaths which were constructed in the 1980's by developers.</p> <p>There are four entrances to Fox Hill woods that no-one wants to take ownership of. We have been told by WBC that they are not public footpaths (even though one has a Council refuse bin and signage on). Some years ago two properties in Tiffany Close were allowed to extend their properties over footpaths via approved planning applications.</p> <p>This is a classic example of the full process of handover from developers not being followed and I would recommend you include footpaths in your review for the future</p>
<p>A resident</p>	<p>I don't think it is clear to residents why some estates are adopted by the Council whereas others aren't. For example, The Brumbles and Mitford Fields estates (off Basingstoke Road - RG7 1W...) both have a management charge. For a three bedroom house on The Brambles this comes to £200 per year in addition to the normal Council Tax fees. In comparison, the estates off Hyde End Road were adopted, look cleaner, and have a regular bus route.</p> <p>How is it fair that I pay the same Council Tax as those three beds that were adopted, but also have to pay an additional amount on top? I feel like I am double paying and not getting any additional benefit.</p>
<p>A resident of Montague Park</p>	<p>We received a copy of the proposed parking restrictions for Montague Park in the post and only have one main comment.</p> <p>The original Barratts/David Wilson plans, and the subsequent plans we've received from the Council all indicate far more visitor bays than have actually been put in. For example we are down in the apartments directly opposite the parking for the school and on all the plans it shows 3 bays outside our building – however, only one has been put in.</p> <p>While we appreciate the need for parking restrictions, many of the properties on the estate already come with not enough spaces for all the occupants (we only have one for two doubled bedroomed property) so people rely on the additional bays – the least we should expect is for Barratts/David Wilson to have put in the right amount as shown on their plans.</p>
<p>A resident of Montague Park - Council Question</p>	<p>Question:</p> <p>This question concerns road safety issues for children attending Floreat Montague Park School. Prior to August 2018, parents were told that a work plan had been agreed between Wokingham Borough Council and the builder, David Wilson Homes to install zebra, toucan or pelican crossings in place for September 2018 to enable children to cross William Heelas Way on the way to and from school. None of these crossings have been installed and despite numerous requests to both WBC and the builder, no satisfactory responses have been given.</p> <p>We understand that the road is un-adopted, which appears to have put us in a 'It's not my responsibility zone', however this is in essence a public road being used by young school children to cross from the houses to their school and their safety must be paramount. Therefore could WBC confirm what action is being taken and give a definitive timescale for a resolution?</p> <p>Answer:</p> <p>Many areas of the Montague Park site will be adopted by the Council in line with legal agreements (Section 38 of the Highways Act) that have been entered into by David</p>

	<p>Wilson Homes for various phases of the development. The site currently remains in private ownership as David Wilson Homes has not completed all of the approved works to an adoptable standard. As the Council is not physically delivering the planned works, we cannot commit to any dates for works to be completed, but continue to push the developer to conclude the necessary works, and commit to sign these off in good time when the details are submitted to the Council for review, which we have done. We have endeavoured to facilitate David Wilson's programme for these works and remain as frustrated as you with the progress that has been made to date. The Council is continuing to work With David Wilson Homes to progress these matters as soon as possible.</p>
A resident of Arborfield Green	<p>Re Waterman's View, Arborfield Green. The Council has adopted a fraction of the estate and residents pay £500 a year forever to a private company to supposedly maintain the rest. Meanwhile, residents pay WBC the highest Council Tax rates I have ever known.</p>
A resident	<p>I have concerns about the use of barbed wire. There is barbed wire at Montague Park SANG. There is barbed wire in Shinfield and along the perimeter Road on Woodley Airfield. I hope that this can be investigated. I suggest a policy to remove all barbed wire unless is required for livestock control.</p>
A resident	<p>I want to raise the issue of car park associated with the Stokes Farm Nature Park (SANG) which was constructed to offset the loss of green space due to the development of the North Wokingham Distributor Road. The park was constructed a while ago and is now declared to be open on the North Wokingham major development website. However, the car park associated with the park is not open. Despite my best efforts to move it along with the Countryside Department, it remains closed. Apparently the lock on the gate needs fixing! But it doesn't get done. It seems as if someone has ticked it off as complete, when it is not, and it has now been forgotten about.</p> <p>This park is mostly only accessible by car (certainly that is the case for me) and it is becoming increasingly popular. The result of this is that people have to park in front of the gates (which need the lock fixing) or between the pinch points that have been put in the road to slow down traffic for people exiting the car park. This means that this section of road is more dangerous than it would have been without the pinches as traffic has to weave in and out between pinch points and parked cars! The park has a 'made' path which means that as we approach winter it will become more popular to walk in and the problem will get worse unless the car park is opened.</p> <p>It seems like it fits the bill for your enquiry because no one seems to care that this facility is 99% complete but the vital 1% is missing. I am sure that if the Council put appropriate pressure on the developers they would make sure the lock was fixed and the car park would be operational.</p>

Examples of Frequently Asked Questions

Homebuyers

Q: What checks should a homebuyer expect to be carried out by their solicitor?

A: The Local Government Ombudsman has advised that a solicitor should:

- Check that the relevant planning conditions have been discharged.
- Check that there is a S38 agreement or a private road management scheme in place.
- If the S38 agreement is not completed, check if there is an APC payment in place.
- If there is no APC payment, negotiate a covenant with the vendor requiring them to have the road adopted or withhold a sufficient sum to meet the client's potential costs.

Adoption of Roads

Q: Why do housing developers build new roads?

A: Housing developers build roads to enable new homeowners to gain access to the existing public highway.

Q: What is road adoption?

A: It is the process where a road in private ownership becomes a public road, which is then managed and maintained by the Council.

Q: Does the Council adopt all new roads built by housing developers?

A: No, housing developers may choose to keep their new roads private and some roads do not meet the Council's adoption standards.

Q: Who looks after private and unadopted roads?

A: Resident groups and management companies usually maintain private roads not scheduled to be adopted by the Council.

Q: What is the advantage of having a new road adopted?

A: Adopted roads become part of the public highway. Following adoption, the Council manages and maintains the road at public expense. Residents do not have to pay additional sums for the maintenance of adopted roads.

Q: What is the process for developers to get new roads adopted?

A: New roads are usually adopted under legal agreements called Section 38 agreements (Section 38 of the Highways Act 1980).

Q: What is involved in a S38 Agreement?

A: The S38 agreement is agreed between the Council and the developer. It normally includes a financial bond to ensure that the works can be completed if the developer goes bust. Essentially the agreement states that if the developer builds the road to the agreed standards and maintains it for a year the Council will then adopt it.

Q: Who is responsible for the new road prior to adoption?

A: The developer is responsible for maintenance and repair of the new road prior to adoption. As the road is unadopted the Council has no powers to undertake works on it.

Q: Why does the adoption of a new road sometimes take longer than agreed?

A: There may be a number of causes, including:

- The developer commences building the road before entering into the S38 agreement.
- The developer tries to vary the standard terms of the S38 agreement.
- The developer, or contractor, builds the road slowly and does not finish it.
- The developer does not build the road in line with the agreed standards.
- The relevant Water Company (Thames Water) does not adopt the sewers under the new road.
- The road is almost complete but there are outstanding “snagging” items such as defective street lights, potholes, broken drain covers and overgrown verges.

Q: How can I find out more about the adoption of new roads?

A: Contact the Highways Team on 0118 974 6000.

Local Plan Update

Q: Will there be new infrastructure such as roads and open space to support new housing development?

A: Yes. When the Council has a better understanding of where and when new development is going to take place, a detailed infrastructure strategy can be prepared. This will set out what infrastructure is needed and how it will be funded.

Q: Will access to open space and our parks be lost due to new development?

A: Open space is an important feature of the Borough and it is important that residents have suitable access. Through the Local Plan Update, new open space will be delivered on housing sites in line with the requirements of the Borough’s Open Space Strategy.

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