



SLOW LANE TO ADOPTION

Cost and timescale implications
of highways adoption on new
housing developments

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BACKGROUND

Up until very recently, planning approvals and subsequent housing supply had increased significantly, with 235,000 net additions to the housing stock in 2022/23. However, as the home building industry has expanded delivery of new homes, developers have run into issues relating to the provision and adoption of utilities and infrastructure, with Section 278 and Section 38 requirements at the centre of these frustrations. Section 278 and Section 38 agreements relate to the adoption of new public highways by local authorities.

For the last decade, HBF has been imploring policy makers to pay sufficient attention to the process for adoption of roads, particularly the disproportionate impact of the risks, costs and delays on SME builders. The conflicting approaches used by highways authorities, the lack of standard timescales and the increasing costs makes it impossible for businesses to plan and deliver housing.

With no consistency between local authorities and little overarching guidance for highways authorities as to what constitutes adoptable standards, many new roads remain unadopted. As a result, the use of private management companies become commonplace. This is an issue for residents of such estates who pay estate management costs and service charges on top of council tax. With no discount on council tax, these households are effectively double paying for the services.

Alongside all of the procedural issues, HBF members also report that behavioural differences between highways authorities create frustrations at a local level. The increased politicisation of the planning process among local authorities has filtered into all stages of achieving a planning consent and highways adoption is no exception.

The Competition and Markets Authority's (CMA) recent Housebuilding Market Study identified the private management of public amenities on housing estates as a detriment to consumers and concluded that the root cause of the aggregate detriment is the decrease in levels of adoption of amenities by relevant authorities.

The CMA's report made five recommendations in this area, two of which include:

- That the UK, Scottish, and Welsh governments each implement common adoptable standards for public amenities on new housing estates.
- That the UK, Scottish, and Welsh governments each implement mandatory adoption of public amenities on new housing estates (outside of minor, well-defined exceptions).

The CMA included roads that meet the eligibility criteria for public roads as one of the amenities that should be required to be adopted by public authorities, alongside sewer and drain networks, SuDS and certain open spaces on housing estates.

FREEDOM OF INFORMATION EXERCISE

Since the publication of HBF's report, ['Reversing the Decline of SME Housebuilders'](#) in 2017, each year we have carried out a widescale Freedom of Information (FOI) exercise, to obtain from local highways authorities across the country the approaches underpinning their adoption (or not) of new roads and the costs involved.

The results of this national survey have highlighted concerns about the disparity between the costs and timescales for works across local authorities, and the lack of a set of nationally agreed requirements. The current system is slowing down the already cumbersome planning process



and ultimately reducing the number of new homes built, and the speed at which they can be delivered.

There is no obvious reason for the variances seen between each authority, and the feedback confirms a desire from highways authorities and developers alike for the introduction of a 'national standard' to minimise issues, frustrations and delays.

In practical terms, as a result of inconsistencies and cost increases, home builders increasingly report that highway authorities require substantial sums of money and take significant time to approve roads and in a significant number of cases are reluctant to adopt new roads at all.

HIGHWAY BOND PROVISION

A highway bond is provided by developers to a local authority to provide financial assurance that the cost and risk associated with constructing the roads does not fall to the local authority should the developer cease trading. This legal mechanism enables the status and responsibility of a newly constructed road to be transferred from private ownership to Local Authority ownership following its successful completion, providing they have been constructed to the required specification, standards and satisfaction of the adopting authority.

The information HBF received regarding inspection fees, commuted sums and total bond values for S278 and S38 agreements from the last three financial years showed great differences between individual local authorities.

For the 2022-2023 financial year, the average cost per bond ranged from £3,619 to £3,606,408.

Not only is this a significant variance, it is also a huge increase from previous years. When HBF first ran the FOI in 2017, the average cost per bond ranged from £515 to £321,421.

The lowest value has increased by over 700%, while the highest value has increased by over 1000%.

The authorities to have received the most in commuted sums over the three year period are:

- Derbyshire - £76,877,209
- Kent - £48,753,945
- Oxfordshire - £44,572,612

With no set national standard for fees per development available, it is left to individual highway authorities to determine this, leading to huge inconsistencies across the country and no real opportunity for builders to challenge assumptions or fee-setting which, in return, after failing to challenge Highway Authorities on fee setting and time critical items, results in a ransom scenario.

COMMUTED SUMS AND INSPECTION FEES

Developers also face similar issues with commuted sums and inspection fees, as there is no common approach for calculating these. A single development should have the same level of fees applied to it no matter where it is being built.

Although most highway authorities are using a percentage of the bond value to calculate the fee, this percentage varies greatly 3% in one council, to 20% in others. The fee also often has a minimum charge but some local authorities charge lower percentages over a certain threshold



of total bond value, favouring larger developments and further hampering the operations of smaller builders.

Additionally, highway authorities are using different methods to calculate fees, such as deposits, hourly rates and linear meters. Some authorities also stated that the inspection fee or percentage is scheme dependent, further hindering the ability of builders to effectively forecast a development's costs.

Commuted sums were originally the reserve of exceptional items included within a legal agreement for the local authority to adopt. These may have included items such as bridges, box culverts or barriers. However today we are seeing entirely normal features of a residential highway being captured and included within the scope of a commuted sum such as drop kerbs, gulleys, street lighting and white lining. This dramatically increases the cost and affordability of a developer in being able to enter into a section agreement and is another reason why there has been an increased emergence in private management companies who do not ask for a commuted sum for such items.

S278/38 TIMESCALES

On top of the great variance in costs, developers also face difficulties in the adoption of roads due to the time it takes to secure approval at the different stages of the process.

The different stages and the varying timelines for each stage in 2022-23 can be seen in the table below.

	Stage	Minimum	Maximum
S278	Technical submission to technical approval 278	2 weeks	103 weeks
	Technical approval to legal engrossment	2 weeks	90 weeks
	Average time to grant a Streetworks Permit	1 weeks	12 weeks
S38	Technical submission to technical approval	2 weeks	103 weeks
	Technical approval to completion	3 weeks	208 weeks
	Technical submission to formal adoption	4 weeks	286 weeks

The number of councils reporting longer timescales for approval has increased each year HBF has undertaken this FOI exercise. The delays and unpredictability as to how long approval creates even more cashflow pressure for smaller firms.

Respondents to the FOI request highlighted other issues causing delays, many of which could also be resolved through the implementation of a national standard and associated statutory timescales.

Multiple highway authorities cited slow responses from external legal teams as a source of frustration and delay. A national standard would help these teams to complete their part of the process with greater speed and efficiency as much of the application could be easily determined at an earlier stage. A national standard should also reduce costs for highways authorities and local council tax payers.

Similarly, many respondents highlighted the lack of resources. A national standard would simplify much of the administrative burden and reduce the workload on highway authority teams.



CONCLUSION AND RECOMMENDATIONS

HBF's FOI has for many years highlighted the problems that exist in getting highways adopted. Without a proper intervention from government, developers will continue to face financial and timing consequences which will have knock on effects for housing delivery and the availability of new homes.

The CMA's recommendations, to introduce common adoptable standards and mandatory adoption by public authorities are supported by the industry.

Adoptable standards should be set in line with Department for Transport standards, as provided for in the Design Manual for Roads and Bridges. The starting point for national standards is for Government to bring together relevant interests and expertise, which HBF stands ready to participate in and assist with.

Common approaches for highways adoption standards could include consideration and clarification of:

- Inspection fee values/percentages
- Frequency of required inspections
- Sign-off processes
- Stage inspections and approvals

The CMA specifies that, for mandatory adoption to be considered, home builders would need to build amenities to an adoptable standard. Currently, in most cases developers are already building to common adoptable standards but without any influence on the authority's adoption. Where the feature has been fully constructed, is operational and is being utilised by the public in the purpose to which it was intended and where rates are being collected by the incumbent authority then there should exist an obligation for a mandatory adoption.

With respect to existing unadopted highways, the Government should oversee mandatory adoption to all statutory highways authorities in England and Wales under a transfer of assets, similar to the transfer of sewers and drains under Section 42 of the Flood & Water Management Act 2010. The seamless transition was a huge success for both the housing and water industry and caused Ofwat and water companies no issues in their ability to function or continue to collect rates.

Elsewhere, we would like to see:

- Bond provision values set through a sliding scale, based on nationally agreed average development size. This would allow developers to budget for the provisions when planning developments, would allow highway authorities to charge with greater ease and would ensure external legal teams can complete their part of the process with greater speed and efficiency.
- The method for calculating inspection fees should be a fixed percentage of total bond value, set a national level. Although many authorities do calculate fees as a percentage of total bond value, this percentage varies across authorities and can cause developers issues when calculating their budget in advance. Ensuring that a single development has the same level of fees applied to it no matter where it is being built will mean the developer will be able to budget and submit their plans much faster as fewer changes would be needed to keep a development within budget.
- A national standard is needed to implement statutory timescales for S278 and S38 agreements. After such time has elapsed, outstanding applications would be deemed approved.



- Increased resources for local highway authority teams. Local authority teams in all areas of the planning process are chronically under resourced, which regularly leads to discrepancies, administrative errors and additional delays for developers. Feedback from the FOI request found that many highway authorities acknowledge that these particular processes are currently slowed down due to a lack of resources.
- A national standard for the scope and inclusion of highways features that can qualify for commuted sums to provide consistency and clarity.
- The introduction of a new independent ombudsman service to act in a similar way to that of the New Homes Ombudsman Service introduced for housing last year. An independent ombudsman service could act as final deciding authority on the adoption of a public amenity once construction was complete, was being utilised by the public and where rates were being collected by the local authority. In this scenario where adoption and legal agreement negotiations had slowed or ceased then an independent ombudsman could decide the final outcome on whether a public amenity could be adopted following a standards and inspection review.

In the meantime, we would support a reduction in council tax for residents of households on new estates with unadopted roads and amenities. This would both address the unfairness for those households double paying for services and provide a financial incentive for authorities to seek effective adoption of roads and amenities assuming they meet adoptable standards and other reasonable criteria.





ABOUT HBF

HBF is the representative body of the home building industry in England and Wales. Our members are responsible for providing around 80% of all new private homes.