

DP 551/03 - 07



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Chief Executives of
Local Authorities in Wales
WLGA

Eich cyf . Your ref
Ein cyf . Our ref MB/AD/5721/03
Dyddiad . Date 24 October 2003

Dear

I am writing with regard to the adoption of private roads by local authorities. It has been brought to our attention that there is some lack of clarity surrounding the statutory obligations of local authorities to adopt or maintain a private road. The position on the adoption of private streets is set out in the Highways Act 1980. The Department for Transport has recently released a guidance note on this subject to local authorities in England setting out the legal obligations laid down in the Act. I enclose a copy for your information.

Any references within the document to functions of the Secretary of State for Transport are now devolved to the National Assembly for Wales. In the case of the reference to contributions to the costs of adopting roads, the law regarding the sale of council assets has changed following assent of the Local Government Act 2003. Local authorities can use the proceeds from the sale of assets to meet the costs of adopting roads, however, this excludes Housing Revenue Account assets. It is still, of course, for authorities themselves to determine how these capital receipts are spent, in the light of local priorities and circumstances.

Yours Sincerely

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17 February 2003

Dear Sir or Madam

HIGHWAYS ACT 1980 - ADOPTION OF PRIVATE STREETS

Following several recent enquiries, the Department believes that local authorities may find it helpful to be reminded of the position regarding the adoption of private streets.

General

Part XI of the Highways Act 1980 sets out the position on the adoption of private streets, i.e. streets which are not highways maintainable at public expense. A highway authority is under no legal obligation to maintain a private street and it is for individual authorities to decide whether they wish to adopt particular streets.

Generally speaking, while a street remains unadopted, the responsibility for maintaining it lies with those whose properties adjoin it (the "frontagers"). However, where a private street is not already in a sufficiently good condition that an authority chooses to adopt it immediately, the authority can implement a private street works scheme under the private street works code (see sections 205-218 of the 1980 Act) to bring the street up to adoption standard. It can then recover the costs of this work from the frontagers, who are legally liable to meet them.

The decision as to whether to implement a private street works scheme is for the local authority to make, and the frontagers cannot normally (except in the circumstances set out in paragraph 7 below) force the authority to act.

Mitigating the impact on frontagers

An authority can reduce the financial burden on frontagers of making roads up to an adoptable standard in a number of ways. Firstly, they may bear some or all of the costs themselves, if they consider this is justified on the grounds of equity or the wider public interests of their area. Secondly, they may allow the frontager to make payments in annual instalments, plus interest, over a period of up to thirty years. Thirdly, in exceptional circumstances, the authority may decide only to recover the interest on a charge from the frontager and to defer reclaiming the principal sum until such time as the property is sold. Alternatively, the local Social Security office may be able to assist frontagers with the payment of interest charges in cases of extreme hardship.

Urgent repairs

Section 230 of the Highways Act 1980 sets out the position relating to urgent repairs. Where urgent repairs are needed to remove danger to traffic in a private street, the street works authority may serve a notice on the frontagers requiring them to carry out, within a given time, such repairs as are specified in the notice. However, if the necessary repairs extend only to part of the street, the requirement to carry out the repairs applies only to the owners whose properties front on to that part of the street.

However, where such a notice is served on frontagers, each of them has the right to appeal to a magistrates court. Alternatively, if a majority of them choose to do so, the frontagers can serve a counter notice on the authority requiring the latter to execute a full private street works scheme (see paragraph 4 above).

If within the timescale specified in an urgent repair notice, the repairs have not been carried out, the authority may execute these itself, and recover the cost of doing so from the frontagers. The expenses would be apportioned between the various frontagers according to the extent to which their respective premises front the street. This is, of course, subject to any order, which a magistrates court might make in response to any appeal, and to any counter notice served by frontagers, as set out in paragraph 7 above. Carrying out the repairs itself does not commit the authority to adopt the road after carrying out the work.

Contributions to the cost of adopting roads

Local authorities can use the proceeds from the sale of assets (generally 25% in the case of council houses, and 100% in the case of most other receipts) to meet the costs of adopting roads. That said, it is of course for authorities themselves to determine how these usable capital receipts are spent, in the light of local priorities and circumstances.

The Advance Payments Code

Sections 219 to 225 of the 1980 Act concern the Advance Payments Code. This requires (with certain exceptions) that when it is proposed to build on land fronting a private street, the landowner (usually the builder) must deposit with the street works authority such sum as the authority estimate they would recover under the private street works code if they were to make up the street for adoption themselves and apportion the expenses incurred between the owners of premises fronting the street. So, the code removes the liability which owners of properties on a private street would otherwise have to meet the costs of bringing the road up to an adoptable standard.

In such cases, the landowner has a right of appeal to the Secretary of State for Transport, whose sole function is to determine whether a smaller sum should be substituted for that required by the authority. Once the sum is agreed and deposited with the authority it will be put aside to earn simple interest until such time in the future as it is used by the authority to defray the cost of making up the street. Thus, for the time being the liability of the frontager is discharged to the extent of the sum deposited (plus accrued interest). However, depending upon whether the costs of carrying out the work proves, in due course, to be higher or lower than the sum he has deposited (plus any interest earned) the frontager will be liable to pay any shortfall or to receive any refund, as the case may be.

Section 38 Agreements

Section 38 of the 1980 Act allows a developer to enter into an agreement with a highway authority for the adoption of a new estate road (or other private street) once it has been completed to a satisfactory standard. When a section 38 agreement is in place, the advance payments code does not apply. An adoption agreement has the advantage of allowing a developer to complete street works himself, perhaps at less cost than if an authority were to proceed under the private street works code, and in the knowledge that having been built to the authority's standards and subject to their inspection, a street will be adopted by the authority once the works are complete. This would also provide comfort for those buying a house on a new estate that they will not be liable for street works charges at a later date.

Whilst there is no obligation on either the developer or the authority to enter into section 38 adoption agreements rather than to proceed under the advance payments code, the advantages set out above mean that this tends to be the preferred course of action in the great majority of cases.

Yours faithfully,

Tim Barrow
Traffic Management Division

reforms to the local government finance system and the development of a simpler, more coherent strategic planning system for local government.

Wales Spatial Plan

Ann Jones: Will the Minister make a statement on the ways in which the Wales spatial plan will engage people and communities in taking forward a sustainable future for Wales? (WAQ28791)

Sue Essex: 'People, Places, Futures', the consultation draft Wales spatial plan, outlines our vision for the spatial sustainable development of Wales which we can achieve if we work together. The consultation process is crucial to this: copies of the consultation draft have been widely circulated and we look forward to the responses. Most importantly we have organised a programme of events throughout Wales to the end of January 2004 where we will bring community interests and national stakeholders together to gain further input to the strategy. Some organisations have already indicated that they want to run additional events, and we will support this wherever we can. This work will be brought together in the first Wales spatial plan in 2004.

We also intend to use this consultation process to lay the foundations for future work in partnership, both at area and national levels, which will continue after the publication of the plan.

Electoral Commission

Ann Jones: What discussions has the Minister had with the Electoral Commission to take forward an all-Wales postal vote pilot for next year's local and European elections? (WAQ28792)

Sue Essex: The First Minister is writing to the Electoral Commission to confirm the Welsh Assembly Government's support of electoral pilot methods. As the Electoral Commission is responsible for recommending the regions at which electoral pilots will operate at European and combined elections we have urged them to consider Wales as a suitable region for an all-postal ballot.

Roads and Land whose Ownership is Uncertain

Leighton Andrews: Further to WAQ27324, will the Minister make a statement on the legal guidance to be issued to local authorities; and does she have plans to enable local authorities to clear up roads and land whose ownership is uncertain? (WAQ28806)

Sue Essex: The Assembly Government will shortly be issuing guidance to all local authorities in Wales that will clarify their legal rights and obligations regarding the adoption of private streets as set out in the Highways Act 1980. A copy of the guidance will be placed in the Assembly Library. I am not aware of any plans to change the powers available to local authorities in this area, which would require new primary legislation.

Discounts on Council Tax

Glyn Davies: What discretion do local authorities have to give discounts on council tax in their areas? (WAQ28973)

Sue Essex: Following the introduction of the Local Government Act 2003, local authorities will have more flexibility to create their own discounts and exemptions.

Discounts could be applied in individual cases, such as to ease the council tax burden on a disabled person or the elderly or anyone suffering from temporary hardship.

As this is a discretionary power, authorities will be able to offer different discounts and exemptions. This allows them to tailor them to meet local needs and the wishes of their local taxpayers.