

SUBJECT:	Petition to adopt highway at Crawshay Bailey Close Gilwern and also consideration of future agreement for new development
MEETING:	Select Committee
DATE:	TBA
DIVISION/WARDS AFFECTED:	All

NON-PUBLICATION

(Insert appropriate non-publication paragraph if necessary)

1. PURPOSE:

To update members on the current position with regard to adoption of highway infrastructure for new developments and consider the implications of where a legal agreement for the road to become formally adopted by the council is not agreed.

2. RECOMMENDATIONS:

To note the petition **but not to adopt** the highway and associated infrastructure at Crawshay Bailey Close Gilwern.

That the authority should not adopt any private development unless a section 38 or other form of legal agreement has been put in place as part of the planning process however request the developer as part of the planning process to provide assurances as to the future management arrangements of the highway and associated infrastructure.

To encourage the developer to enter in to a legal agreement for the adoption of the highways upon completion of the site (section 38 of the highways act 1980). However where this arrangement is not feasible, for the authority to secure a bond to cover the cost of making up the highway and other infrastructure to an adoptable standard.

3. KEY ISSUES:

A petition has been received requesting that the county council adopts the roads and associated infrastructure at Crawshay Bailey Close, Gilwern. This development was approved by the Brecon Beacons National Park (BBNP) without consideration to MCC Highways comments and therefore the site was built as a private estate without carrying out improvements to the existing access road to provide an adoptable width of carriageway, providing sustainable transport links and also residents agreeing as part of the purchase process to contribute towards the costs for a private management company to take on the future maintenance of the infrastructure.

Roads and associated infrastructure on new developments have historically been adopted as public highway under a legal agreement (section 38 of the Highways Act 1980). This is not a statutory requirement, it is a mutual arrangement between the Highway Authority and the Developer (landowner) that requires the developer to pay a bond (a cash deposit or

bond surety that reflects the costs for constructing the adoptable estate roads) and construct the roads etc. to the required specification with the highway authority undertaking inspections of the works and formally adopting the site usually once the development has been completed. The council charges the developer for the inspection of the works and may also require commuted sums in order to cover works that will incur additional future maintenance for items such as high specialist materials, specific highway furniture, highway structures, drainage etc. The planning conditions may also require similar charges for the provision of play areas, open spaces and other infrastructure improvements including the upgrade of local schools and sustainable transport facilities.

These conditions and outlays can be significant for some sites and result in the developer deciding to keep the site as private and set up their own maintenance arrangements, and in some cases also look to recover these costs from the residents through the payment of a management fee.

The decision for the developer to keep the site private is likely to be based upon the financial viability of the site following consideration of the Section 106 Agreement which may include requirements for the provision of affordable housing and other infrastructure improvements outlined above. The option not to offer the site up for adoption may present the developer with an opportunity to make savings especially in relation to those which would attract a high commuted sum. Furthermore, an additional motivator for the developer is to recover such costs through the residents by setting up a management company and annual management fee.

Recent experience shows that new residents to those sites that remain private are not happy with having to pay the annual management fee and would wish to see the council adopt the highway etc. However, although the infrastructure may have been built to an adoptable standard, without the payment of commuted sums, the authority would incur higher than expected costs and above that allocated by the Welsh government for the maintenance of highways, the authority may also be liable for high costs and potential insurance claims associated with inheriting a sub-standard highway .

The planning process involves negotiations between the planning authority and developer and the viability of the site, especially during the economic downturn, is an opportunity for the authority to agree with the developer on appropriate improvements for the wider community and local infrastructure. The Planning authority and Highways as a statutory consultee are not able to stipulate that the site should be adopted once completed, however, an opportunity exists during the pre-planning stage to encourage the developer to enter in to a section 38 agreement. This arrangement will serve to best to ensure that the highway is built to the appropriate specification and offer residents with the benefits of living on an adopted highway without an annual management maintenance fee. This facility is not so straightforward where the Council are not the Planning Authority.

4. REASONS:

The adoption of the highway and associated infrastructure is believed to best secure the interests of the highway authority by ensuring that the development is built to the appropriate specification and also offer residents with the benefits of living on an adopted highway without an annual management maintenance fee.

5. RESOURCE IMPLICATIONS:

The costs associated with future maintenance of new adopted highways are covered as part of the Formula Spending Assessment (FSA) set by the Welsh Government and where applicable commuted sums payed by the developer as part of the legal agreement. The cost of maintaining such sites may only be partially covered should the authority wish to adopt the site outside the section 38 process and where a development remains private. There are no additional costs to the authority where the development remains private however there may be pressures to adopt such site after completion which may lead to additional costs for defective repairs especially where a higher specification has been used and other features such as drainage systems have not benefited from the payment of commuted sums.

6. SUSTAINABLE DEVELOPMENT AND EQUALITY IMPLICATIONS:

Regardless of whether the site is adopted or not, the highway layout should be compliant with the requirements of the current guidance and meet the needs of the DDA and the planning authority will seek contributions to provide and improve accessibility and a wider sustainable community.

7. CONSULTEES:

Cabinet Member for County Operations
Senior Leaders Team

8. BACKGROUND PAPERS:

None

9. AUTHOR:

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10. CONTACT DETAILS:

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