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To: Environment & Regeneration Policy Overview Committee
6th November 2008

Subject: Highway Adoptions – Cold Case Project

Classification: Unrestricted

Summary: This paper provides Members with an overview of the Highway Adoption Cold Case Project.

FOR INFORMATION

1. Introduction

1.1 The adoption of newly constructed streets (including highway drainage and remote footpaths and cycleways) under Section 38 of the Highways Act 1980 has been used successfully by Kent County Council, as local highway authority, for many years. Under a “Section 38 Agreement”, developers design and construct the streets in accordance with KCC’s guidance and standards. All stages are audit-checked by KCC such that upon satisfactory completion of all relevant works and legal processes the streets become maintainable at the public expense.

2. Adoption Problems

2.1 Not all Section 38 Agreements run smoothly. Inadequate standards of construction and land ownership complications are among the reasons why some streets are not adopted in good time. The failure of developers to complete remedial works, confirm drainage easements and transfer land can make adoption inappropriate. Occasionally, developers have gone into liquidation, leaving no reasonable means by which the Agreements can be seen through to completion.

2.2. All Section 38 Agreements include a bond, or equivalent, through which funds for KCC to see the works through to completion can be called upon in the event of the developer defaulting. Unfortunately, for older schemes the bond situation is not always straightforward.

3. The Cold Case project

3.1 Following the formation of Kent Highway services In April 2005, it became apparent that a significant number of Section 38 Agreements dating back over many years remained unadopted. These schemes were started during the “Agency Agreement” and “Kent Highways Partnership” periods when many of KCC’s highway functions, including highway adoptions, were carried out by the District Council’s Highway Units. The formation of Kent Highway Services in April 2005 brought all of these functions under KCC’s direct control.

3.2 The outstanding schemes have been called the “Cold Cases”. Phase 1 of the project to deal with them concentrates on approximately 170 schemes that started before 2002 (see appendix 1). The project was initiated in Spring 2008 with the aim of dealing with all these schemes by the end of March 2009.

3.3 Unfortunately, the quantity and quality of historical information relating to the Cold Cases is variable, with some having suffered significantly from successive reorganisations. Phase 1 is therefore particularly challenging, but it will lay a firm foundation for the next phase (2002-2005) and for a more efficient approach to “KHS-era” agreements.

4. Project methods

4.1 The existing schedules of Section 38 Agreement schemes, prepared by Kent Highway Services under its original divisional structure, have been adapted and simplified to use as the basis for research, review and investigation. They also provided some historical information, including legal positions and engineers’ notes. These adapted records are being used to maintain control and keep a record of progress, correspondence, site visits, telephone conversations, meetings etc. They are accessible to all relevant parties.

4.2 A large mailshot operation was used to establish initial contact with developers, a few of which have gone into liquidation or are trading under new names. These letters advised of a specific point of contact. This was particularly helpful to developers already seeking to progress their Cold Case schemes. Meetings were then held with the relevant KHS Agreements Engineers, albeit some of these had little historical knowledge of schemes they had inherited since 2005. Direct contact with developers followed, with some keen to meet and to agree corrective actions.

4.3 Problems with land transfer and easements were taken up with KCC Legal Services, with whom ongoing liaison has been established.

4.4 Flexible criteria for adoption have been established with specific focus on safety, future maintenance/financial liability, historical information, justification in the absence of full completion, and the general appearance of the development taking into account reasonable wear and tear in relation to the length of time that adoptable areas have been in public use. Without such criteria, many schemes would have to remain unadopted.

5. Adoption records

5.1 It is important to all parties that decisions taken under the Cold Case project are transparent and auditable. Failure to act in this way could lead to maintenance and management problems in the future. Completed schemes are therefore recorded by means of Recommendation Certificates.

5.2 Recommendation Certificates are prepared and signed by suitably qualified engineers. Defects and attendant risks are clearly identified. When it is considered appropriate to adopt in the knowledge of outstanding issues, the cases are elevated for decisions and signatures by senior managers.

6. Lessons learnt

6.1 The Cold Case Project has focussed attention on staffing levels for assessment, inspection and Agreement management and firm controls on the attendant processes. It is anticipated that the recent restructuring of Kent Highway Services and the introduction of

the “DCMan” monitoring software will prove to be an effective response to the needs of the service, avoiding repetition of past delays.

6.2 Work is also underway to review adoption policies and processes including adoption agreements to enable officers better control over the procedure, having regard for good practice elsewhere and the best ways of serving the various interests of residents, developers and the people of Kent in general.

7. Conclusions

7.1 The work of completing Cold Case schemes can be frustrating and time consuming. Early interest among some developers has declined (not least because of the financial climate), and there are often various other parties involved. Furthermore, achieving reasonable standards, but not necessarily meeting current standards, is a difficult balancing act. In a few cases remedial works have been carried out some time ago but inspection now suggests more are needed – this can prejudice relations with developers and their contractors.

7.2 Whilst it is anticipated that the majority of phase 1 Cold Case schemes will be adopted by the end of March 2009, the complexity of a limited number of cases means that it may not be possible to achieve 100% success rate by the due date. If this appears to be likely at the beginning of 2009, the commitment will need to be varied to the following:

- Adopting as many as possible by 31 March;
- Setting a timetable for the adoption of those which are still in progress;
- Giving an explanation why the remaining few schemes cannot reasonably be considered for adoption.

7.3 In the case of the latter, a further policy review will be undertaken at senior management level.

8. Recommendations

8.1 Members are asked to note the content of this report.

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