

# Unadopted roads in Wales

Report to the Minister for Economy and Transport

# **Unadopted roads in Wales - report to the Minister for Economy and Transport**

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## 1. Foreword



I am pleased to present this preliminary report which outlines the current situation with regard to unadopted roads in Wales.

The report has looked at the inconsistency of data and process and sets out an agenda to address the issues raised.

I am grateful to the Taskforce led by the WLGA who have produced this report, and to the valuable input of Local Authorities, the house building federations, Welsh Government officers, Geldards LLP Solicitors and Data Cymru.

### **Ken Skates AM, Minister for Economy and Transport**

The issue of unadopted roads is one that affects residents in parts of all local authority areas and I welcome the efforts of this group to look for solutions. Many of the cases are historic and complex and will take time and money to resolve. However, this report suggests a way to reduce the likelihood of roads being unadopted in future developments. If we can 'turn off the tap' we can then direct our attention to the backlog. Further work is clearly needed to identify the scale of that problem but, once done, it should be possible to prioritise and deal with the most pressing cases as resources become available. This has been an excellent example of partnership work between Welsh Government, local authorities and representatives of housing developers to address a long-standing issue and I fully support the recommendations and thank the group for its work.

*Cllr. Andrew Morgan, WLGA Spokesman for Environment and the Economy*

The Federation of Master Builders (FMB) were pleased to participate in this important piece of work to represent the views of small and medium sized house building firms. There was consensus amongst stakeholders from an early stage that although the challenges are complex and significant, this is a matter that is worth addressing. It was also apparent that developers want to build adoptable roads, and that Local Authorities want to adopt the roads. Identifying these common aspirations gave the taskforce good foundations for the collaborative discussions that ensued. It is clear that more work is required, but we welcome this report as a positive first step.

*Ifan Glyn, Director Federation of Master Builders Cymru*

HBF is pleased to have worked with the Welsh Government unadopted roads Task Force to look at the issue of unadopted roads and in particular those on new housing developments. House builders would much prefer that roads on new housing developments are adopted, as this avoids the need for alternative maintenance provision to be put in place. The research of the group indicates that the current system is not working and unfortunately as a result we are seeing an increase delay in the time it takes to adopt roads and them not being adopted. We hope that the Minister will support the report's recommendations and continue to work with the HBF and other key stakeholders to ensure they are implemented. HBF represents builders of all sizes who between them build around 80% of all the UKs homes.

*Mark Harris, Planning and Policy Advisor Wales, Home Builders Federation Wales*



## 2. Executive summary

A Taskforce was set up at the request of the Minister for Economy and Transport Ken Skates to investigate unadopted roads in Wales, to establish the nature and extent of the issues, and to see what can be done to bring such roads up to a consistent adoptable standard and to better manage the situation.

The outcomes of the investigation are as follows:

- There is currently little reliable, managed information available and it is difficult therefore to quantify the extent of unadopted roads, and the cost of remediation;
- Investment is required to develop a database to provide consistent and robust information on unadopted roads that would enable a more accurate picture to be generated and to understand the cost of remediation;
- Unadopted roads fall broadly into six categories, (these are listed on Page 9 of this report);
- Unadopted housing estate roads are the type of unadopted road which was numerically most referred to by consultation respondents (both historic situations and new build);
- A number of steps have been identified that could prevent the problem from becoming worse over time. Based on these, a flow chart has been developed that sets out the basis for a future good practice guide for use by Local Highway Authorities and housing developers. Applied consistently, this could help reduce new housing estate roads not being adopted. This would enable efforts to be focused on dealing with the backlog of unadopted roads, and how to reduce this in a prioritised way over time, subject to resource availability;
- The need for a common standards approach has been identified to accompany the good practice guide.

Following the findings of the Taskforce, the following recommendations are made:

- That work progresses to establish a DATABASE to provide a comprehensive record of all unadopted roads in Wales;
- That the database be used to provide cost estimates for improving unadopted roads to reasonable adoptable standards;
- That the database be managed and maintained with the assistance of local authorities;<sup>1</sup>

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<sup>1</sup> s.53 of the New Roads and Streetworks Act 1991, and the corresponding Street Works (Registers, Notices, Directions and Designations) (Wales) (No 2) Regulations 2008 places an obligation on local highways authorities to include in a street works register “every street which is a prospectively maintainable highway” and “every street, of which the local highway authority is aware, which is a highway but for which it is not the street authority”. However, it is not intended that the database will fall within the statutory regime of s.53 and that the database will be independently promoted as a system of best practice.

- That a budget be established to set up the *database*;
- That Local Authorities and housebuilders develop a GOOD PRACTICE GUIDE to significantly reduce the chances of any new housing estate roads ending up in an unadopted state;
- That Local Authorities and the house building federations sign up to the suggested good practice guide;
- That a working group is established to develop a set of highway design and construction COMMON STANDARDS for use by Local Authorities and housing developers for adoptable roadways.

### **3. Introduction**

#### **Background**

A Welsh Assembly Member Debate was held in Plenary on the 14<sup>th</sup> February 2018 on the issues surrounding unadopted roads.

The main issues that were raised included:

- The poor condition of the roads and their suitability to accommodate emergency vehicles;
- The apparent lack of commitment by local authorities to bring these roads to adoptable standards and take over maintenance liability;
- Difficult to quantify the scale of the problem across Wales;
- Developers not putting forward roads for adoption or have gone into liquidation;
- Residents having to organise the maintenance of their road;
- Inadequate retention to bring the road to the required adoption standards;
- Is there a case to change legislation to ensure roads are adopted;
- Is there scope to consider innovative ways to fund the improvements necessary to bring roads to adoption standards;
- Ability of householders to pay for bringing the road to adoptable standard;
- Lack of transparency in some cases relating to leaseholds and management companies;
- Lack of interest by buy-to-let landlords in making a contribution to bring the roads to adoption standard;
- Time taken by developers to bring the road up to adoption standard;
- Weaknesses in the house buying and planning consent processes.

As a result of this, the Minister for Economy and Transport committed to:

- Asking officials to seek discussions with the Welsh Local Government Association on the development of a Taskforce to investigate the problem associated with unadopted roads;
- To work with key partners to review current position and make recommendations on how these can be addressed and avoided in the future;
- To receive a report from the Taskforce in spring 2019 with initial findings and recommendations.

#### **The legal context**

An 'unadopted road' is a road that is not maintainable at the public expense; rather the responsibility for maintaining the road will lie with persons other than the Highways Authority. An unadopted road may or may not be highway, and whether it is will largely depend upon whether it meets the legal definition of a 'highway' (the definition of which does not encompass maintenance responsibility). If an unadopted road is considered a highway then the public at large will have a right to

use it and the Highway Authority will have a duty to keep it free from obstruction, but that duty will not extend to bringing the road up to present day standards and maintaining it as is the case with adopted roads. If an unadopted road is not a highway then the rights to use it will depend upon the terms of use set by the landowners, and the right of access may be limited to the home owners and occupiers and persons invited by them.

There are several reasons why a road may not be adopted by the Highway Authority. For example, it may be that the road was simply not built to adoptable standards by the developer or it may be that it is the developer's intention to retain it as a private road (e.g. a gated community serving only a small number of properties). Where there is a deliberate intention to keep the road private then so long as there are adequate private legal arrangements between landowners to share maintenance responsibilities, then the status of the road as unadopted may not give any cause for concern.

However, difficulties arise if the road is not built to adoptable standard and the unadopted road is a thoroughfare serving numerous dwellings. These types of unadopted roads may be unfit to accommodate refuse and emergency vehicles, may not be properly surfaced, drained or lit and, without private maintenance arrangements in place, may fall more into disrepair over time. Although the local authority is able to step in at any time to undertake private street works to bring it up to adoptable standard pursuant to the Private Street Works Code, the process is highly technical and it may still not necessarily result in the road becoming 'adopted'. Furthermore, if the local authority has not obtained security for the future need to undertake private street works from the developer via an Advanced Payment Code Notice, then the local authority may have to resort to recouping its costs in undertaking the works from frontagers through a Private Street works scheme, which is an unpopular and potentially complex process.

By far the most common route to adoption nowadays is by agreement under Section 38 of the Highways Act 1980. These agreements typically include provisions relating to: the construction of the road; dedication of the road by the landowner; step-in rights for the local authority if the developer defaults on the agreement, and obligations on the highways authority to adopt once the road is built to an appropriate standard and has been maintained as such for a period of twelve months.

The agreement may also require a bond or security for the obligations. However, the point about section 38 agreements is that they are voluntary and require co-operation from the landowner, developer and the highways authority. If negotiations break down and a section 38 agreement is not concluded, then there is a risk that the road is not made up to adoptable standards and the local authority may need to rely on its private street works powers to make up the road at a later date. Local authorities will almost certainly benefit from serving an Advanced Payment Code Notice on the developer within six weeks of building control approval to ensure that it has the necessary security for having to undertake private street works in the future,



but it is not a practice that is consistently applied across Wales. Even if a section 38 agreement is concluded, the enforcement of the bond or security if the developer defaults may not be straightforward either. Further information on the legal position, and the different routes to adoption are included in Appendix 1.

## **Establishment of the Taskforce**

Following the commitment of the Cabinet Secretary, a taskforce was established in August 2018 with representation from Welsh Government, the Welsh Local Government Association, Local Authorities, the Home Builders Federation and the Federation of Master Builders.

Terms of Reference were agreed that provided direction in respect of expected outputs and timescales (see Appendix 2).

A Governance Structure was also agreed confirming responsibilities and accountabilities (see Appendix 3).

The work of the Taskforce was supported by two part-time officers employed by Welsh Government and the Welsh Local Government Association for the duration of the project. Geldards LLP Solicitors were also commissioned to provide legal advice and context.

It was established early on, that the work of the Taskforce was basically two-fold:

- Firstly, there was a need to establish what were the types of unadopted roads, what were the issues that arose due to the types of unadopted roads, and importantly, what was the extent of the 'problem', i.e. what were the lengths of unadopted roads, and what were the costs of getting the roads up to reasonable and adoptable standards;
- Secondly, what could be done to avoid further problems being created, i.e. what could be done to ensure that all new roadways were constructed to adoptable standards and subsequently adopted. (This does not include developments that would be 'private' such as gated communities, where there is no general public access or 'benefit' to the general public).

#### **4. Consultation process**

Initial research had indicated that very little information and no meaningful data was readily available in relation to unadopted roads in Wales, (the only 'information' that appears to exist is a 1972 figure indicating 4000 miles of unadopted roads in the whole of the UK). It was agreed therefore, that the initial task should be to undertake primary research via a consultation exercise with key stakeholders, to establish what information they held on:

- the nature of the problem and the types of unadopted roads,
- the issues and problems that arise as a result of unadopted roads,
- the extent of unadopted roads.

Early pre-consultation Taskforce discussions identified 6 categories of unadopted roads:

- unadopted housing estate roads,
- unadopted minor roads not specifically serving households,
- unadopted urban back lanes,
- unadopted privately managed estate roads,
- unadopted industrial / business development sites,
- unadopted former chalet developments.

The Consultation Framework was drawn up by Data Cymru and hosted on the Data Cymru system, whilst the analysis and presentation of the outputs was the work of the Taskforce.

The consultation documents appear in Appendices 4a, 4b and 4c, with the list of consultees appearing in Appendix 5. The consultation ran between the end of September and early November of 2018.

As part of the consultation, stakeholders were asked if these categories covered all of the unadopted road situations that existed in their areas or were there other types of unadopted roads that needed to be identified and noted.

Stakeholders were also asked to confirm the issues and problems that arise from unadopted roads.

Another element of the consultation was an attempt to quantify the number of unadopted roads in Wales and to identify any meaningful and useful data that may exist. It was recognized that currently there is no uniform way or method that data is collected and recorded. Indeed, many Highway Authorities confirmed that they only maintain records of adopted highways and that there is no duty on them or any other body to keep records of unadopted roads. However, GeoPlace provides a number of highway data services for organisations that provide or use National Street Gazetteer, or other street databases. This was found to contain some information regarding unadopted roads that may have the potential to provide the basis for a comprehensive database in the future if properly developed.

Whilst many organisations viewed the consultation documents, fewer responses were received than anticipated with little specific information being provided; it led the Taskforce to believe that there are many pressing and competing priorities that public sector organisations are having to deal with. It is difficult for them to treat unadopted roads as a high priority in the current environment, although clearly unadopted roads create many local issues, especially for some residents.

The main outputs of the consultation process can be summarized as follows:

- The main types of unadopted roads identified by the Taskforce were largely endorsed by respondents with no other significant type of unadopted road being identified;
- Numerically, the type of unadopted road that was referred to most was 'unadopted housing estate roads' which had been left uncompleted or were currently unadoptable by Highway Authorities for a variety of reasons;
- The main problems resulting from unadopted roads, in order of most concern, were as follows:
  - rubbish collection (including, fly tipping, vermin, bin collection Issues);
  - maintenance (including, pot holes, lighting, drainage, and winter maintenance);
  - health and safety issues and issues for vulnerable residents;
  - Council time and money spent on unadopted roads;
  - cost of management fees especially for affordable housing, often making them unaffordable;
  - service and emergency vehicle access.
- Insufficient meaningful data or quantitative information was received making it difficult to estimate the true extent of the issues throughout Wales. However, some useful information was received in terms of estimated costs for making up unadopted roads to adoptable standards;
- It was clear that Local Authorities only kept records for adopted roads (as this is a legal responsibility) and therefore had no current controls for managing unadopted roads.

Fuller explanations of the outputs are listed in Appendix 6.

Specifically, with respect as to why some new estate roads are not adopted, there was an opportunity for organisations to comment on why this happens; unfortunately, no meaningful responses were received. However, the Taskforce included developer and Local Authority representatives with firsthand experience of these issues, and the following factors were identified as potential problem areas:

- Inconsistency of approach by Local Authorities including differing approaches to cost estimating for bonds and commuted sum calculations;
- Some developers not wanting to be tied down by S.38 arrangements, and some seeking to avoid paying for and servicing bond arrangements (however realistic and reasonable the bond sum may be);

- Local Authority delays in processing and signing off Section 38 agreements as a result of resource and capacity issues;
- Privately managed new estate roads potentially being cheaper in the short term for developers;
- Perceived lack of robustness in some conveyancing processes.

## 5. Findings

Reflecting on the early thinking of the Taskforce (i.e. data capture and promoting measures to avoid further problems being created), the consultation outputs served to reinforce the perceived direction.

Firstly, given that there is no comprehensive recording of unadopted roads, it was not possible to gather the data required from the consultation exercise to allow a meaningful estimate of the extent of unadopted roads, and the likely cost of remediation. Accordingly, more work is required in this area, with a more structured database approach being utilized to assess the scale of unadopted roads.

It is known that the work of the Utility companies is being recorded on a GIS based system which identifies whether a particular roadway is adopted or otherwise; whilst not exhaustive, there is potentially a relevant source of data here that could contribute to a meaningful assessment of the degree of unadopted roads in Wales. To this end, further work could be undertaken with database management organisations and Highway Authorities to see how this and other potential components can be used. It is envisaged that this will result in better information and a clearer idea of the cost of remediation throughout Wales. This will however further work outside the scope of this report.

Secondly, in terms of preventing further unadopted roads being created, it was evident that legislation and processes exist that if used properly could assist in preventing problem situations arising; some Local Authorities were more proactive in their use of such tools. Moreover, it may be that some housebuilders / developers are not fully aware of good process. It was therefore subsequently decided by the Taskforce to assemble a Road Adoption Model Guide for use by Local Authorities and housing developers that would, if adopted by all, significantly reduce the chances of any new housing estate roads ending up in an unadopted state. A draft Road Adoption Model Guide (Appendix 7) has therefore been developed and tested with key stakeholders; there appears to be good support for such a model as confirmed by representatives of Local Authorities and the building sector at a recent workshop session.

Thirdly, whilst endorsing a Road Adoption Model Guide approach, it emerged at the Workshop that another positive step would be to develop a set of highway design and construction common standards for road adoption; currently there are inconsistencies in terms of standards required by Highway Authorities, and those being proposed by housebuilders. It appears that clarity and consistency here would be positive and generally welcomed, and this would sit well alongside any Road Adoption Model Guide.

## 6. Recommendations

- That work progresses to establish a DATABASE to provide a comprehensive record of all unadopted roads in Wales;
- That the database be used to provide cost estimates for improving unadopted roads to reasonable adoptable standards;
- That the database be managed and maintained with the assistance of local authorities;<sup>2</sup>
- That a budget be established to set up the database;
- That Local Authorities and housebuilders develop a GOOD PRACTICE GUIDE to significantly reduce the chances of any new housing estate roads ending up in an unadopted state;
- That Local Authorities and the house building federations sign up to the suggested good practice guide;
- That a working group is established to develop a set of highway design and construction COMMON STANDARDS for use by Local Authorities and housing developers for adoptable roadways.

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<sup>2</sup> s.53 of the New Roads and Streetworks Act 1991, and the corresponding Street Works (Registers, Notices, Directions and Designations) (Wales) (No 2) Regulations 2008 places an obligation on local highways authorities to include in a street works register “every street which is a prospectively maintainable highway” and “every street, of which the local highway authority is aware, which is a highway but for which it is not the street authority”. However, it is not intended that the database will fall within the statutory regime of s.53 and that the database will be independently promoted as a system of best practice.

## **7. List of appendices**

1. Legal context
2. Taskforce Terms of Reference (ToR)
3. Governance structure
4. Consultation documents
5. List of consultees
6. Consultation outputs
7. Road Adoption Model Guide for highway authorities and housing developers



## Appendix 1

### Legal Context

#### ***What is a highway?***

The law considers a highway to be a defined route over which the public at large have a right to pass and re-pass as frequently as they wish and without hindrance and charge.

The public's free rights of passage are intrinsic to the definition of a "highway", and the position as to whether or not a highway is maintainable at the public expense is a separate consideration to its status as a highway. Once a highway comes into being, it will always remain as one until such time as it is closed by one of the statutory procedures,<sup>3</sup> or it physically disappears in the sense that it is destroyed by a phenomenon such as erosion, for example. A highway does not disappear if it simply becomes overgrown through lack of use.

Whilst a highway must be open to all members of the public, the right to use the highway may nevertheless be limited to a certain class of user; for example, footpaths, bridleways and carriageways may all be types of "highway", but the public right of way extends only to foot, horseback and the passage of vehicles respectively.<sup>4</sup>

#### ***Are roads and streets "highways"?***

A road to which the public has access may be considered a type of "highway",<sup>5</sup> though not all roads are considered highways as is the case where the use of the road by the public is permissive and capable of being withdrawn as opposed to being as of right.

Similarly, a street may be also be a highway, but if it fails to meet the essential characteristics of a highway then it may not be.

Unfortunately, statute does not set out a clear definition of the key physical attributes of a street; rather, the New Road and Street Works Act 1991 states that a street is:<sup>6</sup>

"the whole or any part of the following, irrespective of whether it is a thoroughfare, (a) any highway, road, lane, footway, alley or passage; (b) any square or court; and (c) any land laid out as a way whether it is for the time being formed as a way or not"

The courts have tended to accept that the word "street" carries its ordinary meaning as commonly understood, although there has historically been some debate as to whether to qualify as a street, there should be houses on either side of the way in

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<sup>3</sup> The common law rule "once a highway, always a highway" is derived from *Dawes Hawkins [1860] 141 E.R. 1399* and *Eyre v New Forest Highway Board [1892] 56 JP 517*.

<sup>4</sup> The greater right will generally encompass the lesser right – for example, a bridleway may be used by horse riders as well as pedestrians. As to the definitions of a footpath, bridleway and carriageway see section 66 Wildlife and Countryside Act 1981 and section 329 Highways Act 1980.

<sup>5</sup> Section 142 Road Traffic Act 1984 defines a road for road traffic legislation purposes as any highway or other road to which the public has access and includes bridges over which a road passes.

<sup>6</sup> Section 48 New Road and Street Works Act 1991

question.<sup>7</sup> It is noteworthy that the statutory definition of a street in the 1991 Act casts the net quite wide and includes both roads and highways (or a part thereof).

There are also provisions in the Highway Act 1980 that apply specifically to “private streets”. These are streets that are not highways maintainable at the public expense,<sup>8</sup> and Part XI of the Highways Act 1980 allows a Welsh unitary authority to make up the street to adoptable standard and either to recoup the costs in doing so from property owners that front the street pursuant to the Private Street Works Code and/or from money paid in advance by a developer pursuant to the Advance Payments Code (see further on these Codes below).

A local authority may itself resolve to make up an existing private street at any time,<sup>9</sup> or, in certain circumstances, at the instigation of the home owners who front the street.<sup>10</sup>

### ***How are highways created and adopted?***

Highways may either be created at common law, or pursuant to the Highways Act 1980.

To create a highway at common law, the freehold owner must dedicate, either expressly or by inference, a public right of way across his or her land and there must be acceptance by the public of that right of way. An example of this is enshrined in section 31(1) of the Highways Act 1980 which provides that land is deemed to have been dedicated where there is at least twenty years of use without interruption (i.e. prescription).

However, nowadays creation of a highway by statute is by far more prevalent, and there are various powers in the Highways Act 1980 which can be relied upon.

Where it is the highway authority itself constructing the road, it can do so pursuant to section 24 of the Highways Act 1980 and these powers are supplemented by land acquisition powers and powers to adjust existing roads and private means of access to accommodate the new highway (i.e. side roads orders). There are also specific provisions in the Highways Act 1980 dealing with special roads and trunk roads.<sup>11</sup>

Where a private developer is proposing to build a road then the modern practice is generally for the landowner and the highway authority to enter into an agreement pursuant to section 38 of the Highways Act 1980. However, an inherent difficulty with section 38 agreements is that it requires co-operation on the part of both the highway authority and the landowner/developer.

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<sup>7</sup> See for example cases *Galloway v London Board* [1866] L.R. 1 H.L. 34, *R v Burnup* [1886] 50 J.P. 598, *Robinson v Barton-Eccles Local Board* [1883] 8 App. Cas. 798 and *Warwickshire County Council v Atherstone Common Rights Proprietors* [1964] 65 L.G.R. 439

<sup>8</sup> See the full statutory definition of a “private street” at section 203 Highways Act 1980

<sup>9</sup> See Private Street Works Code section 205 Highways Act 1980

<sup>10</sup> Section 229 Highways Act 1980

<sup>11</sup> Where the highway is to be a special road or a trunk road it will either form part of a scheme under section 16 of the Highways Act 1980 or be provided by order under sections 10 and 18 of the Highways Act 1980

From the local authority's perspective, there is a risk that negotiations break down, the section 38 agreement does not reach completion and the developer fails to make the road up to an adoptable standard. Should the road need to be made up to an adoptable standard at some point in the future, then the authority will be left with no security for the costs in doing so and may need to consider recovering its costs from those property owners who front the street – which can be a costly and time-consuming process.<sup>12</sup> In order to overcome this risk, local authorities should make use of the Advance Payment Code, summarised further below.

Even if a section 38 agreement is concluded then there is still a risk that the developer will default on the agreement and fail to make up the road to adoptable standard. It is highly likely that the agreement will have required the developer to secure a bond to be used by the local authority in these circumstances, however the process of enforcing the bond and commissioning the remedial work may not be a straightforward or easy process.<sup>13</sup>

It is important to appreciate that the creation of a highway does not mean that it automatically becomes a highway maintainable at the public expense. Where a developer lays out a road adoption is a separate process whereby the highway authority takes on the responsibility for the maintenance of the highway and the repair thereof,<sup>14</sup> and the surface of the highway and a sufficient depth below the surface as is required to discharge its duties becomes vested in the highway authority.<sup>15</sup> Until the highway is adopted the responsibility for the cost of maintaining the unadopted road may fall upon the owners of the premises fronting it.<sup>16</sup>

### ***The Advance Payments Code – Sections 219 - 225 Highways Act 1980, and the Private Street Works Code – Sections 2015 – 218 of the Highways Act 1980***

The Advance Payments Code ("APC") applies to new private streets that are being constructed and where it is proposed to erect a building for which building regulations approval is required and which will front the street. The APC sets out a procedure whereby the local authority is entitled to secure funds from a developer to cover the future need to make up the private street. By way of background, the local authority has powers pursuant to the Private Street Works Code ("PSWC") to undertake private street works to make up the street to adoptable standard which can be used at any time, and the costs of which are recoverable as apportioned between the frontagers. The costs required from a developer pursuant to the APC are therefore the costs that, in the opinion of the local authority, would be recoverable under the PSWC if it were to bring the street up to adoptable standard.

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<sup>12</sup> See the Private Street Works Code at sections 205 to 218 Highways Act 1980

<sup>13</sup> An alternative to a bond may be a cash deposit, which, while being more advantageous to local authorities is less favourable with developers in terms of cash flow.

<sup>14</sup> Section 41 Highways Act 1980

<sup>15</sup> Section 263(1) of the Highways Act 1980.

<sup>16</sup> Note that the liability for maintenance in these circumstances is complex and in some instances a highway may be repairable by no one

Strict timescales apply in relation to the Advance Payments Code; a local authority has only six weeks from the building regulation approval of the building fronting the street to serve notice on a developer requiring payment of an APC sum or sufficient security thereof.<sup>17</sup> The notice will prohibit the developer from undertaking any works to erect the building until the APC sum is paid, and the developer will be guilty of an offence if he undertakes building works in contravention of the notice.

An APC notice can be problematic for a developer who wishes to keep the road as private, however it remains an important mechanism for highway authorities to ensure that there is sufficient security in place to ensure the making up the roads to adoptable standard at some point in the future without the risk of financial burden. Ideally, if an authority considers that a road should be brought up to an adoptable standard, then an APC notice should be served as a matter of course within statutory timescale. That should not prevent negotiations for a section 38 agreement from taking place concurrently (note below the advantages of a section 38 agreement). If a section 38 agreement is agreed in the meantime, then the APC monies should be refunded and the notice cancelled.<sup>18</sup>

In the event that an APC notice is served and a section 38 agreement is not concluded, and the road is not made up to adoptable standards then the authority may seek to rely on its powers pursuant to the Private Street Works Code<sup>19</sup> to undertake works to bring the road up to an adoptable standard at any time, and use the APC sum secured from the developer for the costs in doing so rather than pursue the frontagers.<sup>20</sup> On completion of the works, the authority may by notice declare that the road is to be maintained at the public expense pursuant to section 228 of the Highways Act 1980.

### ***Section 38 Highways Act 1980***

Under a section 38 agreement a landowner (or an agent on its behalf) will agree to construct a road to an adoptable standard and to the satisfaction of the highway authority, following which the landowner will dedicate the road as highway open for use by the public at large and the highway authority will accept such dedication. There will usually then be a maintenance period of twelve months during which the landowner agrees to maintain the road, and upon the expiry of that period, and provided it has been properly maintained, the highway authority will agree to adopt the road as highway maintainable at the public expense.

Highway Authorities have a fairly wide remit in respect of the sorts of provisions that may be included in a section 38 agreement<sup>21</sup> and may typically include step-in-rights which allow the highway authority to undertake the road works itself in certain

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<sup>17</sup> Section 220(1) of the Highways Act 1980.

<sup>18</sup> Section 219(4)(d) of the Highways Act 1980.

<sup>19</sup> Sections 205 to 218 of the Highways Act 1980.

<sup>20</sup> If the costs for the works are greater than the amount secured then the balance will be recoverable in the normal way pursuant to the PSWC

<sup>21</sup> Section 38(6) Highways Act 1980 states that an agreement under this section may contain such provisions as to the dedication as a highway of any road or way to which the agreement relates, the bearing of the expenses of the construction, maintenance or improvement of any highway, road, bridge or viaduct to which the agreement relates and other relevant matters as the authority making the agreement think fit.

circumstances, provisions that require the payment of a bond and/or the payment of a commuted sum towards the cost of the maintenance of the highway once it has been adopted.<sup>22</sup> These provisions can be clearly advantageous to a highway authority but may be costly for landowner/developers as a fee will be payable for securing a bond and developer may not be of sufficient credit worthiness to procure a bond.

### ***Section 37 Highways Act 1980***

An alternative route to dedication and adoption is set out in section 37 of the Highways Act 1980. A landowner/developer who is desirous of dedicating a road as a highway maintainable at the public expense could give notice to a highway authority under section 37 of the Highways Act 1980 of their intention not less than three months before the date of the proposed dedication. If the highway authority certifies that the road has been dedicated on the terms of the notice and it has been made up in a satisfactory manner, and it has been used as a highway and kept in repair for twelve months since the authority's certification then the road will become a highway maintainable at the public expense.

However, adoption of the road via this provision is by no means guaranteed; the authority may make an application to the magistrates' court for an order that the proposed highway will not be of sufficient utility to the public to justify it being maintained at the public expense, or it may not consider that the road has been constructed to an appropriate standard. This gives rise to uncertainty for a developer and the process is seldom used.

### ***Comparison with the position in Scotland***

The position in Scotland is very different and, in many ways, clearer than in England and Wales.

In Scotland, any private person who wishes to construct a new road must obtain Construction Consent from the Local Roads Authority pursuant to section 21 of the Roads (Scotland) Act 1984, and it is an offence to commence any construction of the road until such time as consent (referred to as a Construction Consent) is given. Consent will only be granted where the proposed roads meet set design criteria. Following completion of a road pursuant to a Construction Consent, the developer may then apply for the road to be adopted. A road will generally not be considered as a road requiring consent if it serves five or fewer dwellings; in these circumstances it will be considered a private access and will not require consent.

The concept of "Construction Consent" is not relatable in highways law as applying to England and Wales. However, the benefits of such a consent are clear and reduces the risk of the developer building a road that falls below adoptable standards. There are also provisions at section 13 to 18 of the same Act that cover the development of private streets in Scotland in much clearer terms.

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<sup>22</sup> The latter principle is derived from *R(on the Application of Redrow Homes Ltd) v Knowsley MBC* [2014] EWCA Civ 1433

The National Assembly has competence to legislate to amend the law relating to the adoption of highways in Wales, should it consider it appropriate to do so.

## **Appendix 2**

### **Draft Terms of Reference – Unadopted Roads Taskforce**

#### **Purpose**

To undertake a review of the situation with regards to un-adopted roads in Wales and to provide the Cabinet Secretary for Economy and Transport with a report containing recommendations on actions that can be taken to address existing issues and avoid the issues being repeated in the future.

#### **Aims**

- To define the various categories of un-adopted roads and associate assets such as paths and open spaces and quantify extent. Such categories include:
  - housing estate roads;
  - minor roads / lanes not specifically serving households;
  - urban back lanes;
  - open spaces (non-highway);
  - privately managed un-adopted estate roads;
  - unmaintained former industrial / business development sites;
  - previously low cost 'holiday estates' now used as permanent housing.
- To set out the current regulatory framework that exists to bring existing un-adopted roads and new roads under the control of local highway authority.
- To set out current controls for managing un-adopted roads.
- In the situation of un-adopted estate roads, to gain an understanding from a purchaser, developer and local authority perspective of the
  - reasons why roads are not adopted and,
  - where adoption doesn't take place, what is the extent of the problem (including those surrounding leasehold arrangements and management companies, resource limitations within local authorities, affordability to bring the road to adoption standard).
- To understand the costs and timescales associated with road adoption.
- To identify good practice including Department for Transport Advice Note, "Highway Adoptions – the adoption of roads into the public highway (1980 Highways Act) published in 2017.
- To obtain an understanding on the steps taken to bring private sewers under the control of water companies, and the mechanism to manage the new arrangement and future arrangements with regard to SUDS with the view of understanding if a similar process could be applied to un-adopted roads.

- Identify and engage with the relevant stakeholders that have an interest in the development and purchase of homes and the associated infrastructure.
- To consider the effectiveness of current arrangements including the standards set by local authorities on developers and the opportunities to improve the effectiveness of the consenting/ approval process/ procedure.
- To identify ways to mitigate current issues and improve situation going forward including, if required, review of legislative options.
- Identify good practice and situations where there is justification for retaining un-adopted status.
- Identify resource implications associated with introducing change together with a timeline to implement.
- To provide a report in February 2019 with recommendations on actions that can be taken to address existing issues and avoid the issues being repeated in the future.
- It is envisaged that the prevention of further issues being repeated will be the primary focus of the review and the report, given the widespread issues likely to be raised (and already known to a degree), and the available resources over a short time period. Further future reports detailing proposals on how to deal with legacy issues may be necessary.

## **Duration**

The Taskforce will be established initially for a 6 month period and will report to cabinet Secretary for Economy and Transport in February 2019.

## **Membership and Secretariat**

The Taskforce's membership will be flexible so that it is broad enough to be representative of key stakeholders in Wales, yet focussed enough to ensure action orientated and meaningful discourse.

Flexibility will be retained to allow the membership to vary from meeting to meeting depending upon the issue / or issues under discussion. However, at a minimum membership will include:

- Welsh Local Government Association officers,
- Welsh Government officials,
- Home Builders Federation,
- Federation of Master Builders,
- Local authority representatives from highways and planning departments – CSS/ RTPI.

In addition to the Task Force, there will be engagement with key stakeholders including:



- Town and Community Councils,
- Local Government Finance units within WLGA and WG.

The Secretariat function will be provided by Welsh Local Government Association.

## **Scope**

The review should cover the issues raised by Assembly Members at their debate in Plenary held in Plenary on the 14 February 2018.

The main issues that were raised included:

- The poor condition of the roads and their suitability to accommodate emergency vehicles;
- The constraints on local authorities to bring these roads to adoptable standards and take over maintenance liability;
- Difficult to quantify the scale of the problem across Wales;
- Developers not putting forward roads for adoption or have gone into liquidation;
- Residents having to organise the maintenance of their road;
- Inadequate retention to bring the road to the required adoption standards;
- Is there a case to change legislation to ensure roads are adopted;
- Is there scope to consider innovative ways to fund the improvements necessary to bring roads to adoption standard;
- Ability of householders to pay for bringing the road to adoptable standard;
- Lack of transparency in some cases relating to leaseholds and management companies;
- Lack of interest by buy-to-let landlords to making a contribution to bring the roads to adoption standard;
- Time taken by developers to bring the road up to adoption standard;
- Weaknesses in the house buying and planning consent processes;
- Though not specifically raised at the 14<sup>th</sup> February 2018 Plenary, ownership and legal rights of passage will need to be reviewed.

Within scope:

- All unadopted road scenarios;
- Extent of problem;
- Effectiveness of existing procedures and standards;
- Legislative or regulatory or procedural changes;

- Financial implications and innovative ways to fund change;
- Understanding why various types of roads have not been adopted, and the reasons why these roads came into being in the first place;
- In the 'housing sites' scenarios, pre and post development arrangements;
- Understanding situation from home buyers/ owners, legal profession, mortgage companies, developers, planners, highway perspective, management companies' perspective;
- Leaseholds and freeholds properties;
- Highways and open spaces.

### **Review Outcome**

An assessment of existing situation, an appraisal of possible solutions, and initially recommendations on preventing these being repeated for the future, and then also how to address legacy issues.

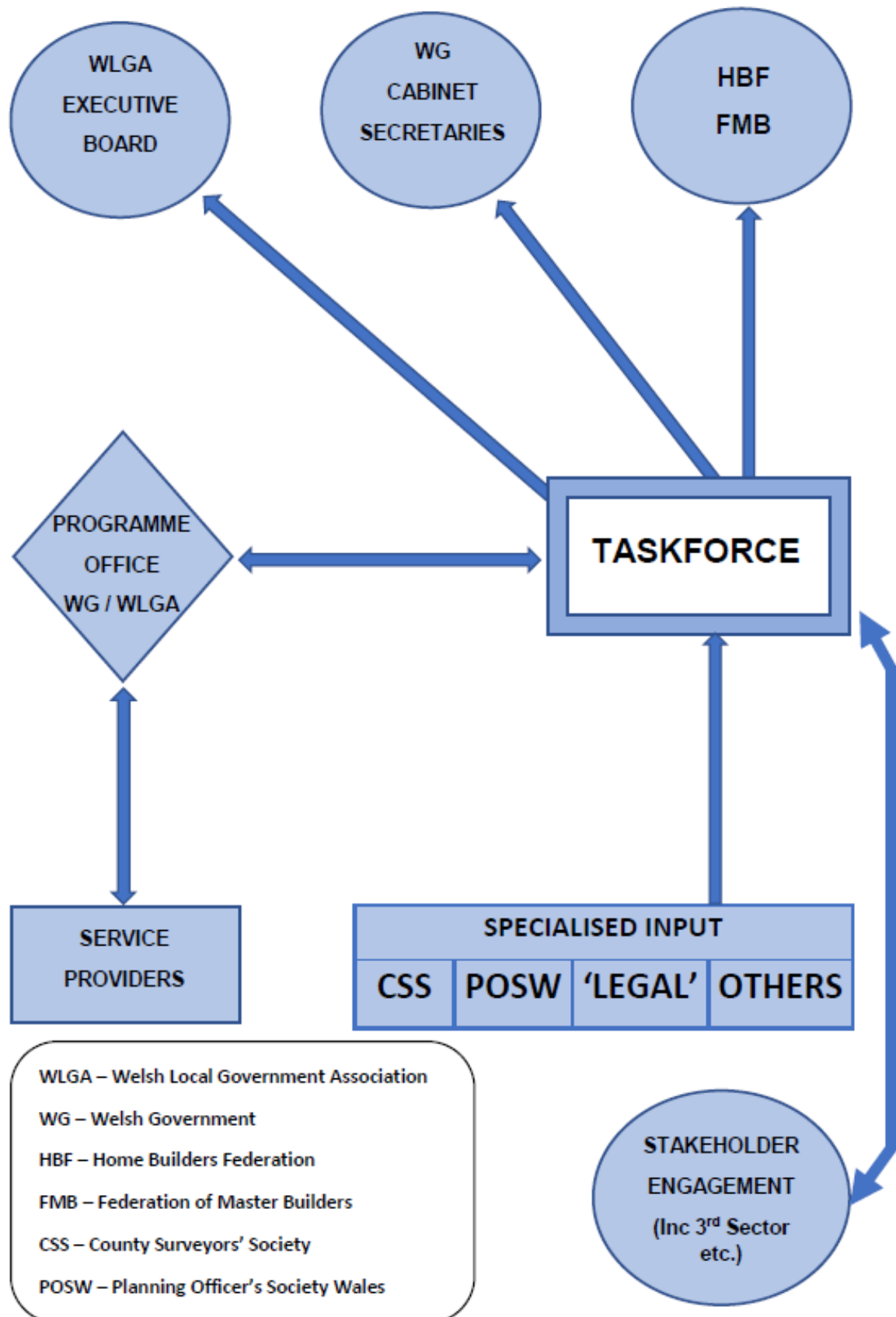
### **Meetings – frequency and venues**

Meetings will be held in Welsh Government or Local Authority offices.

Frequency of meetings will be decided upon by the Taskforce with a maximum of one meeting per month and a minimum of at least one meeting every quarter.

## Appendix 3

### Governance structure



## Appendix 4a

### Consultation documents – part 1

# Unadopted roads in Wales - Part 1

This part of the consultation focusses on the types of unadopted roads, the reasons why they are unadopted and the issues this causes.

We would like to have your views on whether these types of unadopted roads accurately reflect the known situations in your particular area or region of operation, or whether there are other types of unadopted roads and associated issues.

Data Cymru are running the consultation on our behalf. They will share consultation responses with the Taskforce for review, only summary information will be shared beyond the Taskforce. Direct quotes may be used in the reporting process, but no identifiable information will be published. Any organisation or contact details supplied will be used to further understand the responses and to make contact, where consent is given.

Please respond by Friday 12 October 2018.

You can save your response at any time, just follow the instructions.

For technical support on completing the consultation, including accessing a saved response, please contact [Surveys@Data.Cymru](mailto:Surveys@Data.Cymru).

1. Please tell us the name of your organisation, to give context to your consultation response:

2. We may wish to contact you for further information on your responses, please provide your details below:

Your name:	<input type="text"/>
Your email address:	<input type="text"/>
Your telephone number:	<input type="text"/>

3. In which area(s) does your organisation operate?

- ☐ Isle of Anglesey
- ☐ Gwynedd
- ☐ Conwy
- ☐ Denbighshire
- ☐ Flintshire
- ☐ Wrexham

- ☐ Powys
- ☐ Ceredigion
- ☐ Pembrokeshire
- ☐ Carmarthenshire
- ☐ Swansea
- ☐ Neath Port Talbot
- ☐ Bridgend
- ☐ The Vale of Glamorgan
- ☐ Cardiff
- ☐ Rhondda Cynon Taf
- ☐ Merthyr Tydfil
- ☐ Caerphilly
- ☐ Blaenau Gwent
- ☐ Torfaen
- ☐ Monmouthshire
- ☐ Newport

The main issues that were raised during the Plenary debate included:

- The poor condition of the roads and their suitability to accommodate emergency vehicles;
- The apparent lack of commitment by or ability of local authorities to bring these roads to adoptable standards and take over maintenance liability;
- Difficult to quantify the scale of the problem of unadopted roads across Wales;
- Residents having to organise the maintenance of their road;
- Ability of householders to pay for bringing the road to adoptable standard;
- Developers not putting forward roads for adoption or have gone into liquidation;
- Inadequate retention to bring the road to the required adoption standards;
- Is there a case to change legislation to ensure roads are adopted;
- Is there scope to consider innovative ways to fund the improvements necessary to bring to adoption standard;
- Lack of transparency in some cases relating to leaseholds and management companies;
- Lack of interest by buy-to-let landlords to making a contribution to bring the roads to adoption standard;
- Weaknesses in the house buying and planning consent processes.

It is assumed that 'unadopted' roads fall mainly within the following categories:

UNADOPTED HOUSING ESTATE ROADS – in the main, unmaintained and deteriorating assets, developer / Local Authority impasse, private management company involvement, huge legacy issues

UNADOPTED MINOR ROADS NOT SPECIFICALLY SERVING HOUSEHOLDS – unmaintained deteriorating assets, lanes serving properties (farms, businesses, households), used by HGVs – commercial / refuse collection / community transport, size of vehicles increasing

UNADOPTED URBAN BACKLANES – unmaintained and deteriorating, 'unseen', fly-tipping, health issues

UNADOPTED PRIVATELY MANAGED ESTATE ROADS (e.g. 'Gated Estates' with no general public access) – some access/services issues, additional costs to householders

UNADOPTED FORMER INDUSTRIAL / BUSINESS DEVELOPMENT SITES – unmaintained and deteriorating, HGV traffic, public access, sometimes concrete construction, fly-tipping etc.

UNADOPTED FORMER LOW COST CHALET DEVELOPMENTS NOW USED FOR PERMANENT HOUSING – standards issues, utility issues, increased usage (2 car families etc.)

We would like your views on whether these types accurately reflect the known situations in your region of operation, or whether there are other types of unadopted roads and associated issues. (Please note that this review does not include types of unmetalled carriageways referred to as highways under the Highways Act 1980 such as Byways Open to all Traffic [BOATs] and Roads Used as Public Paths [RUPPs])

4. Does your organisation recognise some or all of these categories of unadopted roads?

	Not recognised / Not an issue	A minor issue	A major issue
Unadopted housing estate roads	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Unadopted minor roads not specifically serving households	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Unadopted urban backlanes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Unadopted privately managed estate roads (e.g. 'gated estates' with no general public access)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Unadopted former industrial/business development sites	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Unadopted former low-cost chalet developments now used for permanent housing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

5. Are there other categories of unadopted roads that affect your organisation?

6. Which category (or categories) of unadopted roads affect your organisation the most?

7. What are the main reasons these roadways have remained unadopted? Where these reasons differ between categories of unadopted roads, please say why.

8. What issues affecting your organisation arise as a result of any type of unadopted road?

How might some of these issues be addressed?

You have completed this consultation.

Thank you for taking the time to complete Part 1 of the consultation.

If you haven't already done so, please consider responding to

Part 2: <https://www.smartsurvey.co.uk/s/TCWW1/>

Part 3: <https://www.smartsurvey.co.uk/s/TZT40/>



## Appendix 4b

### Consultation documents – part 2

# Unadopted roads in Wales - Part 2

This part of the consultation requests quantitative information on the unadopted roads and associated matters in your particular area or region of operation.

We would like to know if you have any information such as:

lengths of unadopted roads;

number of households accessed by unadopted roads;

number of businesses served by unadopted roads;

type and number of services not provided due to a road being unadopted, e.g. some refuse collections

number of bus routes using unadopted roads; and

number of developments affected by delays to completion of the adoption process.

The information may be accurate, or an estimate, but would be very helpful to establish a Wales picture of unadopted roads.

Data Cymru are running the consultation on our behalf. They will share consultation responses with the Taskforce for review, only summary information will be shared beyond the Taskforce. Direct quotes may be used in the reporting process, but no identifiable information will be published. Any organisation or contact details supplied will be used to further understand the responses and to make contact.

Please respond by Friday 2 November 2018.

You can save your responses at any time, just follow the instructions.

For technical support on completing the consultation, including accessing a saved response, please contact [Surveys@Data.Cymru](mailto:Surveys@Data.Cymru).

Please tell us the name of your organisation, to give context to your consultation response:

If you consent to us contacting you for further information, please provide your details below:

Your name:

Your email address:

Your telephone number:

In which area(s) does your organisation operate?

- ☐ Isle of Anglesey
- ☐ Gwynedd
- ☐ Conwy
- ☐ Denbighshire
- ☐ Flintshire
- ☐ Wrexham
- ☐ Powys
- ☐ Ceredigion
- ☐ Pembrokeshire
- ☐ Carmarthenshire
- ☐ Swansea
- ☐ Neath Port Talbot
- ☐ Bridgend
- ☐ The Vale of Glamorgan
- ☐ Cardiff
- ☐ Rhondda Cynon Taf
- ☐ Merthyr Tydfil
- ☐ Caerphilly
- ☐ Blaenau Gwent
- ☐ Torfaen
- ☐ Monmouthshire
- ☐ Newport

This section asks you to share any quantitative information or intelligence that you have about unadopted roads. Please complete this for any or all of the types that are applicable to your organisation.

The information you provide may be accurate, or an estimate, but would be very helpful to

establish a Wales picture.

Things that you might consider are:

lengths of unadopted roads;

number of households accessed by unadopted road;

number of businesses served by unadopted roads;

type and number of services not provided due to a road being unadopted, e.g. some refuse collections

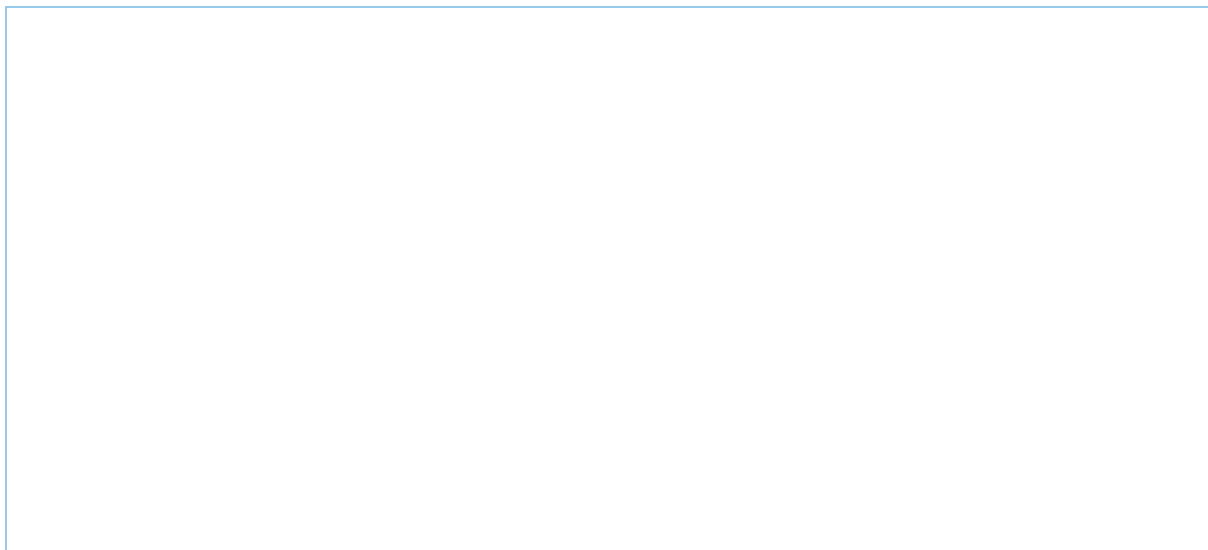
number of bus routes using unadopted roads; and

number of developments affected by delays to completion of the adoption process

An example response might be:

3 miles in poor condition between Ty Nant and Maes Gwyn, affecting one local business (a farm) and 2 local bus routes.

A. UNADOPTED HOUSING ESTATE ROADS - in the main, unmaintained and deteriorating assets, developer / Local Authority impasse, private management company involvement, huge legacy issues What quantitative information or intelligence can your organisation provide?



B. UNADOPTED MINOR ROADS NOT SPECIFICALLY SERVING HOUSEHOLDS – unmaintained deteriorating assets, lanes serving properties (farms, businesses, households), used by HGVs – commercial / refuse collection / community transport, size of vehicles increasing, What quantitative information or intelligence can your organisation provide?

C. UNADOPTED URBAN BACK LANES – unmaintained and deteriorating, 'unseen', fly-tipping, health issues What quantitative information or intelligence can your organisation provide?

D. UNADOPTED PRIVATELY MANAGED ESTATE ROADS (e.g. 'Gated Estates' with no general public access) – some access/services issues, additional costs to householders What quantitative information or intelligence can your organisation provide?

E. UNADOPTED FORMER INDUSTRIAL / BUSINESS DEVELOPMENT SITES – unmaintained and deteriorating, HGV traffic, public access, sometimes concrete construction, fly-tipping etc. What quantitative information or intelligence can your organisation provide?

F. UNADOPTED FORMER LOW COST CHALET DEVELOPMENTS NOW USED FOR PERMANENT HOUSING – standards issues, utility issues, increased usage (2 car families etc.) What quantitative information or intelligence can your organisation provide?

G. COST OF UPGRADING UNADOPTED ROADS TO ADOPTION STANDARDS Would your organisation have any indication of what it might cost to 'upgrade' unadopted roads to adoptable standards? (For example, an average cost per metre of road).

You have completed this consultation  
Thank you for taking the time to complete Part 2 of the consultation.

If you haven't already done so, please consider responding to

Part 1: [www.smartsurvey.co.uk/s/SKR26](http://www.smartsurvey.co.uk/s/SKR26)

Part 3: [www.smartsurvey.co.uk/s/TZT40/](http://www.smartsurvey.co.uk/s/TZT40/)

## Appendix 4c

### Consultation documents – part 3

# Unadopted roads in Wales - Part 3

This part of the consultation focusses on the extent and size of unadopted open space, i.e. areas of undeveloped land not within the curtilage of a building or green space not maintained by any Council or known private organisation.

We would like you to tell us if you know of any parcels of unadopted open space in your particular area or region of operation. This information will support work that is underway elsewhere looking more generally at housing and land use.

Data Cymru are running the consultation on our behalf. They will share consultation responses with the Taskforce who will pass this information on to colleagues within Welsh Government considering the issue of unadopted open space. Direct quotes may be used in the reporting process, but no identifiable information will be published. Any organisation or contact details supplied will be used to further understand the responses and to make contact.

Please respond by Friday 2 November 2018.

For technical support on completing the consultation, including accessing a saved response, please contact [Surveys@Data.Cymru](mailto:Surveys@Data.Cymru).

Please tell us the name of your organisation, to give context to your consultation response:

If you consent to us contacting you for further information, please provide your details below:

Your name:

Your email address:

Your telephone number:

In which area(s) does your organisation operate?

- ☐ Isle of Anglesey
- ☐ Gwynedd
- ☐ Conwy
- ☐ Denbighshire
- ☐ Flintshire

- ☐ Wrexham
- ☐ Powys
- ☐ Ceredigion
- ☐ Pembrokeshire
- ☐ Carmarthenshire
- ☐ Swansea
- ☐ Neath Port Talbot
- ☐ Bridgend
- ☐ The Vale of Glamorgan
- ☐ Cardiff
- ☐ Rhondda Cynon Taf
- ☐ Merthyr Tydfil
- ☐ Caerphilly
- ☐ Blaenau Gwent
- ☐ Torfaen
- ☐ Monmouthshire
- ☐ Newport

Is your organisation aware of any unadopted or unowned open spaces within your area or region? Do you have an idea of the number of parcels of land and what the total area is?

You have completed this consultation

Thank you for taking the time to complete Part 3 of the consultation.

If you haven't already done so, please consider responding to

Part 1: [www.smartsurvey.co.uk/s/SKR26/](http://www.smartsurvey.co.uk/s/SKR26/)

Part 2: [www.smartsurvey.co.uk/s/TCWW1/](http://www.smartsurvey.co.uk/s/TCWW1/)

## Appendix 5



## **List of consultees**

Blaenau Gwent County Borough Council  
Brecon Beacons National Park  
Bridgend County Borough Council  
Caerphilly County Borough Council  
Carmarthenshire County Council  
Civil Engineering Contractors Association (CECA) Wales  
Ceredigion County Council  
Community Housing Cymru  
City and County of Swansea  
City of Cardiff Council  
Conwy County Borough Council  
Denbighshire County Council  
Dwr Cymru  
Federation of Master Builders  
Flintshire County Council  
Gwynedd Council  
House Builders Federation  
Isle of Anglesey County Council  
Merthyr Tydfil County Borough Council  
Hardingpr  
Monmouthshire County Council  
Neath Port Talbot Council  
Newport City Council  
One Voice Wales  
Pembrokeshire Coast National Park  
Pembrokeshire County Council  
Powys County Council  
Rhondda Cynon Taf County Borough Council  
Snowdonia National Park  
Torfaen County Borough Council

Vale of Glamorgan Council

Wrexham County Borough Council

Wales & West Utilities

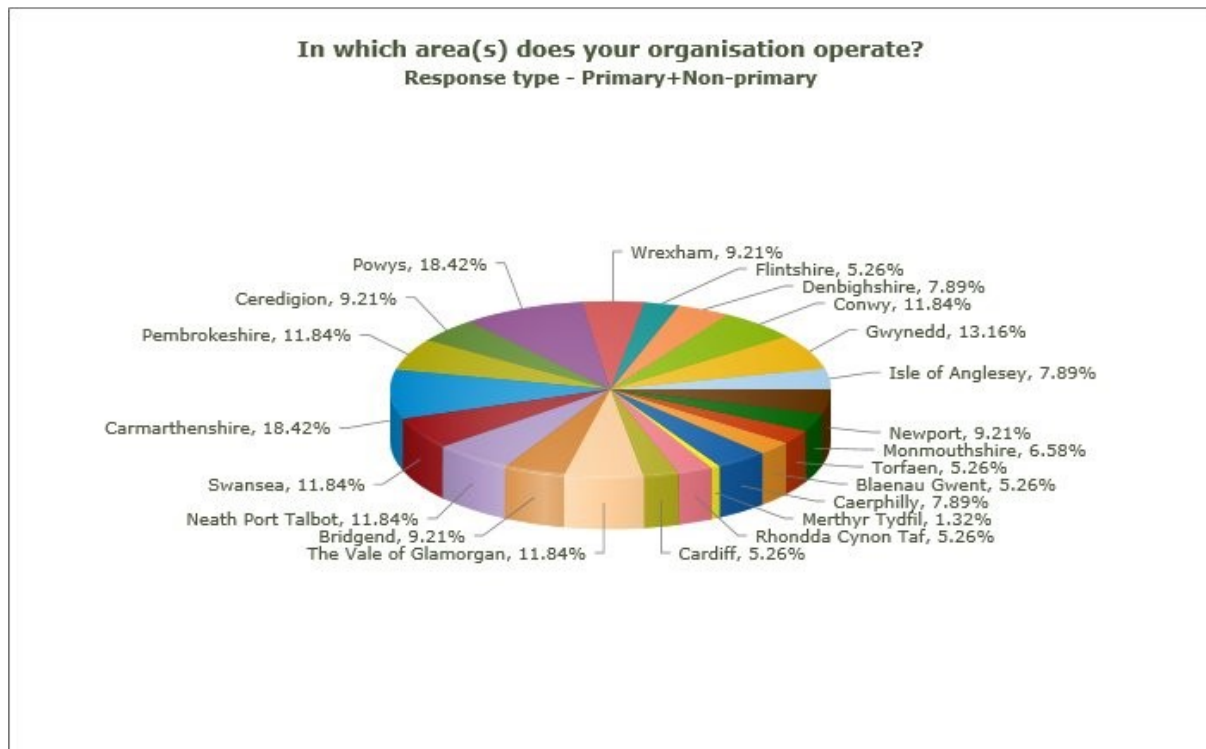
## Consultation outputs

### Unadopted roads in Wales - Part 1

#### Responses to questions

1. & 2. Contact details

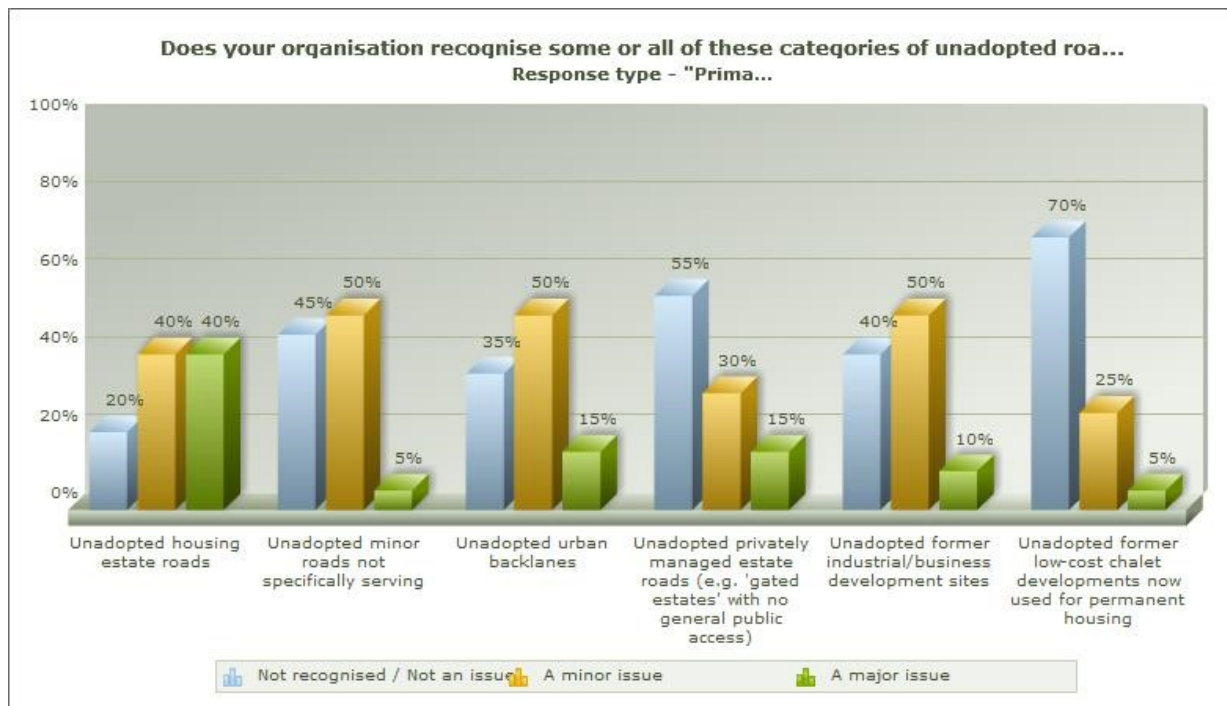
3. In which area does your organisation operate? (All respondents)



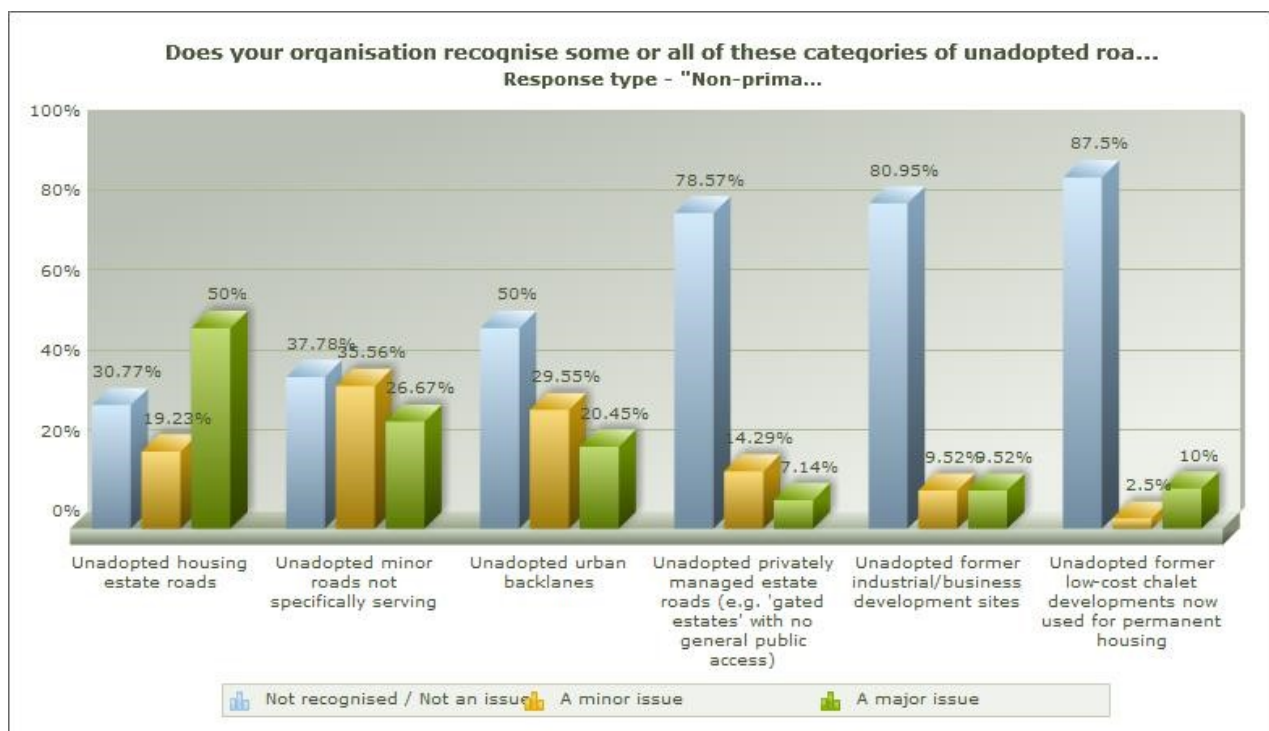
There was a good distribution of respondents across the whole of Wales.

4. Does your organisation recognise some or all of these categories of unadopted roads?

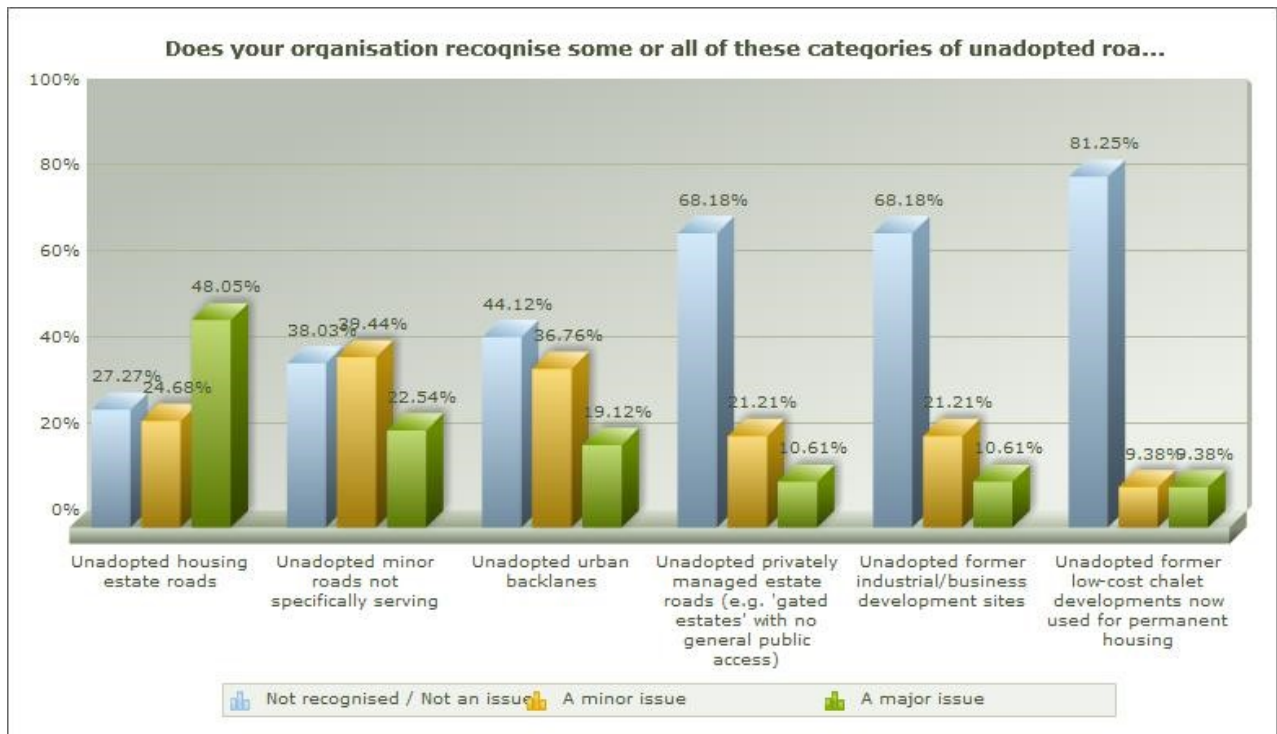
## County Council / HBF Responses



## Community Council / Resident Association Responses



## All Responses



#### Initial conclusions:

- Unadopted housing estate roads are the major issue.
- Unadopted minor roads not specifically serving households and unadopted urban back lanes are the next most important issues.
- Unadopted former industrial/business development sites, is a minor issue for some county councils.
- Unadopted privately managed estate roads (e.g. "Gated Estates") are not an issue.
- Unadopted former low-cost chalet developments that is now used for permanent housing is an important issue, but a local issue.

#### 5. Are there other categories of unadopted roads that affect your organisation?

No other categories were put forward from respondents.

#### 6. Which category (or categories) of unadopted roads affect your organisation the most?

Unadopted housing estate roads were seen to be the likely to cause of requests or complaints to County Councils, and the main category to affect all respondents. This was mainly for new developments, but also historic developments where the developer has failed to enter into S38 Agreement.

7. What are the main reasons these roadways have remained unadopted? Where these reasons differ between categories of unadopted roads, please say why.

- No legal obligation for developers to bring roads to standard, by entering into Section 38 agreements with local authorities.
- House buyers are not properly advised of the implications of buying a house on a road which is not adopted
- Developers transfer the ownership and maintenance responsibility of roads to a management company.
- A developer going into liquidation, so consequently the adoption process is never completed.
- For some historical developments groups of residents are not prepared to collectively support requirement for adoption.
- Budget constraints and lack of staff resources.
- Time and cost associated with adoption, which can be a long process often not resolved until a number of years after all the houses have been built.
- Large and unreasonable commuted sums requested.
- Some historical and new build sites have insufficient space to provide road to adoptable standards.
- The cost of upgrading the roads or back lanes to adoptable standard is prohibitive.
- Where an unadopted road is in multiple ownership, or when no title is claimed, no one is prepared to meet costs of adoption.

8. What issues affecting your organisation arise as a result of any type of unadopted road?

The top six issues

- Rubbish Collection (including, fly tipping, vermin, bin collection Issues).
- Maintenance (including, pot holes, lighting, drainage, and winter maintenance).
- Health and Safety issues and issues for vulnerable residents
- Council time and money spent on unadopted roads.
- Cost of Management Fees especially for low cost affordable housing, often making them unaffordable.

- Service and emergency vehicle access.

Other issues mentioned, but only by a very small percentage of the responders.

- Antisocial issues.
- Stopping further development, by restricting access to further development sites.
- Public Liability Insurance issues.
- Vehicle damage.
- Residents preventing access due to encroachment.

A few respondents also mentioned that they had no issues

#### 9. How might some of these issues be addressed?

- Additional resources and funding to local authorities.
- By encouraging developers to enter into a Section 38 Agreement for all new developments.
- Make it compulsory to either adopt a new road or declare it formally as Private Street with a management agreement in place.
- A change of legislation to force Developers into compulsory road adoption.
- Tighter control over management companies, their role and responsibilities.
- For historic unadopted roads, where residents cannot afford to pay a contribution for adoption, provide of a repayable loan tied to the properties that is repaid when the property is sold. The properties would increase in value by around 15-20% if the roads were adopted so residents would not lose out.
- A government funded scheme to support those living on unadopted roads to get their roads adopted e.g. fixed fee for each frontage/user for assessment of options for adoption (design/layout/cost to bring to a suitable standard), supported by a grant scheme to fund any subsequent works e.g. 50% grant/50% beneficiary contribution.
- A contribution scheme aimed at match funding residents who want to bring their roads into the network.
- Ensure greater consistency between local authorities when addressing issues
- Agree a set of standard commuted sums which apply across Wales

- Future developments have a current legal requirement that Section 104 drainage agreements must be in place prior to the start of works on site.
- Welsh Water to adopt a more pragmatic approach to their required easements, where drains cross third party land. Welsh Water insists on an additional 'lift and shift' provision that developers do not anticipate.
- Shared private drives serving up to a maximum of five dwellings.
- For maintenance undertaken by a management company of a private street, there should be legislation to protect residents from high cost increases. This could be done by linking it to inflation.
- Clear delineation between adopted and private roads, in the form of signs or lines.
- The law and Building / Building Regulations needs to be reviewed and tied together. e.g. The current Highways Act (1980) is a combination of old legislation which is out of date.
- Keeping the alleyways unadopted provides a tool against disincentives fly tipping by those who live there, as the local authority can pass on costs of removing the waste to the landlords/property owners.
- New national guidance on responsibility for unadopted roads - simple explanations for residents of the adoption process and what costs are involved,
- Solicitors receive training to either advise their clients to not buy property or hold substantial retentions to cover future road making liabilities, which can be released when an agreement is entered into.
- Do not grant planning permission without considering who is responsible for the maintenance of the roads.
- Up front S106 payments, or simply put in the road infrastructure first before commencing work on site.
- By Local Authority / Borough Council adopting roads on in partnership with community councils.
- There is not an easy answer.



## Appendix 7 - Road Adoption Model Guide for highway authorities and housing developers

