

**Lancashire Local - Hyndburn**  
Meeting to be held on 8 March 2010

**Part I - Item No. 15**

Electoral Division affected:  
All

**Unadopted Streets**  
(Appendix 'A' refers)

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**Executive Summary**

During the latter part of 2009, the Lancashire Local Hyndburn requested that a report on the County Council's policy for Unadopted Streets be brought to a future meeting of the Local.

This report sets out the County Council's Policy on the adoption of Unadopted Streets and the County Council's duties and powers in respect of maintenance and repair of these streets.

**Decision Required**

The Local is requested to note the report.

**Background and Advice**

This paper sets out the County Council's Policy on the adoption of unadopted streets and the County Council's duties and powers in respect of maintenance and repair of these streets.

**What is a street?**

In the Highways Act a 'street' is defined as any highway and any road, lane, footway, square, court, alley or passage and any land laid out as a way, whether it is formed as a way or not. A street can therefore be a footpath, cycle track, bridleway or full vehicular highway. A street may not even be a highway for public use.

**What is a highway?**

A 'highway' is for the use of all persons. Highways can be privately maintainable or maintainable at the public expense. It is equally an offence to obstruct an unadopted highway, as it is an adopted one. Lancashire County Council, as a highway authority, maintains streets that are "highways maintainable at public expense" as defined by the Highways Act 1980. In this report, publicly maintained streets are referred to as

“adopted” and streets that are not publicly maintained are referred to as “unadopted”. Statute requires that the Highway Authority keep a list of highways maintainable at public expense. There is no equivalent requirement relating to unadopted streets.

### **Why some streets are not adopted**

Streets that existed as highways (of all kinds) before 31<sup>st</sup> August 1835 are all “adopted”. However, for a vehicular highway to have become adopted since 1835 it must have gone through a particular legal process. Today, for example, notices can be given by an owner proposing to dedicate a highway or, an agreement can be made with the Highway Authority under S38 of the Highways Act.

Footpaths and bridleways in existence by December 1949 are all adopted but for them to have become publicly maintainable since 1949 they too must have gone through a particular legal process such as a creation agreement made with the highway authority, or a diversion or creation Order.

In essence, to be adopted and have public money used for its future upkeep, a highway needs to have been considered by the highway authority under a proper process during which the highway authority had the opportunity to say “no” to it being adopted.

There are several reasons why streets may not be adopted.

- Some of the older routes in our towns and cities were laid out by industrialists who, when constructing homes for their workers, did not wish to even dedicate them as public streets and they are not even highways.
- Other streets may have been constructed and dedicated as highways but on the grounds of expense or for other reasons, were unable to be built to the highway authority’s adoption standards.
- Other streets may have become highways through long usage without being formally adopted.

Even though most streets in the County of Lancashire are adopted, there remain many unadopted streets. However, there is no comprehensive list of unadopted streets.

The County Council does not keep accurate records of routes for which it is not responsible and so it is not possible to accurately quantify the length of unadopted road in the county. However, interrogation of another data source, the Lancashire Street Gazetteer, which is a list of streets in the county, suggests that there are at least 850kms of unadopted streets and there may be more. This figure includes privately maintained highways (including back streets), privately maintained private roads and roads that have been constructed by developers under a legal agreement with the county council (Highways Act 1980 s38) and brought into use as roads but which have not yet been adopted. The figures are shown in more detail at Appendix 'A'.

### **Private rights can exist together with public highway rights**

A street may be a highway, over which the public have a right to pass and re-pass, and may also be a street over which some persons have a private right of access either by right of ownership, agreement, grant, or long usage. For example, many tracks are used by people in vehicles exercising a private right but they carry a public footpath. This private use is not relevant as to whether the street is an adopted footpath.

### **Proving that a route is a highway does not necessarily prove it is adopted**

Often, highways can be deemed under Statute or inferred at Common Law to have been dedicated to public use through long usage by the public as of right and without interruption. The right of way may be for pedestrians, persons on horseback or some or all classes of vehicles. If the highway is not a known highway on the records of the County Council it is open for the person asserting that such a right of way exists to show that the necessary use has taken place and gather such evidence to support that assertion. The County Council will consider such evidence. If proven, the highway can be acknowledged either formally by making an Order, following an application under the Wildlife and Countryside Act 1981 to record a footpath or bridleway, or as a decision based on a view taken following a Highway Status Investigation which includes consideration of map evidence and other records.

However, whether any highway is adopted will depend on whether it is old enough or has gone through an adoption process (see above)

### **The County Council's duty to assert and protect rights on all highways**

The County Council has a duty to protect and assert the rights of the public to use all highways (s130 Highways Act 1980), even those that are not maintainable at public expense. In discharging this duty the County Council has the same wide range of powers that it has for adopted streets. It can prosecute for obstruction or serve a notice for the removal of an unauthorised structure, for example gates erected after the street had become dedicated as a highway. However, disputes regarding private rights of way are a matter for private resolution by the parties involved and the County Council would not intervene.

### **Maintenance of the surface of unadopted streets**

The County Council as Highway Authority does not have a duty to maintain the surface of routes that are not publicly maintainable.

Neither the owners of the unadopted street, nor the owners of land having a right of access along it, are under any automatic obligation to maintain the street.

An owner of an unadopted street is generally considered to have a right to undertake repairs (not necessarily an obligation) and make improvements to the street, provided he does not interfere with another person's rights of way. A person with a private right of way over an unadopted street, acquired either by grant or prescription

(i.e. long usage), is generally considered to have a right to undertake repairs consistent with maintaining his private right of way, but there may be no right to undertake more major improvements which would significantly change the character of the street.

Sometimes there may be a liability to repair which stems from statute, prescription tenure or enclosure. These are quite technical terms and will only apply in limited circumstances

It is the case that, at law, some highways may be repairable by no-one.

Where repairs are necessary to obviate danger to traffic using an unadopted street, the County Council has powers (s230 Highways Act 1980) to serve notice upon frontagers to all or part of an unadopted street requiring them to undertake specified repairs within a specified period. The Council can undertake repairs in default and recover the costs from these frontagers. However, these powers are used very rarely due to lack of resources, the difficulty of recovering costs and the potential financial difficulties caused to frontagers.

The County Council has no duty or funding to undertake the maintenance of unadopted streets.

A District Council has some powers to do work under S230 but it can only be to obviate danger to traffic and in limited circumstances and only after giving the County Council notice. These powers are only applicable to a footpath or bridleway or an "urban road". These "urban roads" are routes that are restricted roads under the Road Traffic Regulation Act (RTR) with the street lighting provided at certain intervals and 30mph speed limit, have got a speed restriction of under 40mph by an Order under the RTR Act or are streets in an urban area.

### **Maintenance of the surface of adopted streets**

The County Council has a statutory duty to maintain adopted streets for which the Council is Highway Authority. (The Secretary of State is the Highway Authority for some highways in Lancashire).

The cost to the County Council is high.

### **Adopting private streets**

The County Council may consider adopting privately maintained streets (unadopted) that meet certain criteria. This is discretionary.

The normal method is to use the Private Street Works procedure contained in the Highways Act 1980. Under this procedure, where the majority of the owners of property fronting a street (frontagers) wish that street to be adopted, and the street meets the essential policy criteria set out below, the frontagers pay the majority of the cost of the design, organisation and construction works needed to make the street acceptable to the highway authority. Usually the highway authority pays the remainder.

The current guidelines are set out below:

### *Consideration of Requests*

*The County Council will consider requests that the Private Street Works Code be invoked, where requests are submitted:*

- *Via a petition in standard format signed by the owners of at least 80% of the frontage, by length, of the street.*
- *By a Developer who is required to make up a street to adoption standards at his own expense in order to meet a planning condition imposed by the Local Planning Authority.*
- *By a District Council where the District Council has resolved to bear not less than the recoverable portion of the street works expenses, following consultation with the street frontagers.*
- *By a District Council where the District Council has resolved to pay the normal County Council contribution.*
- *By one or more frontagers where those frontagers undertake to bear the whole of the recoverable portion of the expenses, and where the costs of design & construction works are deposited in advance at appropriate stages.*

### *Eligible Sites for a County Council Contribution*

*The County Council may make contributions to Private Street Works schemes that meet the following criteria:*

- *The street should be a front street, serving as the main or sole access to not less than 6 domestic residential properties, and;*
- *The street should be a through street, connecting to a street other than a back street, and;*
- *The street should be substantially built up, i.e. not less than 75% of the frontage should be residential or industrial curtilage, and;*
- *No more than 10% of the frontage shall be land in unknown ownership. Compliance with this criterion may be waived where the other frontagers agree to meet part of the frontage costs of the land in unknown ownership or in other circumstances at the discretion of the Executive Director for Environment.*

### **Prioritisation of Schemes**

Requests meeting the essential policy criteria stated above would be assessed by the County Council's Network Manager. Any decision to support a scheme would be based on the availability of funds. It should be noted however that currently, there is no specific County Council allocation relating to the making up of private streets.

Also linked to the "private street works code" is the "advance payments code" which is designed to ensure that when streets are constructed, but not immediately adopted, they may subsequently be made up with the developer contributing to the expense. It enables streets to be adopted without placing a financial burden on highway authority or property owners. The procedure is not used as often today as in the past and certain streets are exempted in particular those already agreed to be adopted under another procedure.

### **Consultations**

N/A.

### **Implications:**

This item has the following implications, as indicated:

### **Risk management**

There were no risks identified in the drafting of this report.

### **Any representations made to the Directorate prior to the issue being considered in accordance with the Public Notice of Forward Plans**

Name:	Organisation:	Comments:
N/A.		

### **Local Government (Access to Information) Act 1985 List of Background Papers**

Paper	Date	Contact/Council/Tel
Nil.		

Reason for inclusion in Part II, if appropriate  
N/A.