

Agenda Item No. 4(d)

DERBYSHIRE COUNTY COUNCIL

**MEETING OF CABINET MEMBER – HIGHWAYS, TRANSPORT AND
INFRASTRUCTURE**

29 September 2015

Report of the Strategic Director – Economy, Transport and Environment

**DEVELOPMENT AT THE MEADOWS, HALLSTEADS, DOVE HOLES –
ADOPTION OF RESIDENTIAL ESTATE STREET**

(1) **Purpose of Report** To inform the Cabinet Member of an offer by the developer of a residential site to complete the streets serving the development and seek approval to adopt the streets without following normal procedures or recovering the usual costs involved in street adoption.

(2) **Information and Analysis** The attached plan Appendix HA1 shows a residential development constructed by Kalro Building and Construction Ltd more than 10 years ago. The developer refused to enter into an Agreement under Section 38 of the Highways Act 1980 and, for reasons outside its control, the County Council was unable to obtain the usual financial security for the new streets using the Advance Payments Code.

The developer originally employed the services of the County Council's ALLRoads contractors to construct the estate streets on this development. The streets are substantially complete with only the surfacing and some other minor defects left remaining. The streets are also drained into an off-site soak-away shown on the attached plan Appendix HA2. The soak-away chamber and connecting pipework are located within a residential property (No 3, The Meadows). Advice has been sought from the County Council's Director of Legal Services and he has advised that general powers relating to drainage, within the Highways Act 1980, may not be wholly sufficient and that a formal Easement Agreement, between the property owner and County Council, would be the appropriate way to ensure future maintenance of the drain could be secured. Discussions have been entered into with the current property owner to negotiate an Easement Agreement, to allow/facilitate future maintenance of the drainage system; these discussions are currently on-going.

The site has been subject to numerous complaints over the years, regarding the lack of street adoption, culminating in a Local Government Ombudsman investigation against the High Peak Borough and County Councils last year.

The Investigator did not find that there had been maladministration on the part of the County Council. Both the developer and the local authorities have been the subject of press attention regarding the development in the past.

The developer has offered to complete the outstanding street works provided the County Council then adopts the streets as publicly maintainable highway. However, the developer is not prepared to pay the Council's usual technical inspection fees in connection with the estate streets, although only a limited number of inspections actually took place, due to the absence of any Agreement being entered into and, as highlighted above, the streets were constructed by the County Council's ALLRoads contractors. Therefore, it was expected that minimal inspections would have been required to ensure compliance with adoptable criteria (current at that time) anyway. The developer is also not prepared to pay the normal commuted maintenance sum associated with the off-site soak-away (originally calculated as £7,500). The developer is, however, prepared to meet the Council's reasonable legal costs in completing the adoption process up to a maximum of £1,000.

The dispute with the developer, regarding lack of completion and adoption of the estate streets at The Meadows, has been ongoing for many years and the Council could choose to take no further action and leave the streets private rather than reach a negotiated settlement. Whilst the Highway Authority has acted entirely in accordance with proper process and statute throughout and, in theory, every purchaser of dwellings on the estate has had the opportunity to check the status of the streets prior to buying a house, the fact remains that it is the residents who are primarily suffering from the lack of adoption and unfinished state of the streets rather than the developer. Both the Local Authority and the developer have been the subject of complaints and adverse press attention, regarding the situation in previous years and, without a resolution, this is likely to occur again with a resultant drain on public resources. The Council must also weigh up the perception that the developer has somehow avoided its obligations as regards entering into an Agreement and paying fees, and the signals this might send to other like-minded developers. However, the circumstances relating to this particular development which prevented appropriate enforcement action being taken, have been greatly reduced by changes to procedures with High Peak Borough Council.

On balance, it is therefore considered that prolonging the dispute and stalemate with this developer is not in the public interest. Provided the remaining works are carried out to an adequate standard, an appropriate drainage Easement Agreement can be obtained (where drainage passes outside predicted highway limits); also, provided the Council's current legal fees are met, the other financial losses are, on balance, considered to be appropriate to ensure the site is brought to a satisfactory conclusion on behalf of the residents.

Local Member Comments

Councillor Street has been contacted for her views and the following response was received:

'I have been aware of these issues for some time. People have been annoyed and upset for some considerable years. There were mistakes made [not by DCC] which gave rise to a situation where DCC could not do anything and indeed may have fallen foul of the Auditor had it done so. As you say the roads are substantially in order but require some finishing. The developer has not been easy or amenable to any proposed agreements to press so although I can see concerns about establishing precedents I think in this instance, to rule a line under a long-running saga, we would be advised to proceed'.

(3) **Financial Considerations** The Council will not recover its normal technical inspection fees and commuted sum costs for the upkeep of the surface water soak-away. However, if the road remains un-adopted, the Council would still not recover its fees and further officer time will undoubtedly be required to deal with future complaints. The developer has recently carried out de-silting operations within the soak-away chamber itself and it appeared to be operating in a satisfactory manner, with no obvious or apparent issues. Maintenance of the soak-away is therefore not expected to present a significant financial risk to the Highway Authority. The Council will recover its legal costs in association with the adoption of the streets.

(4) **Legal Considerations** Adoption of the estate streets at The Meadows will be carried out using Section 228 of the Highways Act 1980 whereby notices will be posted on site for 1 month following which (in the absence of objections by the street owners) the streets will become publicly maintainable highways.

The proposed adoption of the street at The Meadows, on balance, is deemed appropriate and is not considered to set a precedent for the future.

Other Considerations

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, environmental, health, property and transport considerations.

(5) **Key Decision** No.

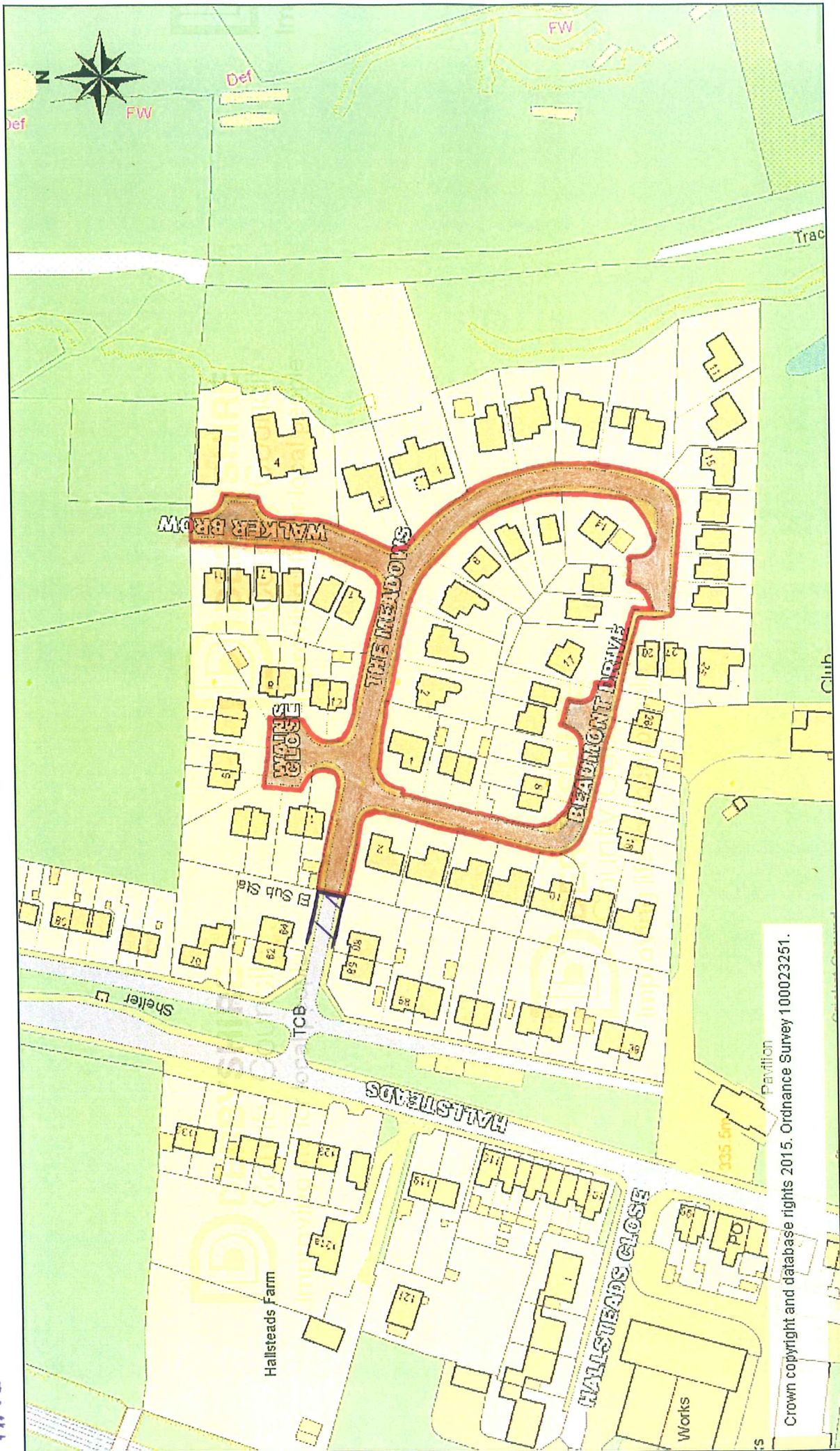
(6) **Call-In** Is it required that call-in be waived in respect of the decisions proposed in this report? No.

(7) **Background Papers** Held on file in the Economy, Transport and Environment Department. Officer contact details – Graham Hill, extension 38647.

(8) **OFFICER'S RECOMMENDATIONS** That the Cabinet Member:

- 8.1 Notes the developer's offer to complete the Street Works, including surfacing, drainage and street lighting.
- 8.2 Approves the adoption of the streets at The Meadows, Hallsteads, Dove Holes, subject to satisfactory completion of the works and (8.3) below.
- 8.3 Approves the County Council entering into an Easement Agreement or similar arrangement with the landowner of No 3 The Meadows, to ensure adequate future access to the highway drainage system in the future.
- 8.4 Approves the waiving of the normal technical inspection fees and commuted sums associated with street adoption.

Mike Ashworth
Strategic Director – Economy Transport and Environment



RESIDENTIAL DEVELOPMENT BY KALRO



ADJOINING PUBLIC HIGHWAY

HA 2



- HIGHWAY SURFACE WATER DRAIN
- HIGHWAY SOAKAWAY
- EASEMENT REQUIRED FOR FUTURE MAINTENANCE OF THE DRAIN / SOAKAWAY

0 m 35 m 70 m

Scale 1: 750

14-Aug-2015