



Committee and Date

Item

Cabinet

Public



New Housing Developments Task and Finish Group Final Report

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| Cabinet Member (Portfolio Holder): | Richard Marshall | | |

1. Synopsis

1.1 This report provides Cabinet with the recommendations of the Place Overview Committee’s new housing developments task and finish group. The group reviewed a range of issues relating to housing development and the quality of new homes and their surroundings.

2. Executive Summary

2.1. The Task and Finish group evolved from a Place Scrutiny committee discussion regarding the quality of housing development in Shropshire. Concern was raised primarily regarding poor internal finishings, lack of good quality open space provision and the lack of timely adoption of access roads to the properties. Members wanted to explore with officers where responsibility for these issues sat and what influence they may have over improving the lives for occupiers of new homes in Shropshire.

2.2. The areas covered included a review of legal responsibilities, particularly regarding the adoption of open space and access roads, but also helped members

understand how Building Control functions and the fact that the customer has a choice whether to use the Council's service. Also, it was explained that the Council does not always have control over the quality of the workmanship or who carries out the development.

- 2.3. The review of this area fits well into the strategic priority in the Shropshire Plan regarding a healthy economy, which includes quality housing and open space areas within developments.
- 2.4. The group have provided several recommendations and if approved, will form the basis of an action plan for officers to develop and deliver on the objectives.
- 2.5. The report content meets the priorities in the Shropshire Plan relating to a healthy economy and healthy environment, by virtue of striving to provide better quality homes and surroundings for residents in Shropshire.

3. Recommendations

- 3.1 That Cabinet agree with the following recommendations of the Task and Finish group, including revisiting progress and impact within 12 months following the approval of the action plan to include expected progress milestones and/or changes in service level/quality/activity etc.
 - always encourage the local authority to use its own building control service for its own developments or those of its ALMO.
 - request its building control and communications services to collaborate to develop a plan to increase awareness of building control, the New Homes Quality Board and the Housing Ombudsman, to would-be homeowners in Shropshire.
 - To include building control in the programme of induction training provided to elected members following all-council elections in 2025.
 - support Cornovii and STAR Housing's work in creating their own open space management company.
 - proceed to recruit a dedicated officer with a specific remit of ensuring well-designed, high-quality, coherent, biodiverse open space on new developments.
 - review its Section 38/278 process to create a greater focus on securing legal agreements early in the planning process.

Report

4. Risk Assessment and Opportunities Appraisal

- 4.1. Requesting the relevant officers to respond to the group's recommendations has provided the opportunity to increase members and the public's understanding of the role of building control. This includes the areas it is involved with regarding Building Regulations, but moreover, that Shropshire Council's Building Control service is in direct competition with the private sector.

4.2. It provides an opportunity to strengthen the role of planning services in ensuring new residential developments feature well-designed open spaces which improves the appearance of the developments, but also enhances the health and well-being of residents living in these areas.

4.3. There are no human rights or equalities implications as a result of this report.

5. Financial Implications

5.1 There are no direct financial implications arising from the recommendation of the task and finish group's recommendations.

6. Climate Change Appraisal

6.1. There are no specific climate change implications arising from the recommendation. However, when providing their action plan, officers should also set out whether there are any impacts on climate change because of their suggested course of action. In particular, there is the opportunity through the improved communications for Building Control to share the requirements for developments to produce significantly less CO2 emissions to meet the governments targets on net zero, which is an important step for the industry ahead of the Future Homes and Buildings Standard in 2025. It is better to build in the efficiencies within the initial design rather than retrofit later.

7. Background

7.1 This task and finish group resulted from a question submitted to the Place Overview Committee by a councillor representing a division in Shrewsbury who had experienced a considerable amount of housing development in recent years. The councillor provided the committee with numerous complaints from new homeowners, particularly from homeowners of newly completed development, including:

- poor workmanship in their homes, eg. ill-fitting internal doors;
- construction plant equipment and other building materials left on site for months after completion of the properties;
- raised ironworks and other hazards resulting from unfinished highway and access roads; and
- incomplete or poor-quality landscaping, including a failure to provide agreed mitigation for wildlife.

The committee discussed more widely the issue of housing development completions and it soon became apparent that many of the committee members had encountered similar issues with developments in their divisions. The group therefore, agreed to create a task and finish group to explore these issues and to identify ways the local authority could prevent or mitigate such issues happening elsewhere.

7.2 The task and finish group visited a few developments in Shropshire with officers to review the quality of the developments to help to inform the discussion regarding

the issues highlighted above. The group then had an all-day session, with various officers participating to provide their professional knowledge and experience of the issues raised. In addition, members invited the Director of the Council's own housing company to share his experience from schemes developed through that vehicle, together with a local private housing developer, who helpfully shared his experience from a developer's perspective.

- 7.3 The focus on Building Control was very well received by officers, particularly in light of the changes in Building Control nationally following the Grenfell disaster. There is a requirement for officers to reach a level of competency when carrying out their duties. In addition, it was clear that there was a lack of awareness that the Council's Building Control service is in direct competition with the private sector and cannot therefore, get involved in disputes when they are not the provider, unless there is a safety concern. We also discussed with members that, in our view, there should be an opportunity for the Council's building control service to tender for all work that the Council carries out, including developments by its wholly owned company. There was also a recommendation that communication needs to be better for Building Control and for the service to explore how we can advise and inform members of the public better about our services, as well as providing advice on ensuring buildings are built safely. There was a further recommendation to include more information in members induction about Building Control.
- 7.4 A recommendation evolved around the opportunity for Cornovii and STaR housing to consider whether they may want to set up a service that manages and administers open space on developments. Officer representation at the meeting demonstrated how this has been done elsewhere and that this may help to drive up the quality of open space and maintenance thereafter, which was a key concern of members on the site visit. Better design and connectivity, as well as the longer term maintenance of spaces where of significant concern. This is to be developed into one of the actions. There may also be the opportunity to consider setting up a group where management companies have been set up by the occupiers of the estate to help and support them with the management and administration associated with running a management company. The practicalities of this need further consideration.
- 7.5 The design of good quality open spaces was a major concern. Unfortunately, SC does not have the landscape design skills in-house to assess the schemes as the resource was part of previous staff reductions many years ago. This presented itself in some locations where the quality of the open space viewed by members was seen as poor. More recently and ahead of the Task and Finish group, officers were working up a job description and funding to create a post to provide this skill in-house. The work crosses over service areas. Members were wholeheartedly behind the need to provide this post as they recognised the significant benefits it would bring.
- 7.6 Adoption of access roads were discussed at the task and finish group at length. Officers were very open about the lack of resources in progressing Section 278 and Section 38 agreements, but also some developers may be able to do more to assist. SC has a backlog of adoptions to deal with and extra resource has recently been brought in to help work through the backlog.

8. Conclusions

8.1. Members and officers used the Task and Finish group to gain a better understanding of the issues raised at Scrutiny committee. The recommendations listed below provide the opportunity for officers to explore different ways of working as well as communicating better with the public and customers so that they are more informed when they are trying to tackle issues with their new homes. An action plan will be developed and then reported back to Scrutiny committee in 12 months from the plan being agreed.

8.2. The report therefore recommends that Shropshire Council:

- should always encourage the local authority to use its own building control service for its own developments or those of its ALMO.
- requests its building control and communications services collaborate to develop a plan to increase awareness of building control, the New Homes Quality Board and the Housing Ombudsman, to would-be homeowners in Shropshire.
- includes building control in the programme of induction training provided to elected members following all-council elections in 2025.
- supports Cornovii and STAR Housing's work in creating their own open space management company.
- proceeds to recruit a dedicated officer with a specific remit of ensuring well-designed, high-quality, coherent, biodiverse open space on new developments.
- reviews its Section 38/278 process to create a greater focus on securing legal agreements early in the planning process.

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)

Report of the Housing Development Completion Task and Finish Group Feb 2023 (see below)

Local Member:

Richard Marshall

Appendices

Appendix 1 – Report of the Housing Development Completion Task and Finish Group

Appendix 1



Place Overview Committee

Report of the Housing Development Completions Task and Finish Group

February 2023

Acknowledgments

The group would like to thank Cornovii Developments, Connexus and Schingler Homes for sharing their expertise. They would also like to thank the officers of Shropshire Council who arranged site visits, wrote briefs, and supported the group during their deliberations.

Members of the Task and Finish Group

- Joyce Barrow (Chair)
- Roy Aldcroft
- Thomas Biggins
- Julian Dean
- Geoff Elner
- Peggy Mullock
- Tony Parsons
- David Vasmer

Introduction

This review came about following a question submitted to the Place Overview Committee by a councillor representing a division in Shrewsbury that has experienced considerable housing development in recent years. The councillor provided the committee with numerous complaints from new homeowners about the largely completed development, including;

- poor workmanship in their homes, including ill-fitting doors;
- construction plant equipment and other building materials left on site for months after completion of the properties;
- raised ironworks and other hazards resulting from unfinished highways; and
- incomplete or poor-quality landscaping, including a failure to provide agreed mitigation for wildlife.

The committee discussed more widely the issue of housing development completions and it soon became apparent that many of the committee members had encountered similar issues with developments in their divisions. Although the committee quickly dismissed the issue of poor workmanship as outside the responsibility of the council, it concluded that other matters such as incomplete roads were area that merited further investigation. The group therefore agreed to create a task and finish group to explore these issues and to identify ways the local authority could prevent or mitigate such issues happening elsewhere.

Scope and focus of the work

The task and finish group sought to:

- Understand the specific issues that residents and builders of a newly completed housing development might face, and where responsibility for those issues sits.
- Examine the policy and legislative framework that results in these challenges for residents, housing developers, and the local authority.
- Research the extent to which these issues may exist with Shropshire and
- Make policy recommendations that will ensure that housing developments are completed fully and at pace.

What has the task and finish group done?

To conduct this review the group:

- Carried out an initial scope of the issues that it wanted to investigate and to determine the evidence that it would need to conduct the review.
- Visited long-established, recently completed and under construction developments throughout Shrewsbury, including those in Cherry Orchard, Radbrook and Bowbrook.
- Received briefings from officers on housing completions, building control, and developing highways on housing estates.
- Considered accounts from groups of Shropshire residents, detailing problems encountered when buying homes on recently completed developments
- Met with housing developers to understand how they work with planning and building control to build and then manage new developments.

Findings

The committee decided to break down their work into three distinct areas: building control, open spaces in developments, and completing the highways through developments.

Building control

Throughout the United Kingdom, building regulations control certain types of building work, principally the erection and extension of buildings, as well as certain alterations and changes of use. The current approach was established with the Building Act 1984, a consolidation of earlier building and public health legislation. At the same time the nature of building regulations changed. They no longer prescribed solutions but instead became broad performance-based "functional" requirements, the theory being that these would allow designers and builders to find the most appropriate and cost-effective solutions.

Current building regulations set minimum performance standards that the building work must meet, principally in terms of health and safety, accessibility, and sustainability. Compliance with building regulations is the responsibility of the person carrying out the work.

Building control may be carried out either by

- local authorities inspecting building work located within their geographical boundaries; or

- Approved Inspectors, most of whom are currently private sector bodies although a few local authority trading companies act as Approved Inspectors outside their area, under powers conferred on them by the Localism Act 2011.

There are over 300 local authority building control bodies in England and 91 Approved Inspectors, between them checking around 0.5m jobs a year.

Contravening building regulations

Building regulations can be contravened by carrying out building work which does not comply with the technical requirements contained in the Building Regulations. This will come to light during the inspections carried out by the building control service (local authority or approved inspector).

Where an approved inspector is providing the building control service, the responsibility for checking that the regulations are complied with will lie with that inspector. They will mainly do this by advising you, however, they do not have enforcement powers. In a situation where they consider your building work does not comply with the regulations, they will not issue you with a final certificate and will cancel the initial notice by notifying your local authority.

If no other approved inspector takes on the work, the building control service will automatically be taken on by your local authority. From this point on your local authority will also have enforcement powers to require you to alter your work if they consider this necessary.

If a person carrying out building work contravenes the building regulations, the local authority or another person may decide to take them to the magistrates' court where they could be fined for the contravention, and a further daily fine for each day the contravention continues after conviction.

This action (under section 35 of the Building Act 1984) will usually be taken against the builder or main contractor and proceedings should be taken within six months of the offence. Alternatively, or in addition, the local authority may (under section 36 of the Act) serve an enforcement notice on the owner requiring them to alter or remove work which contravenes the regulations. If the owner does not comply with the notice the local authority has the power to undertake the work itself and recover the costs from the owner.

However, if the Approved Inspector has issued the final certificate, the local authority cannot take enforcement action. It will then be up to the homeowner to take legal action against the developer or the approved inspector.

Shropshire Council building control

The group heard that Shropshire Council carried out approximately 63% of building control jobs in the local authority area, and that this percentage had increased in recent years. There were approximately 15 private approved inspectors operating in Shropshire, with the largest competitor having approximately 10% of the market. The group heard that there was a competitive market in Shropshire for both business and to recruit qualified staff. Although wages were higher at approved inspectors, the council offered greater stability and a better work life balance. The group heard that the council had in place workforce planning in order to develop our own teams.

The committee agreed with the local authority strategy of developing its own workforce. A similar approach in other council services had successfully mitigated staff shortages as well as inculcating staff loyalty by providing employment stability and professional development.

The developers that participated in the group told its members that they were happy with the service they provided. They felt that competition between providers drove up standards and had caused the local authority to take a more customer-focused approach. However they preferred to spread their business control work across several providers, depending on the nature of the project. Although these developers prioritised quality of service over price, the group heard from council officers that other developers would prioritise other factors, such as price or a longstanding working relationship with a particular approved inspector.

Planning permission and building control

The fact that building control is not entirely a local authority competency is important. It is largely assumed by the public that their local authority is responsible not only for managing planning applications, but for also ensuring that all developments are completed according to building regulations as well as to the plans approved by the local authority. The group discovered that this assumption was often at the heart of complaints the council received about problems with new developments.

Publicity surrounding the launch of this review resulted in a number of residents of newly-built properties to contact the group. These residents told us about serious defects with their properties, and their struggles to have the developer correct the defects.

One homeowner told us:

Nearly 3 years later, large lumps of mortar [are] dropping out of roof joints, the garden still floods every time it rains, locks don't work properly, doors don't close properly etc. The list is endless. The cul-de-sac still has incomplete landscaping. The wall either side of the gates to the development were made from old pallets! The builder says the landscaping is "just to make the site look pretty on drawings submitted". We still have no street signage, making it difficult to locate us ... heaven forbid we ever need emergency services here, they will never find us.

Another faced numerous problems with their home:

We have had many issues here at a development of 6 properties. Some of the issues faced:

- *Drainage (Foul and Surface water). Not laid to plan, not built to building regulation and blocking.*
- *Unfinished Estate road*
- *Lack of roof insulation*
- *House not built to agreed specifications*
- *Water logged garden owing to over compaction of the ground (compressed builders rubble).*
- *Snagging – who ensures a builder carries out snagging (if he has a mind to be difficult and not do it).*

The group looked in detail at these two cases and noted that both developments has been overseen by an approved inspector rather than a local authority building control officer. As the approved inspector had already issued the final certificate approving the works, the council was no longer in a position to take enforcement action. This meant that the homeowners would have to seek redress through the courts at their own expense. The group heard that some instances, building companies facing court action had liquidated rather than face court, only to reincorporate under a different company later.

A failure to appreciate the risk that came with using an approved inspector had resulted in considerable frustration, distress, inconvenience, and expense for the homeowners. We heard from Shropshire Council officers that although they were sympathetic to the situation the homeowners found themselves in, there was little – if anything – the local authority could do.

New Homes Quality Board

The government has long recognised the need to better protect new homeowners. In 2022 it created the New Homes Quality Board, to provide additional protection against poor quality buildings.

The board is an independent not-for-profit body which was established for the purposes of developing a new framework to oversee reforms in the build quality of new homes and the customer service provided by developers.

The framework will be introduced during 2022 and will deliver a step change in developer behaviour, a consistently high standard of new home quality and service, and strengthened redress for the purchasers of new-build homes where these high standards are not achieved. The NHQB was formally constituted as a legal entity in January 2021 and the board members appointed with representatives from across the sector including consumer bodies, developers, providers of new home warranties, the lending industry, Homes England, and independent members to tackle these issues.

Since then, significant progress has been made to put in place a New Homes Ombudsman Service and develop a new industry code of practice – the New Homes Quality Code.

The NHQB has an essential role to play at the centre of the new framework. It will;

- Appoint and oversee the performance of the independent New Homes Ombudsman Service.
- Provide support and information to consumers and industry.
- Hold the register of developers of new build homes.
- Collect an annual registration fee from developers to fund the new arrangements.
- Discipline and sanction poorly performing developers.
- Report and publish details on industry performance.

The group accepts that many of the frustrations borne by homeowners who have lost out due to the weaknesses of the current system are not the responsibility of the local authority. However the group also concludes that if Shropshire Council wishes to fulfil its corporate priority to facilitate housing growth, it should seek to point out these risk to potential homeowners.

Although the council cannot compel private developers to use local authority building control, it can ensure that its own developments, and those of Shropshire Towns and Rural Housing (the council's arm's length management organisation for its housing stock) do so. Although this would account for only a small percentage of developments, it would ensure that the fees generated from building control would be kept by the local authority. It would also ensure that any developments funded by the local authority or its ALMO were protected by warranty.

The group recommends that Shropshire Council should always use its own building control service for its own developments or those of its ALMO.

The group also discussed how it could increase awareness of how building control works, so that would-be homeowners were alert to the risks of unwarranted building control services. The group made some suggestions of ways to do this, but determined that any communications was probably best planned by the council's building control and communications services. This plan should be both long-term and sustainable, so ideally would be cost-free, highly-targeted, and should not distract from the core work of the building control team.

The group recommends that Shropshire Council's building control and communications services collaborate to develop a plan to increase awareness of building control to would-be homeowners in Shropshire.

Finally, some members of the group noted that until they had participated in this group, they had not appreciated the distinction between planning approval, planning enforcement and building control. Similarly, the building control officers supporting the group remarked that they had never participated in scrutiny before.

The group therefore recommends that building control be included in the programme of induction provided to elected members following all-council elections in 2025.

Open Space

The original question to the Place Overview Committee that resulted in this review contained complaints about open space on the development that had not been landscaped according to plan. Issues included open space left unmaintained, trees planted to replace felled mature trees left to die and not replaced, and agreed wildlife mitigation not put into place.



Unmaintained space on a development in Shrewsbury

On its visits to developments in Shrewsbury, members of the group identified issues of concern to them, including:

- Small pockets of open space that appeared abandoned, belonging neither to a property or included as part of grounds maintenance that has clearly taken place.
- Confusion over which spaces were open space and which belonged to homeowners, resulting in a proliferation of homemade signs defending private space.
- Emerging desire lines cutting informal paths through open space, crossing barriers that would act as trip hazards.

The group was keen to learn more about how open space on new developments was managed, and wanted to explore ways by which the open space could be managed better.

Managing open space on new developments

The group heard that local authorities in England no longer generally adopted the open space on new housing developments. They lacked sufficient resources to manage the adoption process, could not afford to buy the land, and were reluctant to incur the long-term cost of managing additional open space in perpetuity.

Most housing developers therefore hand over their open space from their completed developments to a management company for grounds maintenance. Larger developers often operate their own management trust, placing their open space directly into the trust. Smaller developers who are too small to operate their own trust instead use third-

party management companies. Whatever the arrangement, the cost of maintaining the space is borne by the homeowners within the development, who are obligated to pay maintenance charges to the management company, either under the terms of a leasehold or through a deed of covenant. This practice has been the topic of complaints nationally for decades, with existing legislation offering few protections from poor quality work, inflated costs or the inability of some households to extricate themselves from onerous contracts.

Leaseholders have some statutory rights defined in the Landlord and Tenant Act 1985. For example, leaseholders have the right to see all invoices and receipts for work which the [management company](#) has undertaken and recharged to the leaseholders. They may also challenge the reasonableness of charges through the courts.

Freeholders, however, are not covered by the service charge provisions in the Landlord and Tenant Act 1985 and have no statutory rights to see any evidence relating to the service charge or to challenge the reasonableness of the service charge. Because the agreements are imposed by covenants in their deeds, they are not covered by consumer law and in many cases the management company is named in their deeds so there is no option to use a different company for maintenance. Their only recourse is to make or defend a claim in court. However because freeholders have no rights to see any invoices or other documentary evidence, it can be extremely hard to build a case against the company. If the management company fails, and the management clauses in the deeds do not provide a remedy, then homeowners on the estate face a number of time consuming and potentially costly options in order to assure that open space is maintained, including creating their own management company or negotiating a contract with a management company.

Although the use of management companies creates a risk for new homeowners that they would be subject to an exploitative company, the developers who participated in the group were keen to stress that the companies that they used provided what they believed to be a good service to householders. Cornovii, Shropshire Council's housing developer, for example, uses a management company for its own developments. Cornovii pays the management company a dowry for the first three years of the contract, before householder become liable for the service charges. Crucially, householders are able to buy out of the contract and form their own management company should they wish to do so. In future, Cornovii planned to bring their estate grounds maintenance in-house, and were exploring ways to develop their own management company. This report discusses this opportunity later in this section.

The group was keen to explore ways by which the local authority or housing developers could provide better options for homeowners. A proposal to recommend that the local authority form its own management company was dismissed as creating

an unequal system within the local authority for different homeowners, with some households paying a council management company for grounds maintenance and other household receiving the same service included in their council tax.

Members were also keen to explore ways to offer open space on new developments to town and parish councils. The members of the group who were also town or parish councillors were keen on this suggestion as many councils already manage open space in their towns. Shrewsbury Town Council currently manages nearly fifty open spaces throughout the town, Ludlow, Whitchurch and Bridgnorth town councils manage approximately a dozen apiece. Oswestry and Wem town council each manage a handful of sites, with other smaller town or parish councils managing pieces of open space in their areas.

Such transfers of land presented challenges that the group discussed. Shrewsbury Town Council, as the fifth-largest parish council in England, has in place not only grounds maintenance staff and equipment to manage open space but allied resources such as its own nurseries. This would allow Shrewsbury Town Council to take on additional areas of open space relatively easily. Other larger market towns might find expanding their capacity to take on extra open space was limited, and smaller parish councils probably lack the resources to manage spaces themselves. Additionally, it would require additional work to determine whether town and parish council had the funds or the appetite to buy open space from developers had been completed. Finally, it was not clear to the group the mechanism by which a developer might negotiate with town and parish councils to sell or transfer the land concerned. In any event, such arrangements were probably not of direct concern to Shropshire Council. The group therefore makes no recommendations on this approach to open space management.

The group were also interested in exploring further Cornovii's idea of a management company or trust, operated by Cornovii or STAR Housing, Shropshire Council's ALMO. This would allow Cornovii and STAR Housing to set reasonable prices, align themselves more closely with local authority priorities such as improving biodiversity. Such a trust would also be able to manage open space for private developers outside of Shropshire, potentially generating income to support further housing growth. Although the local authority could not insist that a developer use any particular housing management company, a locally-controlled option could be of interest to smaller developers that were required to provide open space on their developments, but who lacked their own in-house trust to manage the space after completing the development. Such a body would not necessarily be restricted to managing open space but could also manage larger open spaces such as parks and other green space.

Case study – Milton Keynes Parks Trust

Established as an independent charity in 1992, The Parks Trust manages over 6,000 acres of green space in Milton Keynes including parks, ancient woodlands, lakes, river valleys and 80 miles of landscaped areas along the city's grid roads.

In most towns and cities, parkland is owned by the local authority, but Milton Keynes chose to manage their space through charity that was separate from local government.

The Parks Trust was set up in 1992. The new charity was given a 999-year lease on a total of 4,500 acres of Milton Keynes, an endowment of £20m and a portfolio of commercial property. Returns on these carefully managed investments generate the primary source of income required to fund the charity's wide-ranging work today and forever.

Over 80 staff and 200 volunteers deliver the essential work of The Parks Trust. In addition to landscaping and maintenance tasks, that also includes providing valuable recreation and leisure facilities, connecting communities at over 500 outdoor events each year and advancing public education around the wildlife, biodiversity and the environment.

Each year, the charity takes on new green spaces and endowments from developers to cover costs in perpetuity.

The group therefore recommends that Shropshire Council support Cornovii and STAR Housing's proposals to create their own open space management company.

Unintended desire lines and ambiguous ownership of land

During its site visits, the group saw the development that had been the subject of the initial questions from a Shropshire Council councillor. Since then, many of the issues that had been raised had been addressed. The development's roads had been surfaced and much of the landscaping had been completed. The group however noticed three issues that concerned them.



Example of impromptu signs protecting private space. Note to the right development of an unplanned desire line.

- Unplanned desire lines – as there was no paved access to the open space alongside (but outside of) the development, people walking to the open space were cutting a path of now bare earth while accessing the site. To use the desire line required stepping over a small wooden barrier, which remained in place.
- Pockets of unmaintained land that appeared to not belong to a property nor to constitute open space.
- Unclear boundaries between properties and public space.

The group heard that issues such as these could have been resolved at the planning stage, and a more careful review of plans by a planning officer would have highlighted these issues. The development in question had been approved at a time when there was no local plan to enforce, resulting in a small boom in new developments. The council had lacked the staff resources at the time within planning to be able to identify all of these issues. It had also lacked the capacity to co-ordinate across services such as the Great Outdoors service, to plan access between developments and nearby open space. The group heard that regrettably, once plans had been approved and the development had been completed, the council lacked any formal means to enforce changes to open space. Instead it could rely only on persuasion, which was difficult if it concerned a developer with no future development interests in the local authority area.

A sustainable solution?

The group asked Shropshire Council officers how they could strengthen their processes to avoid problems such as these arising in future. They suggested that Shropshire Council could become more prescriptive in the standard of landscaping required for a development. This would allow the council to insist on higher standards for outdoor space, eliminate parcels of unmaintained land, and reduce confusion over public and private space. To facilitate this, Shropshire Council has explored recruiting an additional officer with a specific remit of negotiating high-quality open spaces from the very beginning of the planning process for a new development. This officer would work in conjunction with environmental services and the Great Outdoors service, ensuring that open spaces were accessible, well-designed and maximised biodiversity. This would provide the capacity to bring greater rigour to the planning process, to minimise issues such as this arising in the future. The group endorsed this approach.

The group recommends that Shropshire Council proceed to recruit a dedicated officer with a specific remit of ensuring high-quality, coherent, biodiverse open space on new developments.

Developing Highways

Fundamental to a new housing development, particularly development larger than a few houses, are the roads and path (highways) through the development that connect to the highways network. As well as building highways to be used once the development is completed, developers often have to build new highways or alter the existing highway to facilitate building the new development.

Supporting development

Housing developments, even relatively small ones, usually require new roads to be built or existing highways to be altered in some way before work can begin. To regularise this process, section 278 of the [Highways Act 1980](#) allows developers to enter into a legal agreement with a highway authority, in this case Shropshire Council, to make permanent alterations or improvements to a public highway, as part of a planning approval.

Examples of work covered by a section 278 agreement include:

- new or changed access into a development site (for example a bell mouth junction, roundabout, signalised junction, right turn lane or a simple priority junction)

- new signalised crossings or junctions close to the development site.

Work affecting the highway can only begin when both:

- the section 278 agreement is signed by the developer and the highways authority (with any [performance bond](#) agreed) and
- all pre-commencement requirements listed in the section 278 agreement have been met and approved by the council.

Some highways authorities use section 278 agreements to allow developers to employ a road works contractor and for that contractor to work on the existing public highway in the same way as if the highway authority were carrying out works. The developer is responsible for all aspects of the works on the public highway, from the design through to supervising construction and ensuring that the works are completed to the highway authority's satisfaction.

Highways development and adoption as public highway

A section 38 agreement (or S38) is a section of the Highways Act 1980 that can be used when a developer proposes to construct a new estate road for residential, industrial or general purpose traffic that may be offered to the highway authority for adoption as a public highway.

The highway authority (in this case Shropshire Council) has no power to insist that a developer enter into an S38 agreement. A developer may also complete the construction of a road then offer it to the highway authority under Section 37 of the Highways Act 1980. However, many developers see a S38 agreement as a more suitable option, as the adoption process can be lengthy, and if it takes place after a road is completed then the developer will be responsible for all maintenance until adoption takes place. However, if an S38 agreement is made before construction starts, the council can ensure that it is built to the agreed standard, is appropriately lit and drains correctly.

Once a S38 agreement is made, the developer will have to operate within a set of conditions, terms and timescales in building the highways. It is supported by a bond or cash deposit calculated by the highway authority and based on the works proposed. This bond or cash deposit can be called upon if the developer goes into liquidation or otherwise defaults on their responsibilities.

The Shropshire Council process

There is an eight-stage process to securing highways through a development that has been adopted by Shropshire Council.

- **Planning and development**

Shropshire Council as Highway Authority are normally a consultee on all major planning applications. At the time of the application the applicant/developer states on the application form if it is their intention to put the development forward for future adoption (Section 38). During the planning process it is determined whether works on the existing highway (Section 278) are required to make the development acceptable. This works will be subject to a planning condition or Section 106 legal agreement.

- **Section 38/278 application**

The developer should submit their proposed S38/278 design with a completed application form to Shropshire Highways at the earliest opportunity following 'outline' or 'full' planning consent.

- **Technical assessment**

When an appropriate submission has been received and accepted by Shropshire Highways, a technical review of the proposed scheme is undertaken. This technical assessment is currently undertaken by WSP on Shropshire Council's behalf.

- **Drafting of legal agreement**

The drafting of the Section 38 legal agreement starts before technical approval is granted, and often continues whilst the site is under construction and on occasion post-completion of the site. Section 278 agreements need to be in place prior to commencement on site to give the developer authority to complete the works. It should be noted that this part of the process can become protracted and can take a significant time to complete, particularly if the information supplied changes and/or is legally challenged. Legal fees are charged on an hourly basis and paid prior to completion of all agreements. Shropshire Council charges a checking and inspection fee which is 10% of the bond value. **Each Section 38 and Section 278 is accompanied by a bond which is 100% of the works cost on signing.**

- **Start of works onsite**

Before works start onsite the developer needs to ensure they discharge all the relevant planning conditions. The developer is also required to liaise with Shropshire Council's Streetworks team to ensure that they have obtained all the necessary permission to carry out works on or adjacent the highway. This might include Section 50 (utility connections), Traffic Management and road closures, and Section 184, to form a new access into the site if the Section 38 agreement has not been signed.

- **Construction phase and inspections**

The council's representative or inspector will undertake periodic inspections. All inspections are currently undertaken by WSP on Shropshire Council's behalf.

WSP liaise directly with the developer and the site manager and produce site inspection reports following every visit.

- **Works completion**

Within the Section 38 and Section 278 agreement there are stages where the developer can apply to the Council to get confirmation that works have been completed and ask for the bond to be reduced.

- **Final adoption**

Final inspection is undertaken of all works and any remedial works identified are completed. Bond is fully discharge. Development is added to the 'List of Streets' and becomes Highway Maintainable at the public expense. Shropshire Council Highway Information officers notify Highways Manager and relevant departments such as Street lighting and drainage.

The group's main concern with the process was the time it sometimes took to complete the highways on a development, as well as the time taken to adopt the highways post-completion. It heard that there were currently 275 active sites throughout Shropshire, but of these only about 60 are currently under development. The remaining sites, over 200 of them, were currently awaiting adoption.

Although the process of highways building and adoption could be complex, the fundamental issue behind the backlog was a lack of staff to oversee the adoptions. The council had a small team to manage the process, was understaffed due to staff leaving the council, and had struggled to recruit suitably trained staff – an issue common to local authorities nationally.

The issue was not financial, as the service was self-funding, if not income generating because of 10% of bond charge made to manage the process. Additional staff would allow a more rapid turnover of work and generate more income to pay staff. The group heard too that following a successful focus on clearing the recent backlog of planning applications, the service would now focus on clearing the backlog of highways adoptions. However, the speed at which it could do this would depend on the service's ability to recruit a new staff member. The group supports this decision to recruit a new staff member, and notes that this would be in addition to the proposed new planning officer post discussed earlier in this report.

The group recommends that the Place Overview Committee, in following-up the recommendations of this report, monitor progress in recruiting the required additional staff.

The other issue identified by the group was the challenge of securing the necessary legal agreements to secure adoption by the local authority. Although the lack of a legal agreement prevent adoption, it did not prevent the developer from starting work once they had planning permission and the required bond in place.

The group agreed that securing legal agreements with developers could be complex and time-consuming, and that it was difficult to get developers to focus on this aspect of the process once they had started work on site. Both the officers supporting the

group and the group members agreed that greater focus from the local authority before work started would probably result in both faster adoptions and less work later on in chasing agreements. However, for the local authority to be able to do this it would first need to clear its current work.

The group therefore recommends that Shropshire Council reviews its Section 38/278 process to create a greater focus on securing legal agreements early in the planning process. However, the group recognises that the council's priority should be to first reduce its backlog of existing work.

Recommendations

The group therefore recommends that Shropshire Council:

- should always use its own building control service for its own developments or those of its ALMO.
- requests its building control and communications services collaborate to develop a plan to increase awareness of building control to would-be homeowners in Shropshire.
- includes building control in the programme of induction training provided to elected members following all-council elections in 2025.
- supports Cornovii and STAR Housing's work in creating their own open space management company.
- proceeds to recruit a dedicated planning officer with a specific remit of ensuring high-quality, coherent, biodiverse open space on new developments.
- reviews its Section 38/278 process to create a greater focus on securing legal agreements early in the planning process.