

Powderhall and Hopetoun: Parking on Roads within Developments

Transport, Infrastructure and Environment Committee

13 September 2012

1 Purpose of report

- 1.1 To update Committee on issues surrounding residents' parking in Powderhall and Hopetoun developments.
- 1.2 To comment on the Motion put forward by former Councillor Gordon Mackenzie to the full Council meeting on 26 April 2012. The motion stated:

'Council notes the longstanding disagreement between owners, property developers and the Council regarding the provision and management of resident parking in Powderhall. As a means to resolve this situation to mutual satisfaction, Council agrees to investigate the potential for 'stopping-up' those residents' parking spaces which would be adopted by the Council, as Roads Authority, in order that these spaces can be managed by the residents themselves and report to the Transport, Infrastructure and Environment Committee'.

- 1.3 To recommend a way forward.

2 Summary

- 2.1 It has become common practice in the case of many developments that it is implied to purchasers that road parking spaces are for their exclusive use. The residents of Powderhall and Hopetoun have advised the Council that they too were given the impression that their flats included the exclusive use of a parking bay. Whilst the Council is not obliged to provide a remedy to this situation every effort has been, and will continue to be made to find a solution for the residents.
- 2.2 As previously acknowledged in the report to committee on 27 July 2010 the Council accepts that incorrect advice was given to residents in 2006 by Council officials.
- 2.3 In this situation, the Council is seeking to find the fairest solution it can for the residents taking into account legal and financial constraints and suggests that

certain options be explored further with residents, the developer and other relevant stakeholders.

3 Main report

- 3.1 The developer (Bryant Homes, latterly Taylor Wimpey) and the Council entered into Road Construction Consents (RCC) in respect of the roads in these developments in June 2000 and July 2001 respectively. These are legally binding agreements and place obligations on both the developer and the Council. The developer is required to design and construct roads to the specification and requirements of the Council, and in so doing, the Council is legally obliged to adopt the roads if requested to do so by the developer.
- 3.2 In both developments, the developer has met its obligations contained in the RCCs and requested the Council to adopt the roads in February 2012. In the terms of the legislation, the Council would normally be required to complete adoption by February 2013. The disputed parking bays are included in the RCC agreement and form part of the roads.
- 3.3 In the case of Powderhall incorrect verbal advice given by senior officials in 2006 had indicated that an amendment to the RCC to allow the roadside parking spaces to remain private would be possible if the developer submitted a replacement adoption plan removing the parking bays from the area to be adopted by the Council. Similar advice was given to Hopetoun residents. The developer, Taylor Wimpey, did not submit an amended adoption plan. The Council cannot compel a developer to amend an adoption plan. Even if the parking bays were removed from the adoption plan the residents would still not be able to control their use as they have been open to the general public. The general public now have a right to use them. In view of the representations made by the residents associations it has been confirmed that as the bays were built as part of the RCCs they are roads and, whether or not adopted onto the Council's List of Public Roads for maintenance, they can only be controlled by the Council as a local Roads Authority.
- 3.4 The Council recognises that residents feel aggrieved that, in their view, they were misled through mis-selling and that the initial advice from the Council was unclear. Therefore the Council seeks a resolution to this matter which satisfies as far as possible the residents wishes, but which allows the Council to meet its legal and financial obligations.
- 3.5 There have been several options put forward by the residents, the Council and most recently the developer and these are listed in the table below:

Scenario	Explanation	Key Issue(s)
Stopping Up of parking bays.	As per residents' request to enable them to control parking on private land.	Council can only promote a Stopping Up Order under Section 68 of the Roads (Scotland) Act if the reason for promoting such an order passes the strict legal test that the roads being 'closed' are no longer necessary.
Accept a modified RCC from Taylor Wimpey (TW).	TW make application to council for amendment to RCCs deleting parking bays from areas to be adopted.	As bays are part of the roads and have been opened for the use for which they were built an amended RCC would not alter their legal status. Therefore a Stopping Up Order would be required.
Adopt all roads as per RCCs issued to Bryant Homes in 2000 and 2001.	This includes roadside parking bays.	1) Bays either have to remain uncontrolled or brought into a local Controlled Parking Area (CPZ). 2) If brought into CPZ committee has agreed 4 years' discount to permits - on a sliding scale. 3) Taylor Wimpey and council to have further discussions with residents of both developments.

- 3.6 This matter has been considered by Committee on 27 July 2010 and the offer of discounted permits formed part of that report. Specifically, it was proposed that in year one a free permit was offered, in year two a 70% reduction was offered, in year three a 50% reduction and finally in year four a 30% reduction. In year five (post-incorporation of the streets in the CPZ schedule) full residents permit charges would apply. This does not meet with the aspirations of the residents and the position of the developer regarding any contribution to these costs requires further clarification.
- 3.7 In order to bring this difficult matter to a conclusion it is recommended that further discussions take place on the available options with all affected parties. In considering the legal advice, consideration will need to be given regarding the risks associated with each of the options as well as the extent to which any decision regarding these schemes may be seen as a precedent elsewhere.

3.8 A further report with recommendations will be presented to a future Committee as soon as possible.

4 Financial Implications

4.1 There are no financial implications directly associated with this report.

5 Equalities Impact

5.1 There are no adverse impacts on any race, disability, gender, age, sexual orientation or religion/belief groups from the proposals contained in this report.

6 Environmental Impact

6.1 There are no environmental impacts as a result of this report.

7 Recommendations

7.1 It is recommended that the Committee notes that further discussions will take place with the residents, the developer and other stakeholders as necessary and that a report will be brought back to Committee for a decision as soon as possible.

Mark Turley
Director of Services for Communities

Appendices

Contact/tel/Email Andrew McBride – 0131 529 3523 -
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Wards affected 12 - Leith Walk

Single Outcome Agreement National outcome 10-We live in well designed, sustainable places where we are able to access the amenities and services we need

Standard adoption policies with respect to roadside car parking ensure all Edinburgh residents are treated equally and contributes to well designed places.

Background Papers 1) TIEcomm report/minutes of 29 July 2008
2) TIEcomm report/minutes of 27 July 2010
3) Road Construction Consents ED/00/0031 and ED/01/0017 relating to Powderhall Village and Hopetoun Street respectively
4) <http://www.powderhallvillage.org.uk/aboutus/PVOAMinutes29Apr2009.pdf>
5) The Roads (Scotland) Act 1984.

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