

CHESHIRE EAST COUNCIL

Cabinet Member for Environmental Services

Date of Meeting: 5th December 2011
Report of: Head of Highways and Transportation
Subject/Title: List of Streets Policy
Portfolio Holder: Councillor Rod Menlove

1.0 Report Summary

- 1.1 That the Cabinet Member approves the proposed amendments to the List of Streets policy.
- 1.2 The Council is required under statute namely the Highways Act 1980 to keep corrected up to date a comprehensive List of Streets maintainable at the public expense.
- 1.3 The List is to contain all roads, lanes, footpaths, bridleways, byways, restricted byways, squares, courts, alleys and passages which are considered to be maintainable at public expense.
- 1.4 At present this Council does not have in place a policy on any changes that are required to keep the List of Streets up to date. The legislation associated with the List of Streets is not thorough enough to be able to determine what format the so called "list" should be presented.
- 1.5 Currently any changes required to the List of Streets are received from a number of different sources. Types of evidence supplied to the Authority vary, from an adoption plan showing the road and extents to minutes from historical meetings of previous Councils.
- 1.6 There has never been any strict procedure in place prior to any changes to the existing highways that are considered to be maintainable at public expense. The policy will set out to ensure that any future changes to the List of Streets will have a proper audit trail. This will ensure that any subsequent claims on the highway network can be successfully supported with a policy that shows the changes have been correctly followed.

2.0 Recommendation

- 2.1 That the Cabinet Member for Environmental Services approve the amendments to the List of Streets policy set out in Appendix A to the report.

3.0 Reasons for Recommendations

3.1 To ensure that any changes to the List of Streets through adding or removing streets are carried out to a robust structured procedure.

4.0 Wards Affected

4.1 This report affects all wards equally.

5.0 Local Ward Members

5.1 This report affects all wards equally.

6.0 Policy Implications

6.1 There are no human resources implications of the recommended option.

7.0 Financial Implications (Authorised by the Borough Treasurer)

7.1 The costs of implementing this policy will be that if documentary evidence is found to add a street that is currently not recognised as being a highway maintainable at public expense, there will be a financial issue on the Council to repair this newly found street. There may also be claims from property owners whose land adjoins these newly found streets for any monies they have spent in the past on the maintenance of what was previously thought to be an unadopted highway. It should be remembered that it is a duty of the Authority to keep the List of Streets up to date so is open to challenges at any time from anyone.

8.0 Legal Implications (Authorised by the Borough Solicitor)

8.1 The legislation relating to the List of Streets is detailed in Appendix B. Whilst there are statutory requirements for the creation of a list of maintainable highways, there is nothing available as to how this list should be produced or how it can be properly amended.

9.0 Risk Management

9.1 This Authority currently does not have any formal policy to deal with changes to the List of Streets. Implementing this policy will ensure this situation remedied to give a coherent, structured and consistent approach when dealing with any additions or removals to the List of Streets. With no policy currently in place the Authority is open to challenge from both internal and external pressures when any changes have been done incorrectly. It should be remembered that any decisions taken arising from this policy can be challenged in the courts.

10.0 Background

- 10.1 The current legislation relating to the List of Streets is under Section 36(6) of the Highways Act 1980. Here at Cheshire East Council, this 'list' comprises in alphabetical order of all known adopted highways that are maintainable at public expense.
- 10.2 The List is to contain all roads, lanes, footpaths, bridleways, byways, restricted byways, squares, courts, alleys and passages which are considered to be maintainable at public expense. It is kept by all Highway Authorities throughout the country and by definition should include all highways. Some Highway Authorities have a map instead and it is thought that this is acceptable as an alternative to a "List".
- 10.3 It should be noted the current List does not contain any Public Rights of Way even though these are considered to be highways maintainable at public expense. These are recorded on the Authority's' definitive map and statement which is the legal record of public rights of way in Cheshire East. In law it is the definitive record of where a right of way is located. Local authorities in the UK have a statutory duty to maintain the Definitive Map. Each right of way also has a written description referred to as the Definitive Statement.
- 10.4 Historically various methods have been used to amend the List of Streets. Most of these were either from an officer sending notification the network was incorrect or by representation from individuals or organisations outside the Authority claiming to have new evidence to support the current list is incorrect.

How do other Highway Authorities amend their highway record?

- 10.5 Through working with a number of Authorities across the country it has become apparent that there are no formal processes currently in place for any necessary changes to the List of Streets. The methods used by highway officers throughout the country varies considerably from just carrying out a change without challenge to those authorities who follow a strict consultation exercise to ensure all changes are properly documented.
- 10.6 It should be noted that there are several highway authorities who are reviewing their systems in how to amend the highway record. They are also to ensuring the public get the information needed to complete a highway search without the need for an undue delay to answer these sorts of queries.

The Way Forward

- 10.7 In view of the fact that the List of Streets and the determination of the highway boundary is considered not to be easy to define, it seems sensible that a set of guide lines are drawn up. These can then be rolled out across countrywide so as to ensure consistency is in place to all relevant highway

authorities. Cheshire East officers are leading the way in this endeavour and Chair the national Highway Records Working Group whose terms of reference include delivery of a nationally recognised policy.

Summary

- 10.8 This policy has been written to ensure that there is a robust structured procedure to make any necessary changes to the List of Streets. The current system is considered not fit for purpose and leaves the door wide open to any challenges whether from an internal or external source.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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1.0 List of Streets Policy

- 1.1 The policy to be followed will enable a coherent, structured and consistent approach when dealing with any additions or removals to the List of Streets
- 1.2 Before any addition or removal of a street from the List the appropriate investigation should be carried out. Once this has been completed a decision will be sort from the Environmental Services Portfolio Holder under their delegated powers.
- 1.3 If a formal adoption plan is available then this would without doubt be considered to be sufficient documentary evidence on its own to change the status of any particular street. However, it should be remembered that in exceptional circumstances the particular section of road may have been closed by some formal procedure and this would need to be checked out.
- 1.4 It should also be noted that all evidence contained in the documents listed below are open to interpretation. The considered opinions of the evidence may be contested by one or more officers. It is therefore essential that the officer writing the report for consideration is able to explain as to why the street should be added/removed from the list.

2.0 Adding a street to the List

- 2.1 If a street is subject to one or more of the following then it would not be necessary to obtain a delegated decision. This would include if the street was subject to an agreement subject to Section 38 1980 Highways Act or section 40 1959 Highways Act, inclusion within a Section 278 agreement of the 1980 Highways Act, is included in the Handover Schedule of the Local Government Act 1929 (unless subsequently been stopped up) is included as being part of a Deed of Dedication or a grant was given by virtue of the Agriculture (Improvement to Roads) Act of 1955.

3.0 Trigger

- 3.1 Request received from either internal or external person or organisation.

4.0 Highway Officer Consultation

- 4.1 Seek the views of the local highway officer as to what they know about the street.

5.0 Site Visit

- 5.1 This would be undertaken to fully understand the situation as it exists on the ground and to take photographs of the area.

6.0 User evidence

- 6.1 This step would come into the equation in the event of any challenges to the public using a street. User evidence is evidence from users of a claimed way and relates to their individual use and the nature of that use along the street being claimed. The Borough Council reserves the right to interview those who provide user evidence personally following submission of an application.

7.0 Primary research

- 7.1 The list of documents to be looked at is not in any order of priority but is sufficient for an assessment to decide whether a street should be added to the List: Enclosure records, Finance Act information, Land Registry, Side Roads Orders (if appropriate), Quarter Session files, Dedication Agreements, Tithe records, County Council minutes, Parish Council minutes, Handover ledgers from previous Authorities, Grass Cutting schedules, Ordnance Survey records, Stopping up orders, deposited plans (if appropriate), Highway records, Planning records, Draft Definitive Map information, Aerial photographs from the Luftwaffe set through to the modern collection and Old County maps such as Greenwoods and others.

8.0 Secondary research

- 8.1 The following documents could be viewed and again is in no order of priority but would be used if the above is not conclusive. Estate records, local histories and Mining records (if appropriate).

9.0 Further consultation

- 9.1 This would only be carried out if the research of the documentary evidence above was not conclusive. Other consultees could include highway officers, Parish and Town Councils, landowners affected by the street and depending on whether the street is contentious will determine whether the consultation would include any user groups.
- 9.2 Any research undertaken must be looked at as a whole rather than identify one piece of evidence on its own. The only exception to this being if an adoption plan or similar exists for a street where this alone would be sufficient to add a street to the List.

10.0 Next steps

- 10.1 In any report produced there needs to be an analysis of the findings of the research and to include a note as to whether the street is considered to be a highway maintainable at public expense. The Borough Solicitor will be consulted as to the evidence and the weight to be attached to the evidence. If it is decided the street should be added then a plan should accompany the report to identify the full extent of the street to be added.

- 10.2 Any recommendations will be sent to the Local Ward Members to gather comments to be included in the report.
- 10.3 The report and plan would then be sent to the Environmental Services Portfolio Holder for an appropriate decision. If accepted the street can be amended accordingly on the List of Streets. Notification of any additions will be sent to the Local Ward Members and Parish Council.

11.0 Removal of a street from the List

- 11.1 This procedure would be similar to the one described for “Adding a street to the List” with a few exceptions. It should be noted that before any street was removed, there would have to be a series of steps so to satisfy all concerned that it definitely needs to be taken off the list of maintainable highways.

12.0 Trigger

- 12.1 Request received from either internal or external person or organisation.

13.0 Area Office consultation

- 13.1 Seek the views of the local highway officer as to what they know about the street.

14.0 Stopping up order

- 14.1 Has this been carried out? Check the online London Gazette for any stopping up order ever having taken place?

15.0 Side Roads Orders

- 15.1 This is an essential piece of documentary evidence that would automatically remove an entry. It should be remembered that the street may be just realigned or similar so the record would be updated accordingly.

16.0 Next steps

- 16.1 In any report produced there needs to be an analysis of the findings of the research and to include a note as to why the street is considered not to be a highway maintainable at public expense. If it is decided the street should be removed then a plan should accompany the report to identify the full extent of the street to be removed.
- 16.2 Any recommendations will be sent to the Local Ward Members to gather comments to be included in the report.
- 16.2 The report and plan would be sent to the Environmental Services Portfolio Holder for an appropriate decision. If accepted the street can be amended

accordingly on the List. Notification of any deletions will be sent to the Local Ward Members and Parish Council.

1.0 List of Streets Legislation and Advice

There have been three pieces of legislation directly concerning the List of Streets:

- Public Health Act 1925
- Highways Act 1959
- Highways Act 1980

The first piece of legislation was under Section 84 of the Public Health Act 1925. It should be noted that this requirement applied to Urban District Councils only so any maintainable highways within the rural areas were not listed.

2.0 Public Health Act Section 84 (1) and (2):

“Every urban authority shall, within six months after the commencement of this Act [8th September 1925], cause to be prepared a list of the streets within their district which are repairable by the inhabitants at large.

Any list prepared under this section shall be open to the inspection of any person, without payment, during the ordinary office hours of the urban authority”.

The 1925 legislation and requirement survived until 1959. In this year the passing of the 1959 Highways Act was made which served solely as a consolidation Act to the 1835 Highways Act. The relevant part was section 38(6) and once again the only obligation to produce a list of maintainable highways was given to urban authorities.

3.0 Highways Act 1959 Section 38(6):

“The council of every borough and urban district shall cause to be made, and shall keep corrected up to date, a list of the streets within their area which are highways maintainable at the public expense; and every list made under this subsection shall be kept deposited at the offices of the council by whom it was made and may be inspected by any person free of charge at all reasonable hours”.

The requirement to list all highways maintainable at public expense was included in the 1980 Highways Act and like in 1959 was only a consolidation Act. The relevant part is found in sections 36(6) and (7). This time the requirement to keep the list of highways maintainable at public expense included the rural areas and specified where the lists can be found.

4.0 Highways Act 1980 Section 36 (6) and (7):

“The council of every county and London borough and the Common Council shall cause to be made, and shall keep corrected up to date, a list of the streets within their area which are highways maintainable at the public expense.

Every list made under subsection (6) above shall be kept deposited at the offices of the council by whom it was made and may be inspected by any person free of charge at all reasonable hours and in the case of a list made by the council of a county, the county council shall supply to the council of each district in the county an up to date list of the streets within the area of the district that are highways maintainable at the public expense, and the list so supplied shall be kept deposited at the office of the district council and may be inspected by any person free of charge at all reasonable hours”.

It should be noted that the requirements have altered slightly since 1925. The main points being that the “list” is to be inspected free of charge but also in the 1980 Act was a requirement to place a copy in each of the borough offices of the council. Here in Cheshire East Council although it is a Unitary Authority, copies are still placed in the old offices of the former boroughs.