

MEMORANDUM

Economy and Infrastructure Directorate

From: Dean Ward – Head of Highway Infrastructure

Date: 29/11/2024

To: Andy Williams - Centrick

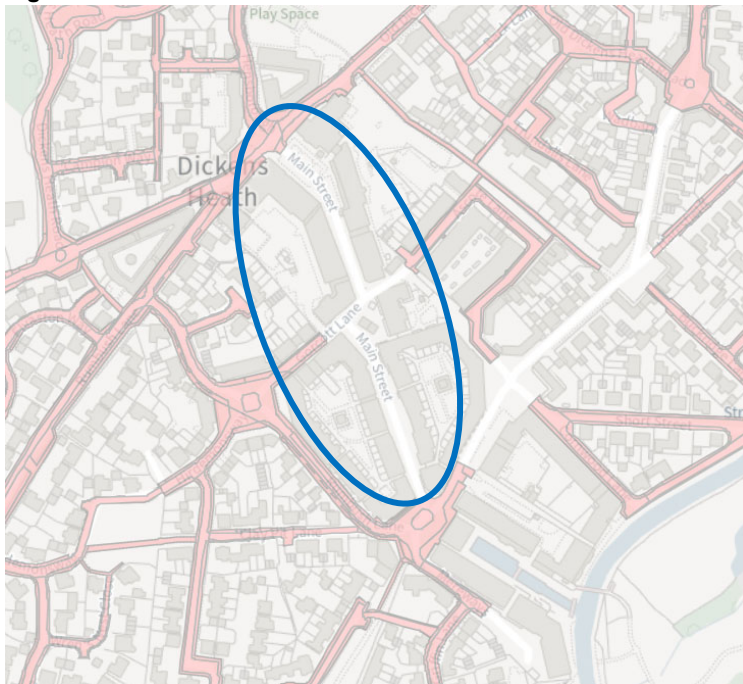
File Ref: DHMS-01

Subject: Dickens Heath Main Street – Position Statement

This memorandum is provided to clarify SMBC's position with regards to the current unadopted status of Dickens Heath Main Street.

For clarity, the extent of current highway adoption is shown in pink on Figure 1 below with Main Street shown to be unadopted and circled in blue.

Figure 1: Dickens Heath Main Street



Discussions have been ongoing with Kingsburgh Consulting, who are working with the owner's liquidators over the potential adoption of the private streets in Dickens Heath Village Centre. A copy of the plan showing the areas under consideration is shown in Figure 2 below.

Whilst informal discussions with Kingsburgh Consulting have been undertaken, at present, SMBC have received no formal request to adopt Main Street under Section 37, Section 38 or Section 228 of the Highways Act 1980.

Section 38 of the Highways Act 1980 allows SMBC as Highway Authority to decide whether to enter into a legal agreement with a developer to adopt highways, provided they are constructed to SMBC's requirements, standards and specifications. In the absence of an agreement, this section alone however places no obligation on SMBC to adopt any assets maintainable by the public purse regardless of whether the technical standards for condition are met.

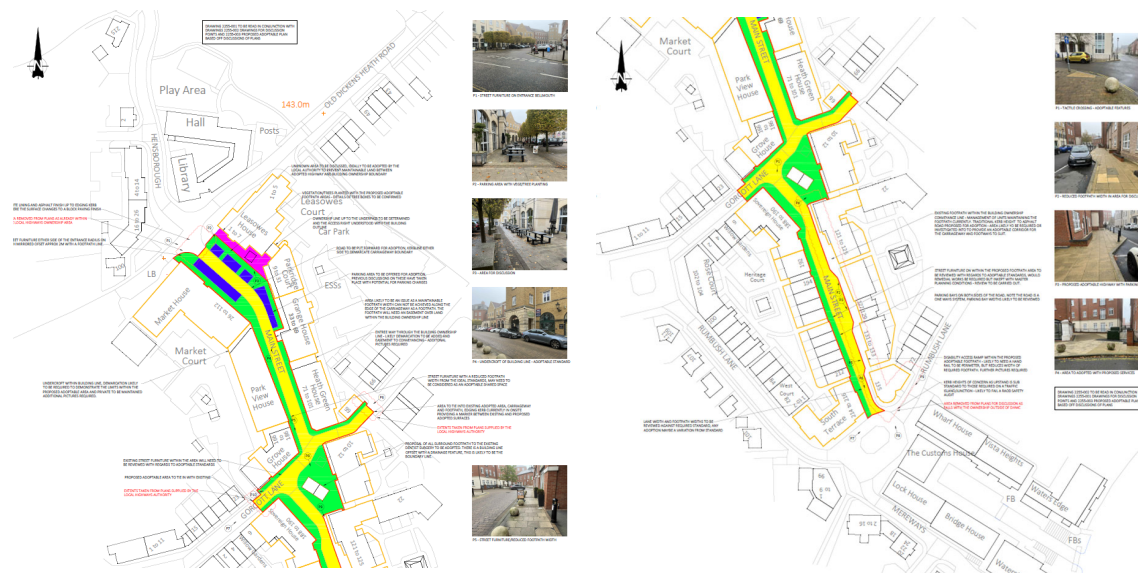
Road adoption is a process where a street in private ownership becomes maintainable at the public expense. A 'private street' is defined in Section 203 of the Highways Act 1980 as 'a street that is not a highway maintainable at the public expense' and this means that the responsibility and liability for its maintenance falls to the landowner.

In the case of existing private streets SMBC may adopt them in the following circumstances:

- (i) if requested to do so under Section 37 of the Highways Act 1980 provided they are constructed to a suitable standard; and
- (ii) pursuant to its powers under Section 228 of the Highways Act 1980. This allows SMBC to declare the street as a public highway so long as it connects to an existing public highway.

The full council Section 38 policy and guidance document for adoption of highways is available on our website¹ and provides a full set of technical requirements and standards that any asset would be required to achieve to be considered “adoptable” regardless of whether they were proposed under Section 37, Section 38 or Section 228.

Figure 2: Dickens Heath Main Street Ownership



It is our understanding that the Dickens Heath Management Company Limited (DHMC) is the legal entity responsible for running/managing the 'estate' which comprises 410 residential and commercial properties of the much larger Dickens Heath village.

Prior to Christmas 2023, a 'stop' was applied by the management company to subcontractor payments due to financial pressures meaning maintenance is no longer being undertaken.

The 410 Leaseholders cannot feasibly support the ongoing maintenance/renewal of the Main Street's Road/pavement assets including street lighting and drainage, especially given that such assets are used by all residents and visitors to Dickens Heath and noting the significant development of Dickens Heath and surrounds, which has increased the usage of the Main Street road/pavement assets.

The condition of the public realm is deteriorating as minimal maintenance works are taking place at the present time and economic pressures on residents and retailers have also been brought to SMBC's attention.

¹<https://www.solihull.gov.uk/sites/default/files/2021-08/Developers-Design-and-Highway-Adoption-Guide.pdf>

In its current condition, adoption by SMBC would be considered unlikely as there are very limited asset condition information and as-built records for construction, electric circuits and drainage details meaning the S37 / S38 requirements are unlikely to be achieved as there is no way for Officers to determine whether the highways (and its assets) meet the standard design details without significant intrusive works. Additionally, adoption comes with financial risks which could be considerable as initial estimates suggest that SMBC could incur remedial costs in the order of £2m to bring these areas up to adoptable standards. This cost does not take into account the ongoing maintenance throughout their lifetime.

Should full details of the technical construction of Main Street be located and provided to SMBC under a formal submission (S37, S38 or S228), this will be reviewed and an updated position provided considering the revised information.

In light of the above, SMBC as the Local Highway Authority proposes to take no further action at present and recommends that the responsible parties acting on behalf of the estate take legal advice on how best to dispose of their obligations.