

# Transport and Environment Committee

10.00am, Tuesday, 19 March 2013

## Powderhall and Hopetoun – Update Report

Item number	7.9
Report number	
Wards	12 - Leith Walk

### Links

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Coalition pledges	
Council outcomes	<a href="#">CO16</a> , <a href="#">CO19</a> and <a href="#">CO22</a>
Single Outcome Agreement	<a href="#">SO4</a>

### Mark Turley

Director of Services for Communities

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# Executive summary

## Powderhall and Hopetoun - Update Report

### Summary

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Previous reports to Committee, as listed below in the *Background Reading* section, detailed the difficulties encountered in completing the road adoptions at both the Powderhall and Hopetoun 'village' developments.

Adoption is the process whereby new roads within developments, built in accordance with Road Construction Consents (RCCs) issued by the Council, are added to the list of publicly maintained roads.

Council Officers and the Convenor of this Committee have met with Taylor Wimpey's Technical Director and legal representative and discussed with them a proposal to amend the adoption request to omit the parking bays. This omission is as per the request of the residents of both developments.

After consideration, the developer rejected this proposal and requested that the Council adopt the roads in full. This request is in accordance with the RCC agreements between the Council and Taylor Wimpey and the requirements of the Roads (Scotland) Act 1984. As a result the Council is obliged to add all the footways, carriageways and parking bays, which were included in their RCCs, to its list of publicly maintained roads.

The Council's legal advice is:

- 1 regardless of whether or not the parking bays are adopted, as the bays form part of the road, the residents cannot lawfully control or issue fines to non residents parking in these bays;
- 2 the Council cannot competently promote a Traffic Regulation Order to stop up the parts of the road that form the parking bays.

The Transport, Infrastructure and Environment Committee, at its meeting of 27 July 2010 approved a recommendation to offer owners/occupiers a discounted residents parking permit. Whilst this does not satisfy the desires of the residents this is the only competent option open to the Council. The creation of unique parking zones for the 'villages' would, in addition to preventing commuter parking, prevent N1 permit holders parking in the developments.

## Recommendations

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It is recommended that the Committee:

- 1 notes that Managing Director of Taylor Wimpey East Scotland Ltd has confirmed to the Council that they do not wish to amend the terms of their original Road Construction Consents; and
- 2 notes that further discussions between the Managing Director of Taylor Wimpey East Scotland Ltd, the Convener and the Acting Head of Transport will take place on the matter.

## Measures of success

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To ensure appropriate assistance is given to residents to the extent compatible with the Council's statutory obligations.

## Financial impact

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If Controlled Parking Zones for the villages are introduced the proposed discounted permits potentially means a loss in income of £200,000 per annum. This will be absorbed in the Parking revenue budget.

## Equalities impact

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Not applicable. This report relates to developments given planning permission in 1999 and 2000. Equalities impact matters were considered as part of consideration of the applications in accordance with procedures in place at that time.

## Sustainability impact

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Not applicable. The maintenance and control of the parking bays is the only matter under consideration. Regardless of the final decision the parking bays will be used in the same manner.

## Consultation and engagement

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Meeting - Committee Convener with Taylor Wimpey Technical director and Transport officers on 20/11/2012.

## Background reading/external references

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[http://www.edinburgh.gov.uk/download/meetings/id/36509/item\\_no\\_61-powderhall\\_and\\_hopetoun-parking\\_on\\_roads\\_within\\_developments-response\\_to\\_motion\\_by\\_former\\_councillor\\_gordon\\_mackenzie](http://www.edinburgh.gov.uk/download/meetings/id/36509/item_no_61-powderhall_and_hopetoun-parking_on_roads_within_developments-response_to_motion_by_former_councillor_gordon_mackenzie)

[http://www.edinburgh.gov.uk/download/meetings/id/36746/minute\\_13-09-12](http://www.edinburgh.gov.uk/download/meetings/id/36746/minute_13-09-12)

[http://www.edinburgh.gov.uk/download/meetings/id/14143/new\\_development\\_roads\\_in\\_controlled\\_parking\\_areas-update\\_report](http://www.edinburgh.gov.uk/download/meetings/id/14143/new_development_roads_in_controlled_parking_areas-update_report)

[http://www.edinburgh.gov.uk/download/meetings/id/14150/minute\\_270710](http://www.edinburgh.gov.uk/download/meetings/id/14150/minute_270710)

[http://www.edinburgh.gov.uk/download/meetings/id/13866/controlled\\_parking\\_scheme-management\\_of\\_provision\\_within\\_housing\\_developments](http://www.edinburgh.gov.uk/download/meetings/id/13866/controlled_parking_scheme-management_of_provision_within_housing_developments)

[http://www.edinburgh.gov.uk/download/meetings/id/13863/minute\\_290708](http://www.edinburgh.gov.uk/download/meetings/id/13863/minute_290708)

## Powderhall and Hopetoun - Update Report

### 1. Background

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- 1.1 The RCCs granted to Bryant Homes (now Taylor Wimpey), in 1999 and 2000, by the Council, in its capacity as a local roads authority, included the roadside parking bays. As such, from the date when the footways, carriageways and parking bays came into use they assumed the full legal status as roads, and their use, including the management and enforcement of parking, can only be regulated by the City of Edinburgh Council.
- 1.2 The residents have advised the Council that when these properties were marketed by the developer's selling agents it was understood by the residents that the disputed parking areas were private and for the sole use of the residents in the 'villages'. It is understood that the residents' property factors subsequently employed private contractors to issue civil fines to non-residents using the parking spaces. Enforcement of parking on public roads, as these are, by a private contractor is illegal, however the residents wish to continue with this practise.
- 1.3 The matter was most recently considered by Transport, Infrastructure and Environment Committee at its meeting of 13 September 2012. The decision was 'to note that that further discussions would take place with residents, the developer and other stakeholders as necessary and that a report be brought back to Committee as soon as possible'.
- 1.4 Under the terms of the Roads (Scotland) Act 1984 the Council must add the roads, built in accordance with an RCC issued by it, to its list of publicly maintained roads within 12 months of application by the developer. Taylor Wimpey applied in February 2012 and all required remedial works have been completed at both sites.

## 2. Main report

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- 2.1 As per the decision of 13 September 2012, the Convenor has met with senior technical and legal representatives of Taylor Wimpey. It has not been possible to arrange a joint meeting with the company and the residents' representatives. The residents' representatives have indicated to the Convenor that they wish the parking bays to be excluded from the adoption and subsequently 'stopped up' (ie removed from the list of roads).
- 2.2 At the meetings referred to above, a proposal for Taylor Wimpey to amend the adoption requests omitting the parking bays was discussed. The Council subsequently wrote to the company requesting it considers this option. The Company have rejected this and lodged a formal request on 21 January 'that we conclude the adoption process for the roads and pavements as contained in our applications for adoption, at both developments without any further consideration of partial or hybrid arrangements'.
- 2.3 Given Taylor Wimpey's recent confirmation (Appendix 3) that they wish the Council to proceed with full adoption any action by the Council to further delay may result in challenge by them under Section 16 of Roads (Scotland) Act 1984. As Taylor Wimpey have complied in full with the terms of their RCC it is probable that any such challenge would be successful.
- 2.4 In addition to confirming that a decision to further delay adoption would be *ultra vires*, the Council Solicitor has indicated that any attempt by the Council to promote a stopping up of the parking bays, whether these are adopted or unadopted, would also be incompetent. This is because the statutory test for promotion of such an Order (that the parts of the roads to be stopped up are 'no longer required for the purpose for which they were built') is not met.
- 2.5 Given the above, if the parking bays were to remain unadopted the residents would be left in a situation where they have to pay to maintain the parking bays but cannot control them. Adoption takes the maintenance burden from them and, with the renewed offer of discounted residents' permits, it is considered that promotion of an order to include all the roads in the Controlled Parking Zone (CPZ) is the only solution that can be competently progressed by the Council.
- 2.6 At its meeting on 27 July 2010, the Transport, Infrastructure and Environment Committee decided to offer the Powderhall Owners Association a scaled reduction in annual permit over a period of four years. It is considered appropriate to extend this reduction to the residents of Hopetoun 'village'.
- 2.7 The terms of the offer were that in year one (post incorporation of the streets in the CPZ schedule) a free permit is offered, in year two a 70% reduction is offered, in year three a 50% reduction and, finally, in year 4 a 30% reduction. In year 5 full residents permit charges would apply.

### 3. Recommendations

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- 3.1 It is recommended that the Committee:
  - 3.1.1 notes that Managing Director of Taylor Wimpey East Scotland Ltd has confirmed to the Council that they do not wish to amend the terms of their original Road Construction Consents; and
  - 3.1.2 notes that further discussions between the Managing Director of Taylor Wimpey East Scotland Ltd, the Convener and the Acting Head of Transport will take place on the matter.

**Mark Turley**

Director of Services for Communities

## Links

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### Coalition pledges

### Council outcomes

CO16 - Well-housed – People live in a good quality home that is affordable and meets their needs in a well managed Neighbourhood

CO19 – Attractive Places and Well Maintained – Edinburgh remains an attractive city through the development of high quality buildings and places and the delivery of high standards and maintenance of infrastructure and public realm.

CO22 - Moving efficiently – Edinburgh has a transport system that improves connectivity and is green, healthy and accessible.

### Single Outcome Agreement

SO4 - Edinburgh's communities are safer and have improved physical and social fabric.

### Appendices

1 – Letter to Peter Matthews, Taylor Wimpey East Ltd dated 31 January 2013.

2- Letter from Peter Matthews, Taylor Wimpey East Scotland dated 25 February 2013.



Peter Matthews  
Taylor Wimpey East Ltd  
1 Masterton Park  
South Castle Drive  
DUNFERMLINE  
KY11 8NX

Date 31 January 2013  
Your ref  
Our ref T/TP/DC/ED/00/0031,  
ED/01/0017/SR521897/NF

Dear Mr Matthews

#### POWDERHALL AND HOPETOUN – ADOPTION

I write in response to the email of 21 January 2013 from Derek Wilson to Alan Howie and Andrew McBride in which it was indicated that, after discussion at a Regional Board meeting, you were no longer willing to consider applying for adoption of only the carriageways and footways.

This response is extremely disappointing given previous assurances that your company would work with elected members and Council officers towards a solution affording some degree of compromise with the wishes of the residents. This is especially regrettable in light of the fact that it appears it was selling agents employed by your company who implied to purchasers that the parking was private (contrary to the granted Road Construction Consents).

Councillor Hinds would be grateful for an opportunity to meet with you and members of your Board to discuss the matter further. In the meantime I have instructed that a report goes back to the Transport and Environment Committee on the 19 March 2013 advising of the latest developments, and noting that we will not be progressing with the adoptions until further notice.

Should you wish to discuss this further please contact me on the details below.

Yours sincerely

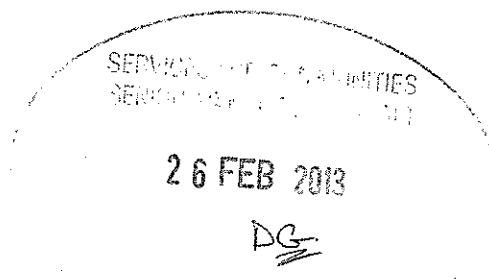
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J

**John Bury**  
**Acting Head of Transport**

**John Bury, Acting Head of Transport, Services for Communities**  
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# Taylor Wimpey



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Our Ref: PSM/TF/027

Your Ref: T/TP/DC/ED/00/0031D/01/0017/SR521897/NF

25 February 2013

Dear Mr Bury,

## Hopetoun & Powderhall, Edinburgh

I write further to your letter of 31 January 2013, in relation to the developments at Hopetoun and Powderhall, Edinburgh.

First, I would like to make you aware that the decision to instigate formal adoption, as intimated by Derek Wilson our Technical Director to your colleagues on the 21 January 2013, was not taken lightly and is supported by me and the Taylor Wimpey East Scotland Management Board. Whilst I appreciate your disappointment with the most recent events, I would like to make you aware that throughout the agreed period for negotiations, our representatives did work with the elected members and Council Officers at all stages, and we offered various options that were ultimately discarded for various reasons and at no stage did we frustrate the spirit of negotiations.

You may be aware that the agreement between Councillor Hinds and us was to collaborate for 12 weeks leading up to 21 December 2012, in an attempt to find a mutually agreeable solution to the issues at Hopetoun and Powderhall. From the outset we reserved the right to withdraw from the negotiations and ask that the Council formally conclude the adoptions process in the event negotiations failed to conclude a suitable solution by that date. It became clear by 21 December 2012, that a suitable solution was unachievable between all relevant parties and therefore we deemed it appropriate to request that your Officers progress the adoption in terms of the Roads Construction Consent for both developments, as per our earlier agreement.

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Taylor Wimpey East Scotland is a  
division of Taylor Wimpey UK Ltd

Second, I would ask you to refrain from making further comments regarding the manner in which Taylor Wimpey's selling agents acted, and that there has been any breach of the Road Construction Consents granted. To our knowledge there has been no evidence supplied to suggest that this matter resulted from any form of implied sales process. Indeed, our aim is to have the roads and parking spaces adopted without further delay in keeping with the requirements of both Road Construction Consents.

Third, I note that you are now recommending that adoptions will not be progressed further, and you intend going back to Committee in March to ratify this. This is extremely disappointing to us, as your letter of 21 December 2012 and the agreement between us and Councillor Hinds was predicated on the basis that we had the express right to request, without further questioning, adoption of the developments should an agreement not be reached by 21 December 2012.

Finally, I would be delighted to meet you and Councillor Hinds at the earliest opportunity to discuss the way forward, and I will ask my PA Trudy Fleming to liaise with your office to arrange a meeting. I intend to bring Derek Wilson and Scott Colquhoun our in-house Company Counsel.

Yours sincerely

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**Peter S Matthews**  
Managing Director