

A report by the Scrutiny and Audit Committee

Unadopted Roads

February, 2014

SAC Report No. 25

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SUMMARY AND RECOMMENDATIONS

This report sets out the process, conclusions and recommendations of the 25th investigation undertaken by Aberdeenshire Council's Scrutiny and Audit Committee, into "Unadopted Roads".

The Committee, having considered the questions originally set in the terms of reference for the investigation, and the evidence provided by witnesses and included in the documents submitted for its consideration, including a survey of other Scottish councils, is aware that Aberdeenshire's approach is not significantly out of step with that adopted by other local authorities. Other councils had attempted to address the matter through grant aiding frontagers, (the owners of properties served by non-public roads). In Aberdeenshire, a previously approved scheme, established in 2009, which had been instigated to address the challenges, taking the roads' surface to a more acceptable standard, had seen its funding withdrawn from budget allocation; the Committee would like to see this scheme extended, with appropriate funding.

Councils are funded by central government to maintain public roads and officers advised members of the continuing challenge of keeping these roads; there was currently a substantial backlog of maintenance work on that network.

The Committee note that the future creation of additional non-public roads was likely to diminish as the coupling of Roads Construction Consent to planning permission now required roads to be made, to adoptable standard, to serve new developments. This had reduced the incidence of house-builders failing to deliver roads associated with residential developments. Work had similarly been undertaken, following Local Government Reorganisation in 1996, to take up to adoptable standard those roads built by District Councils, as social housing providers, to serve council estates.

The Committee would recommend the undernoted be considered:

- a. That Community Councils, and other community stakeholders, be asked to review, for officer consideration, the road network in their area and provide suggestions of routes which the Council may wish to consider adding to the Statutory List of Public Roads, or upgrade to a more acceptable/ usable standard, being justified as being those where there was a clear community interest or concern;
- b. That the dormant budget line relating to the 50% grant scheme for frontagers be (1) reinstated and (2) extended to allow for "community groups" and stakeholders as well as owners, with roads surfaces being taken to acceptable and not adoptable standard;
- c. That the new scheme be actively advertised;
- d. That the Council considers the development of a regime of reactive surface maintenance, including the repair of potholes, on non-statutory roads of public benefit. Such a regime, to be provided at the Council's cost, would be limited to repairs which are necessary to protect the safety of road users, in terms of Section 15 of the Roads (Scotland) Act, with no formal commitment for future repairs, and be prioritised in line with available budget provision; and
- e. That consideration be given to asking the Scottish Government to extend existing grant schemes to include contribution to road works on unadopted roads, whether in an urban or countryside setting.

1. INTRODUCTION

1.1 This investigation

1.2.1 The Scrutiny and Audit Committee, at its meeting on 18 September, 2013, agreed that a mini-investigation be undertaken into "Unadopted Roads." The work began on 28 October, 2013, with a scoping and lead service briefing. Other Scottish local authorities were surveyed in the period to the end of December, 2013. A joint session with the Head of Roads and Landscape, Philip McKay and Head of Transportation, Ewan Wallace, (the latter in his role as current Chairman of the Society of Officers of Transportation in Scotland (SCOTS¹)) was held on 9 December, 2013. Consideration of the evidence and the drafting of this report continued to January, 2014.

1.2.2 Members who took part in this investigation are listed in the Appendix hereto.

1.2.3 The Committee chose to consider the topic as it was recognised to be a matter of public concern. At the outset, it was agreed that the purpose and objectives of the investigation should be to consider:-

- What percentage of Aberdeenshire's road network is made up of unadopted roads?
- Are there specific criteria which would allow the Council to undertake the necessary remedial work?
- Do other councils share this problem, and if so, how do they deal with it?
- Has this matter been considered by the Society of Chief Officers of Transportation in Scotland (SCOTS), and if so, what was the outcome?
- Is there any discretion at all to allow works on unadopted roads?
- Are there any funding opportunities which could be explored to address the problem?
- Is this a matter on which representations might be made to government to address?
- Is this a matter which impacts on the delivery of public services, such as Police, Fire and Rescue, and Ambulance?

The detailed brief for the Committee's investigation is available on the Committee's webpage at :- <http://www.aberdeenshire.gov.uk/about/scrutiny.asp>

2. How the investigation was progressed

The Committee undertook a range of different activities to enable it to carry out this investigation.

2.1 Documentation

2.1.1 A range of background documentation was provided to the Committee at the commencement of the investigation. This included information from both within and outwith Aberdeenshire Council:

¹ Society of Chief Officers of Transportation in Scotland, (<http://www.scotsnet.org.uk/>)

Internal documentation:-

- A. Reports to Infrastructure Services Committee on Unadopted Roads:
 - (a) Private (Unadopted Roads), 19 March, 2009;
 - (b) Private (Unadopted Roads) – Update, 13 May, 2010; and
 - (c) Private (Unadopted Roads), 19 August, 2011.
- B. Report to Infrastructure Services Committee, 30 January, 2014 – Response to Stage 2 Consultation on Scottish Rural Development Programme, 2014- 2020.

External documentation:-

- C. Responses to Survey of Scottish Local Authorities, November – December, 2013.

Websites:- http://www.aberdeenshire.gov.uk/planning/plans_policies/index.asp

2.2 Witnesses and evidence gathering

- 2.2.1 Members of the Committee met with the Heads of Roads and Landscaping and the Head of Transportation, Aberdeenshire Council officers. The Committee sought their views on the evolutionary history of the Council's, and its predecessors', approach to non-public roads and the issue of adoptable standard. Additional written submissions were received from the Council's economic development officers on whether there were any general grants which might be made available to frontagers to repair the non-public roads for which they were responsible.
- 2.2.2 In addition, a survey was made of other Scottish local authorities as to how they dealt with the matter.
- 2.2.3 Full details of the evidence given to the Committee by witnesses is available on the Committee's webpage at <http://www.aberdeenshire.gov.uk/about/scrutiny.asp>

3. WHAT PERCENTAGE OF ABERDEENSHIRE'S ROAD NETWORK IS MADE UP OF UNADOPTED ROADS?

- 3.1 The Head of Roads and Landscaping, Mr McKay, reported that currently there were around 330 kilometres of Private (Unadopted) Roads across Aberdeenshire. These varied from long rural stretches, serving a number of properties, to short lanes within settlements and translated to approximately 6% of the network. However, this is just a "sub set" of a wider "private" road network, of which no formal record was maintained.
- 3.2 The Committee was advised that Aberdeenshire has a backlog of work costed at circa £100M to keep the roads which it must, by statute, maintain. Updating figures from the known list of Private (Unadopted) Roads survey previously undertaken, any works outwith the statutory obligation would add an additional £70M to that list.
- 3.3 Mr McKay advised that the primary legislation covering the maintenance and management of road was the Roads (Scotland) Act 1984. Under the terms of the Act, Aberdeenshire Council was a roads authority, responsible for the management and

maintenance of public roads of which there were some 5,400km. The Council was also obliged to maintain a list of all public roads, commonly referred to as the Statutory List of Public Roads.

- 3.4 There was also a substantial network of roads across Aberdeenshire that were not public roads. This could lead to confusion, as the term “private road” was sometime used to distinguish them from the roads for which the Council was responsible, but had no legal basis. The Head of Roads and Landscape, Mr McKay, stressed that the public had identical rights of use and access over both categories of road. The only difference between a public road and a “private” road was that the former was managed and maintained from the public purse, whereas the latter was the responsibility of the landowners/frontagers. Mr McKay reported that the confusion was amplified further by the historical creation of a third category of road, the “Private (Unadopted) Road”. These roads were not in public ownership, but predecessor Councils, assessing them to be of some value to the overall road network, had been prepared, for a variety of reasons, to contribute to their maintenance. Section 14 of the Act gives roads authorities the permissive power to contribute to the maintenance of “private” roads.
- 3.5 The definition of “road” was not concise, but it was commonly accepted that if a roadway served five or more properties, it was a road; if it served less than five, it would be considered a private access. For example, a road leading to a single farm, or rural industry, would be defined as access.

4. ARE THERE SPECIFIC CRITERIA WHICH WOULD ALLOW THE COUNCIL TO UNDERTAKE THE NECESSARY REMEDIAL WORK?

- 4.1 Mr McKay detailed to the Committee the various provisions of the Roads (Scotland) Act 1984. Whilst Sections 13 and 14 of the Act empowered councils, as roads authorities, to compel frontagers to make improvements to their non-public roads, to bring them to adoptable standard, from that point onwards, the Council was responsible for the road and any repairs required to maintain that standard. Notices served under these Sections were rarely used.
- 4.2 Section 50 Notices were used for emergency repair issues, such as work necessary on dangerous buildings. The Head of Roads and Landscape reported that these, however, did not give the option to recoup any costs incurred.
- 4.3 Mr McKay suggested that the biggest barrier to greater involvement with the upkeep of non-public roads was the lack of resources, both financial, and, increasingly, in terms of manpower and plant. Should additional funds be made available to local councils, the priority would have to be catching up on the backlog of repairs to adopted roads on the Statutory List of Public Roads. The budget allocated for maintenance of the public roads was never underspent, so there was little possibility of transferring any surplus resources to works for which the Council had no obligation. Most councils did not staff their services to carry out 100% of scheduled work but relied on contractors to make up about 20% of resources in terms of workers and plant.

- 4.4 Mr McKay advised Members that whilst it would be desirable to have a better road network, across all categories of public and non-public roads, if the Council were to adopt another 300km roads, (the known total of the Periodically Maintained Unadopted Private Roads in Aberdeenshire,) this alone would prove an additional burden of £1.5M-2M on-going maintenance costs per annum, which in turn would mean a further re-adjustment of the current maintenance regime for the roads for which the Council had statutory responsibility.
- 4.5 He advised that Aberdeenshire Council had previously developed a scheme for covering a proportion of the cost under Notices issued under Section 13 of the Act. If the road were made up of households, then each would be asked to share the cost. If the road included a commercial interest, then they would be asked to pay slightly more than householders. If a majority signed up to it, then the works went ahead. Enforcing it on those who were unwilling to buy in to the scheme was a difficult aspect, he felt, especially as the sums involved could amount to tens of thousands of pounds.

5. DO OTHER COUNCILS SHARE THIS PROBLEM, AND, IF SO, HOW DO THEY DEAL WITH IT?

- 5.1 A letter was sent to the 31 local authorities. This may be seen on the Committee's webpage at <http://www.aberdeenshire.gov.uk/about/scrutiny.asp>. Responses were received from 14 Councils: Angus, Argyll and Bute, East Ayrshire, East Dunbartonshire, Dundee, Fife, Glasgow, Midlothian, North Ayrshire, Orkney, Perth and Kinross, Renfrewshire, South Lanarkshire and West Lothian.
- 5.2 It was clear that for many authorities, the scope of the potential problem had not been quantified. In some cases, they did not know the length, and had not the resources to survey the condition of the private network. For some, such as Glasgow, it was clearly not an issue as most of their roadways were already public roads, and any tied to new developments covered by the bonds of the Roads Construction Consent needed in parallel to planning permission. Similarly in Renfrewshire, it was reported that the "rural road network is almost entirely public, and generally it is only access to single farm units that remain private." In most areas, the councils found it a challenge to keep those roads within their direct and statutory responsibility up to standard – there was no capacity, either in terms of budget availability, or resources of plant and manpower, for contemplation of extending current responsibilities. In West Lothian, a scheme similar to that dormant within Aberdeenshire had been in place; the experience paralleled that of Aberdeenshire, with only sporadic and very low volume take up by frontagers as road managers. "The scheme started in 1998 and although there were plenty of enquiries, residents did not usually take proposals forward. About four (4) schemes were done. There is no budget allocated to this initiative at present."
- 5.3 All respondents stressed that there was no obligation for the councils to become involved in the condition of non-public roads, but that Section 13 of the Roads (Scotland) Act 1984 gave local authorities the power to compel works to be done to adoptable standard, if the roadway met specific criteria, was a source of concern, and the frontagers unwilling to take voluntary action. This route was seldom pursued as the costs of such works were vast, greatly in excess of what might be needed to bring

the roads to an acceptable, useable standard. It was also the case that the powers were perceived to be “in reality, a pointless exercise, due to multiple ownership, absent landlords, inability to fund improvements etc.”

- 5.4 Renfrewshire Council reported that, whilst they had never had a formal policy on improving non-public roads to acceptable standard, they had, on occasion, “plugged” potholes to assist local residents with the maintenance of their private streets. In Midlothian, although there was no budget provision to carry out work to non-public roads, “it has been the practice to carry out minor works to a limited extent without prejudice, where there may be a danger to life or limb.” This could be done in terms of Section 15 of the Roads (Scotland) Act.
- 5.5 None of the councils found roadway condition to be an impediment to the delivery of local services, or an inhibitor of economic development. In the case of council services, an alternative location, or route, was negotiated. School Transport operators were, Midlothian reported, “left to decide whether they use a private road in poor condition or not. Most (probably about 95%)...choose not to use the road...and another collection location is agreed that is acceptable to both the parents and the operators.”

6. HAS THIS MATTER BEEN CONSIDERED BY THE SOCIETY OF CHIEF OFFICERS OF TRANSPORTATION IN SCOTLAND (SCOTS) AND, IF SO, WHAT WAS THE OUTCOME?

- 6.1 From Mr Wallace, Head of Transportation, the current Chair of SCOTS (Society of Chief Officers for Transportation in Scotland,) the Committee heard that the issue of unadopted roads, or non-public roads, was not one which had come to prominence during his involvement with the Society. SCOTS, as the recognised professional grouping, was working closely with the Improvement Service (IS) on a number of projects, some of which linked to similar works in England and Wales. During their work with the Scottish Government over the last three years, road maintenance, across the whole road network, had been pinpointed as a topic for a national maintenance review.
- 6.2 Whilst the response to letters sent out on behalf of the Committee on the subject of unadopted roads had been disappointing, Mr Wallace felt this partially reflected that the issue was not flagged up as a major concern. Most local authorities were trying to get the most from the money allocated to them, and this meant keeping the adopted road network in the best possible condition was the priority.

7. IS THERE ANY DISCRETION AT ALL TO ALLOW WORKS ON UNADOPTED ROADS?

- 7.1 Officers advised the Committee that it was up to each council to determine for itself an approach to undertaking works on non-public roads. Mr McKay, Head of Roads and Landscape, suggested that the lack of resources were the main impediment to restricting action to roads for which Aberdeenshire had a statutory obligation. This

was a barrier in financial terms, and increasingly, in terms of manpower and plant. Should additional funds be made available to local councils, the priority would have to be catching up on the backlog of repairs to adopted roads on the Statutory List of Public Roads. The budget allocated for maintenance of the public roads was never underspent, so there was little possibility of transferring any surplus resources to works over which the Council had no obligation. Most councils did not staff their services to do 100% of scheduled work but rather relied on contractors to make up about 20% of resources in terms of workers and the expensive road maintenance plant.

- 7.2 The Committee heard from Mr McKay that there were instances where the Council acted like a frontager in respect of operational responsibilities for non-public roads. The example of a Council operated graveyard, accessed along an unadopted road was used; in this case, the Council had funded the necessary surface repairs to bring the road up to an acceptable standard, in order that people could access the cemetery.
- 7.3 Aberdeenshire Council had previously had a funding scheme to help maintain the surface of the roads. Prior to this, in Grampian Regional Council days, from 1976 – 1996, there was investment in “Public Unadopted Roads”, in terms of the discretionary powers of Section 14 of the Roads (Scotland) Act 1984. This investment was suspended in 1996 and replaced with the Aberdeenshire scheme in 2009. The subsequent poor take up, led to the revised scheme’s suspension in 2012 when its budget had been removed. Mr McKay stressed that it should not be assumed that previous schemes had up-graded the improved roads to adoptable standards; this was not the case – council work was usually to seal the surface and extend usable life. The 2009 scheme provided surface maintenance to roads meeting the set criteria, including being a through road, number of vehicles using, and houses served. Funding was restricted to a maximum 50% contribution.
- 7.4 A final consideration which ought to be borne in mind, Mr McKay suggested, was fairness. Whilst it might be argued that the current system was unfair to council taxpayers in Aberdeenshire who lived on unadopted roads; a rebuttal could be made that the price paid for a property should reflect any responsibilities, or liabilities, which came with it. This should be made very clear to any purchasers at the outset.

8. IS THIS A MATTER WHICH IMPACTS ON THE DELIVERY OF PUBLIC SERVICES, SUCH AS POLICE, FIRE AND RESCUE, AND THE AMBULANCE SERVICE?

- 8.1 The Head of Roads and Landscaping advised Members that there were no reported complaints from other public services of their service being detrimentally impacted by the conditions of non-public roads in Aberdeenshire. Their greatest difficulties came with winter weather conditions, snow, ice, blocked roads etc.
- 8.2 Mr Wallace, Head of Transportation, agreed and spoke of joint discussions with these partner organisations within the Health Transport Action Plan. Their control centres may have feedback in the state of the roads.

9. ARE THERE ANY FUNDING OPPORTUNITIES WHICH COULD BE EXPLORED TO ADDRESS THE PROBLEM?

- 9.1 The Committee was advised, in a submission from the Council's Economic Development officers, that there were no current schemes which could be used for funding the upgrading or maintenance of non-public roads. In some parts of Scotland, there might be access to some European money, such as LEADER, which might allow roads works but this was unlikely to be successful in Aberdeenshire.
- 9.2 Mr Brebner, Team Manager, European Policies and Programmes, reported: "I'm not aware of any EU programmes which could finance the upgrading of unadopted roads, apart from, perhaps, the Scotland Rural Development Programme (SRDP) in terms of improving access to the countryside. However, this would be stretching the eligibility criteria somewhat and anyhow the SRDP has now closed, with a new programme not due to be in place for some months. There is the possibility that other areas of Scotland were eligible for support through programmes specifically available for the Highlands and Islands who can access funds which Aberdeenshire cannot." He added that there might be grants to which landowners have access but that these should not be used for "main infrastructure" needs. "To join two existing public roads simply would not qualify".
- 9.3 In terms of community groups, and roadworks required to assist the access to places of public interest, Mr Brebner cited recent improvement works done at Haddo House and Estate. Undertaken under the umbrella of a wider environment improvement programme, these might serve as a model for other community based works but only when these were a small part of a larger action plan.
- 9.4 A final category where funding could currently be accessed for road improvements to the non-public network was where there was a need to access business space. Mr Brebner stressed that this would only apply to a single project and so this would not be relevant to the circumstances under consideration.

10. IS THIS A MATTER ON WHICH REPRESENTATIONS MIGHT BE MADE, FOR GOVERNMENT TO ADDRESS?

- 10.1 The Committee initially considered that, as the Scottish Rural Development Programme (SRDP) finished December 2013, and its replacement not yet been defined, it was possibly timely to look at making representations for road improvement works to be included in any future scheme, as the criteria for the replacement scheme might be capable of being amended.
- 10.2 The subsequent consideration of a report on the SRDP, submitted to the Infrastructure Services Committee on 30 January, 2014, dismissed this consideration. Although the specifics of the replacement scheme had not yet been determined, the budget available had been cut and it was thought very unlikely that there would be flexibility in the new scheme to allow for anything other than grants aimed specifically at fostering economic development.

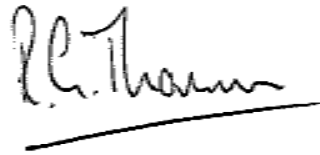
11. THANKS AND INVITATION FOR FEEDBACK

The Scrutiny and Audit Committee would like to record its appreciation of the cooperation and assistance it received from internal and external witnesses, in particular, Mr McKay, Head of Roads and Transportation.

Each investigation undertaken is a learning experience for the Committee. It would welcome any feedback or comments from participants or interested individuals on the investigation process and this report.



Cllr Gillian Owen
Chairman, Scrutiny and Audit



Cllr Richard Thomson
Vice-Chair, Scrutiny and Audit

APPENDIX**INVESTIGATION PROGRAMME AND WITNESSES HEARD**

DATE	ACTIVITY
28 October, 2013	Investigation scoping/Lead service briefing Philip McKay, Head of Roads and Landscaping Councillors Owen, Thomson, Farquhar, Ingram, Ross, Shand and Tait.
9 December, 2013	Joint session to consider responses from other Scottish councils/ Initial Wrap Philip McKay, Head of Roads and Landscaping, and Ewan Wallace, Head of Transportation, Aberdeenshire Council Councillors Owen, Thomson, Cullinane, Duncan and Ingram.
6 January, 2014	Wrap 2 Cllrs Owen, Thomson, Cullinane, Duncan, Farquhar, Latham, Shand and Tait.
20 January, 2014	Initial consideration of draft recommendations /Consideration of Wrap 1 and Wrap 2 Cllrs Owen, Thomson, Cullinane, Duncan, Farquhar, Ingram, Shand and Tait.
30 January, 2014	Consideration of draft report Cllrs Owen, Thomson, Cullinane, Duncan, Ingram, Shand and Tait.
6 February, 2014	Approval of revised draft report Cllrs Owen, Thomson, Cullinane, Duncan, Ingram, Latham, Shand and Tait.