



# **Development Design Guide**

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## **Appendix 8 – Highway Agreements / Obligations**

## Appendix 8 Highway agreements/obligations

### 1 - Advance Payment Code

The advance payments code (APC) forms part of the Highways Act 1980 (Sections 219-225).

The County Council will continue to apply the APC for new developments where 5 or more units are proposed, subject to the exceptions set out in Section 219 of the Highways Act 1980 and exemptions where one of the subject to the following criteria is met.

- It is established at planning stage that the roads are to be private and the Local Planning Authority has been advised to place appropriate conditions to secure the standard of construction and future maintenance of the road, OR
- It is established at planning stage that the roads are to be private and a section 106 agreement is in place that secures the standard of construction , including method of approving the design and construction , and future maintenance of the road; OR
- Where an APC notice is served and the developer provides a statement confirming that their intention is to keep the road private and provides evidence to the County Council to support this.

Under Section 219 the code secures payment of the expenses for carrying out street works in private streets next to new buildings. This makes sure that CCC can complete the roadworks if the developer fails to complete them. If work commences on a building before the appropriate sum has been paid or secured, the owner and the builder may have to pay a fine.. Exemptions to the APC code are listed in Section 219(4) of the Highways Act 1980..

Under Section 220, the APC is tied to passing building plans. The District Council must inform CCC within one week that they have passed the plans. If the code applies to the development and a payment is needed, CCC must serve notice of the sum that is required to be paid on the person who deposited the plans within six weeks of the plans being passed. Please note that the APC is not tied to planning approvals.

Section 221 states that where work is carried out in the street after a notice has been served, we can serve another notice substituting a smaller sum taking into account those works, and, where applicable, refund part of the deposit that has been made

Section 222(3) states that where a street is eventually made up under the private street works code, the money deposited under the APC can be used to discharge (cancel) the liability for road charges. We will refund any excess deposit which has not been used, to the person who is, at that time, the owner of the land.

Section 224 states that all transactions made under the APC must be registered in the register of local land charges.

Section 225 states that any sum paid to us must carry simple interest at the rate fixed by the Treasury under the National Loans Act 1968.

If work is carried out before the sum stated under the APC has been paid, Section 219(1) states that the owner of the land and the person carrying out the building are guilty of an offence and may be subject to a fine. Any further work carried out on the same building before payment is made is treated as a new offence. Please note that the fine applies to each building that is being constructed. Payment for the APC notice amount can be in the form of a cash deposit or by a [bond of surety](#).

Alternatively, completion of an Agreement under section 38 of the Highways Act 1980 will ensure that the works are monitored by the Highways Authority during construction, so eliminating the requirement for post construction investigation. Such an agreement will also effect the cancellation of the APC Notice at the Local Land Charges Register and the release of any APC deposits previously made to the council, together with any interest which has accrued.

## 2 - Section 38

The procedure for the adoption of new highways associated with development work under the Highways Act 1980, Section 38

### Preliminary Work

Work up to the granting of planning consent by Planning Authorities will be carried out by the Development Management Team (DMT). The DMT will negotiate with the Developer taking advice and working with Highway Network Team to agree works required within the development and if necessary any works within the Highway (Section 106 of Town and Country Planning Act 1990 or if necessary Section 278 Highways Act 1980).

### Technical Approval and Work Leading up to Signing of Section 38 Agreements

Prior to undertaking any work to progress a Section 38 Agreement, including design checks etc, the Developer should provide a written request that it is their intention to enter into a Section 38 Agreement with the Council and deposit an amount to cover these fees. Should the situation arise that the Section 38 Agreement is not completed, any fees due will be claimed back from the Developer.

For residential developments deposit shall be based on the number of houses:-

Number of Dwellings	Deposit required
5 – 25	£2,000
25 – 50	£4,000
50 – 80	£6,000
80 – 125	£8,000
125+	£10,000

For commercial /industrial estate developments these can be determined on a case by case basis taking into account the length of proposed highway to be adopted.

Following a request to enter into a Section 38 Agreement the Highway Network Team undertakes all highway design checks, agree adopted areas, calculation of Greenfield Site Value and Bond figure etc.

### Calculation of Bonds

The Greenfield Site Value and Bond figures are calculated using current cost available in Appendix 5.

### Commutated Sums

Developers will be required to contribute towards the cost of future maintenance of areas, features or materials that are extra over the basic facilities that are necessary for the safe and efficient operation

of the highway and are outwit the Council's standard specification. The contribution would be made via the payment of a commuted sum for future maintenance.

The commuted sum, payable upon completion of the Section 38 Agreement will be held in an interest bearing account and made available to the Highway Network Team via the Legal Services Department who would, upon a suitable instruction from Highways, request that Finance transfer the appropriate sums to the project codes supplied by Highways.

## **Safety Audits**

Safety audits (Stages 1, 2, 3 and 4) shall be paid for by the Developer and carried out in accordance with the Highways Agency document HD 19/15 "Road Safety Audit" (DMRB Volume 5) and Service Procedure 09/031 Road Safety Audit. Safety Audit Stage 1 will be reviewed by DMT.

## **Financial Provisions**

Prior to any works commencing on the progressing of a Section 38 Agreement the Developer should provide an advance payment towards the design checks as stated above.

This advance payment will be ultimately deducted from actual design/plan checking costs incurred by the Council.

The following financial provisions are contained in Standard Section 38 Agreements:-

Clause 16(1) of the Section 38 Agreement provides that the Developers shall pay to the

Council:-

(a) The sum of £1500 or 8% (10% if works have already commenced on site resulting in additional inspections) of the Estimated Cost (Greenfield Cost), being (£><) (whichever is the greater) in respect of the costs incurred by the Council in inspecting the works.

(b) The sum of £>< in respect of the actual design/plan checking costs incurred by the Council.

(c) The actual administrative and legal costs incurred in connection with this Agreement subject to a minimum of £ 500.

Clause 16(5(i)) of the Section 38 Agreement provides that:-

"In addition, the Developer shall when called upon to do so, pay the actual costs incurred (if any) in connection with any Traffic Regulation Orders which are required in connection with the Works together with any other costs incurred by the Council as a result of changes arising as a result of Safety Audits etc following the completion of the Agreement".

Clause 16(1) (d) of the Section 38 Agreement provides that :-

The Developer shall pay the commuted sum of £>< in respect of the future maintenance of the items listed in Schedule 2.

## **SECTION 278 AGREEMENTS**

### **Introduction**

Cumbria County Council has a statutory duty to provide and maintain a network of roads and to secure the expeditious movement of traffic on that network. The aim is to ensure the safe and free flow of traffic on these routes. That may mean limiting the formation of new accesses, and ensuring

that the implications for road safety and traffic flows are taken into account when planning applications are made to develop land in the vicinity of roads.

#### General Approach

Cumbria County Council's purpose in giving advice and responding to planning applications as a highway authority are:-

To ensure that the local transport network is adequate to cope with the transport demands generated by development: in terms of road safety, walking and cycling, public transport and car and commercial traffic and taking into account of the needs of people with impaired mobility.

To use the development control process to assist in meeting the Council's transport policies. For example, to encourage the use of suitable and healthy transport modes, to reduce the environmental impacts of transport to improve road safety and to improve accessibility.

To make effective, on the ground, the linkage between land use and transport planning.

To guide developments to sites where the transport network is adequate to cope with generated travel demand in a sustainable way.

To ensure that developments that affect local or wider transport needs made a proportionate financial contribution to the County Council to enable implementation of measures that mitigate their transport impacts.

Development proposals vary greatly in size. Some will generate no additional demand for movement while large retail, leisure, employment or residential proposals will generate a significant demand. In some cases Developers will be required to provide further information on transport impact whilst for others a Transport Assessment will be triggered. The Transport Assessment will set out in detail what impacts the development will have on the transport network encompassing all modes and make proposals for mitigating these impacts, which could include a Travel Plan. The thresholds for developments needing a Transport Assessment are set out in the CLG (Communities and Local Government) and DfT document "Guidance on Transport Assessment".

Some developments will require the Developer to produce a Travel Plan setting out proposals for encouraging sustainable travel and transport patterns to reduce the transport impact of the development. Thresholds for production of Travel Plans are also set out in the CLG and DfT document "Guidance on Transport Assessment". For school alterations a Travel Plan will only be required if additional transport demand is likely to be generated by the proposal. Where a school has not already prepared a Travel Plan, a planning condition will be imposed to require a Travel Plan before the new extension is occupied.

As a first principle the Council will expect any Developer to meet the costs of making improvements to the transport network necessary to accommodate, in a safe and a sustainable way, the transport demands of the development. This may be achieved through planning agreements including those made under Section 106 of the Town and Country Planning Act. Such improvements will include good facilities for pedestrians, cyclists, public transport and car and commercial traffic and take account of disabled users.

## **The Statutory Framework**

3.1 Agreements for the private sector funding of highway works are made under Section 278 of the Highways Act 1980, as amended by Section 23 of the New Roads and Street Works Act 1991. A Section 278 agreement is essentially a financial mechanism. It is not a contract to carry out works.

Neither does it mean that the highway authority will support a Developer in any planning application or subsequent proceedings. (The planning decision is in any case likely to hinge on wider planning considerations). The provisions of a typical agreement are set out in the Annex to these notes. The following paragraphs give guidance on the application of Section 278 and the steps which will need to be taken by the Developer and others when such an agreement is required.

### **Conditions to be met**

The following conditions must be met before the County Council as Highway Authority will enter into a Section 278 agreement:-

The Developer must provide an abortive costs undertaking as a guarantee that all costs incurred by the Council will be paid whether or not the Section 278 Agreement is completed.

The Developer must provide a cheque in the sum of £2,000 as an advance payment of the Council's design check fee.

The Council must be satisfied that the agreement will be of benefit to the public;

The Developer must normally be in a position to dedicate to the County Council free of charge, all the land required for the Highway Works which are to be funded by the Developer or to make arrangements for such dedication (at their expense) by a third party.

The Council will not complete the Section 278 Agreement or authorise the commencement of the Highway Works until the required land has been dedicated;

### **Costs to be paid by the Developer**

It is a fundamental principle of all Section 278 agreements that the Developer must bear the full cost of the works. These will normally include, but are not exhaustive:-

The design check, and supervision of the works and the administrative expenses of the Council.. The fees will vary according to the nature and complexity of the tasks required under this heading. The need or otherwise for traffic regulation orders, public consultation, safety audits, and the cost of the Highway Works are therefore among the factors that will be taken into consideration.

Costs incurred in meeting any claims arising from the execution of the Highway Works, including claims for injurious affection under Section 10 of the Compulsory Purchase Act 1965 and claims under Part I of the Land Compensation Act 1973) and the costs of any Traffic Regulation Orders (either temporary or permanent).

In all cases, regardless of the nature of the Highway Works, a sum equal to any non-recoverable VAT incurred on the costs listed above.

A commuted lump sum calculated by the highway authority to cover future maintenance and energy costs of the Highway Works for a period of 30 years.

NB: Major Structures such as bridges will attract a longer future maintenance period of 120 years.

Legal costs for making the agreement.

The Council will seek a surety or bond or cash deposit to secure performance of the Developer's obligations under the agreement to complete the Highway Works.

## **Timing of Agreement - Interaction with other procedures**

Agreements may be made at any of a number of stages depending on circumstances. In most cases, they will follow the grant of planning permission, though occasionally it may be appropriate to conclude an agreement before the planning permission stage. In that event, the agreement will be conditional on planning permission being granted. This is likely to be the case, for example, where planning applications are to be determined following call-in by the Secretary of State or on appeal.

## **Steps to be taken by Developer**

Developers contemplating a Section 278 agreement should make an early approach to the County Council Area Highways office to open preliminary discussions. It is important that approaches of this sort are made in good time in view of the stages which have to be completed before an agreement can take effect and the relevant highway works carried out. On the other hand, it is desirable if the County Council staff are to give a reliable indication of their view on the possibility of an agreement, that the proposals shall be sufficiently worked up for the implications to the highway network to be assessed and the location and nature of works determined.

If it is established in the initial discussions that the County Council is prepared to consider the possibility of a Section 278 agreement, the next step will be for the Developer to submit further details. In particular, they will need to provide:-

- an assessment of the extent of the proposed Highway Works including outline drawings;
- a proposed timescale.

## **Arrangements for the carrying out of works**

Once the Council has the information necessary to prepare a first draft of an agreement, the Legal Services Unit will normally expect to issue that draft within about four weeks. Progress thereafter will inevitably depend on the complexity of the works involved and the Developer's ability to provide any further details necessary to allow the agreement to be completed.

No Highway Works can commence until a Section 278 Agreement has been signed and any land dedication has been secured. The developer must ensure that it is able to dedicate all of the land required to enable the Sec 278 Works.

Note - Dedication does not happen until the Certificate of Completion is issued (ie. Highway Works on 12 months maintenance, or other maintenance timeframe agreed by the Highway Authority).

## **KEY ELEMENTS LIKELY TO FEATURE IN A SECTION 278 AGREEMENT**

It is not feasible to give an example of a 'standard' section 278 agreement because the text of each agreement needs to reflect the individual circumstances of each case. However, a feature common to all of them is the need to protect the interests of Cumbria County Council as highway authority. A typical agreement, accordingly, may be expected to:-

- Cite the relevant planning permission;
- Provide for the Developer to pay the whole of the cost of the Highway Works and any costs incurred by the County Council as part of these works, any VAT that the County Council cannot recover; and other contingent expenses incurred in carrying out the Highway Works.
- Payment of the Council's fees will be required upon completion of the section 278 Agreement
- Provide for the Developer to pay a commuted lump sum in lieu of future maintenance and energy costs of the highway improvement works over a period of 30 years; (NB: Major

- Structures over a period of 120 years), usually upon the issue of the Certificate of Completion which places the Highway Works on maintenance.
- Provide for the Developer (or a third party) to dedicate any land needed for any Highway Works (at the Developer's expense), such dedication arrangements to be in place prior to commencement of the Highway Works.
- Provide for either party to terminate the agreement at any time before the commencement of the Highway Works, making appropriate repayments (in which event the Developer will pay the Council's abortive costs);
- Provide for interest to be added on payment of any monies overdue to the Council and on repayment to the Developer of any cash deposits lodged as security for the performance of the S.278 Agreement.
- Provide for a surety or cash deposit as security for the cost of the Highway Works and any commuted sums
- Payment of the council's fees (payable upon completion of the Agreement);
- Include a schedule detailing a summary of the Highway Works, by reference to the appropriate plans showing the extent of the Highway Works, which will be included or referred to in the S.278 Agreement. A separate plan should be provided to indicate any land to be dedicated as highway to the County Council.

## **Section 106**

Developers should take careful note of the County council policy on Travel Planning and Developer Obligations, which can be found at the following links:

Travel plan policy – <http://www.cumbria.gov.uk/eLibrary/Content/Internet/544/5505/4064516465.pdf>

Planning Obligation Policy

<https://www.cumbria.gov.uk/planning-environment/NSIPs/contributions/Policy.asp>