

Section 38/278 Agreements Guidance Notes for Developers



1 Design Check and Inspection Fee (DCIF)

A DCIF is required in connection with the preparation of the Legal Agreement and covers the Council's administration, design check and inspection costs.

The DCIF is calculated as 10% of the estimated value of the proposed highway works (or £2,000 whichever is the greater) which should include for traffic management costs, but exclude statutory undertakers works.

The DCIF is payable in accordance with the terms of the Agreement, however, for larger schemes an advance payment of 3% of the estimated value may be sought.

An additional fee may be required if the Council needs to commission additional checks to review the design of any specialist areas of work e.g: infiltration drainage systems, etc or the promotion of any new Traffic Regulation Orders in connection with the development works

The DCIF **does not include** for any checks or review of any Street Lighting, Traffic Signals or Structures (Retaining Walls, Bridges, etc) that may be included in the scheme. This will need to be arranged and paid for separately through East Sussex Highways who can be contacted on 0345 60 80 193 or at customer@eastsussexhighways.com

2 Bond / Deposited Sums

A Bond or deposited sum is required in support of the Agreement, initially for the Council's full estimated value of the proposed works, which are the subject of the Agreement.

Reductions in the amount of the Bond or sum will take place as construction progresses and at the request of the Developer, following the issue of the relevant certificates.

Under the terms of the Agreement, the Council may issue certificates for phases within a single agreement (a phase must be made up of a complete road).

3 Proof of Title

The Council requires proof of ownership of the land. When the draft Agreement is prepared the Council's Director of Law will request the submission of a copy of the Land Conveyance or up-to-date Office Copy Entries and Filed Plan (if the Plan is registered at HM Land Registry). At the time of signing of the Agreement this information must not be more than 3 months old.

4 Contractor (S278 works only)

For S278 works, the proposed contractor must be approved by the Council in writing prior to the commencement of works on the public highway.

5 Commencement of Works

S38 Works

Developers are asked to give at least 5 works days notice of their intention to commence site works. Please note that works commenced on the developer's site before the Section 38 Agreement has been completed are done so at the Developer's risk.

S278 Works

Please note: No works shall allowed to commence on the public highway until the Section 278 Agreement has been completed and all Pre-Commencement Matters are in place.

Developers must notify their works in accordance with the Traffic Management Act 2004. In general, at least THREE months written notice of their intended start date must be sent to the Council. This is to ensure the availability of road space and to comply with the Act.

We will also require at least 10 weeks notice for road closures, temporary speed limits etc, in order to procure the necessary temporary Traffic Regulation Orders.

In addition, notification must be given for all traffic control measures, a minimum 7 days in advance for 2 way lights and 21 days in advance for multi-way lights.

For further information on notifying works, please contact the Network Coordination Team on 0845 60 80 193.

6 Temporary signing of road works

It is the Developer's responsibility to ensure that all excavations, obstructions and hazards of any kind within the public highway and proposed adoptable highway shall be suitably protected at all times and lit at night in accordance with Chapter 8 of the DfT's Traffic Signs Manual. During this time all skips, scaffolds, hoardings, building materials and other obstructions may be placed and left on the highway only with the Council's written permission (in the form of a licence) and the holder of the licence shall observe its terms and conditions.

7 Mortgagee

If any of the land comprising the development is the subject of a mortgagee or legal charge, details in this respect will be requested by the Council's Director of Law when the draft Agreement is prepared.

8 Extent of Highway

For confirmation of the highway boundary, the Developer should contact our Highway Lands Information Team on 01273 482142. A charge may be made for this service.

Where the proposed limit of adoption extends across a carriageway, a row of inverted bull nose kerbs should be laid flush to mark the proposed extent of highway. Across a footway, a 150mm x 50mm concrete edging laid flush should be used.

Where there is a verge which is contiguous with private gardens and which the Council, as Highway Authority, is to adopt, special attention is necessary to ensure that the rights of the Council and statutory undertakers are fully understood by the purchaser of adjacent property. Much can be done by careful landscaping and consistent marking at driveways to indicate that such a verge is part of the highway. Boundaries across driveways, gardens and verges should be marked with 150mm x 50mm concrete edging laid flush with the surface.

9 Commuted Sums

For highway features that require increased maintenance or are non-preferred e.g. infiltration drainage systems, structures, ornamental street lighting columns etc. a commuted sum will be payable to the Council.

This sum is required to cover the additional costs of maintenance, repair and rebuilding.

Commuted Sum amounts will be advised where applicable and should be paid upon request during the Agreement process.

10 Public Foul and Surface Water Sewers

Foul and surface water sewers should be the subject of a separate adoption agreement with the relevant water authority or agent. These agreements will need to be in place before the S38 Agreement is signed.

11 Connections to Existing Highway Drains

The Developer must seek permission from the Council before an existing Highway Drain can be utilised for the disposal of highway surface water. Private surface water will not be allowed to discharge to a Highway Drain and must be disposed of by other means.

We have few records of our existing highway drainage and the Developer should make his own investigations in this respect. The Network Area Offices may be able to assist and they

may be contacted on 0845 6080193.

12 Timescales

The Agreement process (technical and legal) typically takes 3 months to complete, however, this is dependent on workloads, how well the proposed works are designed and on the co-operation of the Developer, his Agent and Legal Representative.

These guidance notes are intended to assist the process and failure to follow them can seriously effect the overall completion time

13 Surface Dressing & Slurry Seal Treatments

On sites where carriageway or footway has been constructed with an Asphalt Concrete surface course, the cost of the first surface dressing treatment or slurry seal treatment, calculated by the Council at the time of adoption, must be paid by the Developer.

14 Adoption

Under the terms of the Agreement, the roads will normally be adopted 12 months after the commencement of the maintenance period, ie on issue of the Part 2 certificate defined in the Agreement, provided that the Developer carries out any necessary remedial works to the satisfaction of the Council. During the maintenance period it is the Developer's responsibility to cleanse roads, footpaths, sewers and gullies, cut grass and generally keep all works in a safe state. The Council will not normally be prepared to adopt roads and footpaths until heavy construction traffic has ceased to use the estate roads. In such circumstances, the maintenance period is likely to be extended accordingly.

15 Supporting Information

For our initial assessment, all applications must be accompanied by the following: -

S38 Applications

- 1 copy of the Planning Decision Notice and Approved Planning Layout relating to the proposed works or development, as requested in Section 8 of the Application Form.
- 2 copies of a S38 Agreement Plan (see note 15d below)
- 2 sets of all drawings including: 1:1250 scale Location Plan, 1:500 scale layout plans, longitudinal and cross section plans, foul and surface water drainage layout, typical construction details, structures details (if applicable) and street lighting design (if applicable).
- Site Investigation Report (see note 15b below)
- Statutory Undertakers Responses (see note 15c below)

S278 Applications

- 1 copy of the Planning Decision Notice & Approved Planning Layout relating to the proposed works or development, as requested in Section 8 of the Application Form.
- 2 copies of a S278 Agreement Plan (see note 15d below)
- 2 sets of all drawings including: 1:1250 scale Location Plan, 1:500 scale layout plans, longitudinal and cross section plans, surface water drainage layout, typical construction details, structures details (if applicable) and street lighting design (if applicable).
- Stage 1 & 2 Safety Audit reports as appropriate at the time of submission.
- Statutory Undertakers Responses (see note 15c below)
- Traffic Signal Design & Specification where applicable

Following technical approval of the design of the proposed works, further copies of the drawings will be requested by the Development Control Engineer.

Electronic copies of drawings and documents are accepted and where possible should be

used to minimise paper wastage, for example during the approval process where revisions are likely to be most frequent.

15a Drawings

The layout plans should be drawn to 1/500 scale and incorporate a location plan, drawn to either 1/1250 or 1/2500 scale, as appropriate. The location plan should show the outline of the new roads by a broken line and the boundary of the land in the ownership of the applicant defined by red edging. Two of the layout plans should be coloured to reflect the areas the developer is offering for adoption and be coloured in accordance with the advice given in Section 6 below. If there is more than one landowner, each separate area of ownership should be edged in a contrasting colour on the drawing.

15b Site Investigation Report

A Soil Investigation Report is required, carried out by an independent specialist company, comprising:

- (i) An examination of the nature materials below the proposed highway, to the depth necessary to assure the County Council of the future stability of the construction (e.g. made ground, unsuitable material, swallow holes, etc.)
- (ii) An appraisal of nearby features which could have an impact on the design of the new road or a long term maintenance involvement (e.g. high ground, ponds, dams, streams and existing land drainage).
- (iii) The measurement of the strength and suitability of the ground at the proposed formation level of the proposed road and water characteristics of the subsoil.
- (iv) C.B.R. tests are required up to 30m intervals together with an assessment of the frost susceptibility of the subsoil.

The site investigation report should include a plan showing the locations of the boreholes and trial pits and appropriate sections to illustrate (i) to (iv) above. Where infiltration drainage is proposed, soakage test data must be provided together with an interpretative report.

15c Details of any Statutory Undertakers service protection or diversion works

The Developer must notify all of the Statutory Undertakers of the proposal to carry out works on the Publicly Maintainable Highway and obtain from them written confirmation whether or not their plant and apparatus is affected by the proposal. Details of their requirements, including costs for altering the apparatus affected by the proposed works must be submitted to the Council, together with copies of the Undertakers correspondence & marked up plans.

15d Agreement Plan

Agreement Plans are required to denote the boundary of land in the ownership of the Developer and also to clearly indicate the areas of carriageway and footway, drainage, street lighting and structures that are to be adopted. Occasionally, small areas are adopted as part of a S278 Agreement and these should be coloured up accordingly. The layout plans should be coloured as follows:

Section 38 works (Within the developer's site)

Areas to become Adopted Highway	Brown
Adoptable Highway Drainage (including gullies & connections)	Blue
Adoptable Street Lighting	Red
Boundary of land in Applicant ownership	Red
Non-adoptable Surface Water Drainage	Black
Adoptable Structures	Orange
Easements	Green

Section 278 works (Works on the public highway)

Area of works on existing highway	Pink
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| | Areas to become highway by Deed of Dedication | Brown |
| | Adoptable Highway Drainage (including gullies & connections) | Blue |
- 16** Health & Safety File
 In accordance with the CDM Regulations 2007, the Developer will be required to maintain and provide his Construction Health & Safety File for the site.
 Adoption of the site will not take place until this has been provided on completion of the Works.
- 17** Design Guidance
 Guidance for the design of new residential estate roads can be found in the Manual for Streets, published by the DfT, which can be downloaded from <http://www.dft.gov.uk/pgr/sustainable/manforstreets> .
 ESCC are currently preparing a local design guide which will supplement the Manual for Streets at a local level and outline our design preferences.
 Referral to the Design Manual for Roads and Bridges, produced by the Highways Agency, is occasionally required where the Manual for Streets is not applicable. This can be viewed at <http://www.standardsforhighways.co.uk/dmrb/index.htm> .
 For industrial roads, a Design Guide is available from our website or by email upon request.
 All new applications will be considered against the standards provided in these documents.
- 18** Construction Specification
 The Council has produced a Highway Construction Specification for Developers. This is available electronically by email or downloadable from the ESCC website as described below.
 A Specification Acceptance Form must be completed by the Developer as part of the Agreement process.
- 19** ESCC Website
 Copies of our design guidance, specification and various other documents can be downloaded from our website at:
<http://www.eastsussex.gov.uk/environment/planning/applications/developmentcontrol/roads.htm> .
- 20** Contacts
 To contact the Transport Development Control Team, please telephone 01273 482254, fax on 01273 481133 or email Development.Control.Transport@eastsussex.gov.uk .