

# Section 38 and Section 278 Guidance and Technical Notes

## General Notes

### 1. Fees

#### Administration and Inspection Fee

A fee is required in connection with the preparation of the Agreement and covers the County Council's administration, design check and inspection costs. The fee is based on the cost of the highway works. The fee structure is as follows:

- Schemes up to the value of £1M will be subject to a fee of 10%.
- Where the scheme cost exceeds £1M the additional scheme costs above £1M and up to £2M will be subject to a fee of 8%.
- Where the scheme cost exceeds £2M the additional scheme costs above £2M will be subject to a fee of 6%.
- The minimum fee chargeable for an agreement (i.e. for small schemes less than £30,000 in value) is £3,000, payable in full with the application.

#### Upfront Fee

An upfront payment of **5%** of the applicants estimated cost of the highway agreement works is required with the submission.

**Applications will not be registered until the required level of upfront fee is paid.**

The rest of the fee, including any adjustments that may be necessary as a result of the County Council's estimate being different to the applicants will be requested by our Legal Department when the agreement is prepared. WSCC will calculate the fees once technical approval is granted.

#### Method of Payment

The fee can be paid:

- [online](#) through our website – click Miscellaneous, Planning, and then S38, S278 and S278 Minor Works Application Fees.
- by [bank transfer](#).

#### Legal Fees

Legal fees are additional and will be collected by our Legal Department when the agreement is prepared.

#### Recovery of Costs associated with Design and Implementation Checks

All street lighting and illuminated equipment will be adopted and maintained through a Private Finance Initiative (PFI). Therefore, all design and implementation of street lighting and illuminated equipment will need to comply with the standard development specification and be approved by the PFI provider. The costs associated with the PFI provider

reviewing developer designs and checking installations will be recovered through the highway agreement process in addition to the 10% or minimum £3,000 administration and inspection fee.

Where the design and or installation of street lighting and illuminated equipment is undertaken by the PFI contractor then there would not be a requirement to recover costs through the agreement for these elements.

### **Specialist Design**

An additional fee will be required and recovered through the agreement if the County Council needs to commission consultant(s), to review the design of any specialist areas of work, e.g., infiltration drainage systems, structures or geotechnical.

### **Traffic Regulation Orders**

Where a Traffic Regulation Order is required, an additional fee will be required to cover the cost of preparing the order. Please note that the TRO process can take longer than the technical approval process so early contact with our TRO Team is required to discuss proposed orders and the process. Contact the TRO Team at [tro.team@westsussex.gov.uk](mailto:tro.team@westsussex.gov.uk).

## **2. Bond**

A bond is required in support of the agreement, initially for the County Council's estimated value of the highway works that are the subject of the agreement.

## **3. Proof of Title**

The County Council requires proof of ownership of the land. When the draft agreement is prepared, Legal Services will request the submission of a copy of the Land Conveyance or up-to-date (i.e. not more than three months old) Official Copy Entries and Filed Plan (if the Plan is registered at HM Land Registry).

## **4. Contractor (S278 works only)**

For major S278 works or works on traffic-sensitive streets the Contractor must be approved by the County Council.

## **5. Statutory Undertakers (S278 works only)**

The Developer must notify all of the Statutory Undertakers of the proposed 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 County Council, together with copies of the Undertakers correspondence and marked up plans. If your search shows that your scheme is in the vicinity of 33kV cable, please contact cable watch for site advice before excavation commences.

## 6. Mortgagee

If any of the land comprising the development is the subject of a mortgage or legal charge, details in this respect will be requested by Legal Services when the draft agreement is prepared.

## 7. Commuted Sums

A commuted sum payment is required in connection with all highway infrastructure that require extraordinary maintenance or are non-standard. Refer to our [policy on commuted sums](#).

## 8. 'As Built' Drawings and Health and Safety File

Following construction of the agreement works, drawings are required to show the 'as built' layout of the new road/highway alterations along with a copy of the Health and Safety file.

## 9. Timescales

The agreement process (technical and legal) typically takes **three months to complete**, however, this is dependent on the quality of the proposed design, the nature of the works and on the co-operation of the Developer or his representatives. Failure to comply with these guidelines can seriously affect the overall agreement completion time. Where a Traffic Regulation Order is required, additional time may be required. It is the responsibility of the applicant to provide sufficient lead-in time for works on the public highway.

## 10. Street Lighting and Illuminated Equipment

Since April 2010 street lighting in West Sussex has been maintained under a PFI contract by Tay Valley Lighting (TVL). As such the County Council can no longer offer free design checks or a design service. All designs and installations need to be approved by TVL and the County Council will ask the PFI provider to review your design and installation and recover the cost of this service through the agreement process. TVL through Scottish and Southern Energy (SSE) can provide a design and installation service and if taken up we will not need to recover costs through the agreement for reviewing design and inspecting installations. Once the lighting columns and any other electrical works on site are complete an Electrical Installation Test Certificate must be submitted to the County Council.

Details of standard specifications for highway lighting are contained in the document 'Development Standard for Highway Lighting'.

## 11. Highway Boundary

Details of the location of the existing highway boundary in relation to the development site can be obtained by emailing a topographical-based survey drawing to the County Council's Highway Boundary Team at [land.charges@westsussex.gov.uk](mailto:land.charges@westsussex.gov.uk). The location of the highway boundary needs to be shown on the coloured agreement plan.

## 12. Connections to Existing Highway Drains

The Developer must obtain permission from the County Council before an existing highway drain is utilised for the disposal of highway surface water from the development site. Private surface water will not be allowed to discharge into an existing highway drain under any circumstances.

## 13. 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.

## 14. Structures

If a new structure is required in connection with the agreement works early consultation with the County Council is necessary to agree the form of the new structure, including the materials to be used. An Approval in Principle Document is likely to be required in this respect and needs to be submitted for approval.

## 15. Passively Safe Sign Posts and Lighting Columns

For all new schemes, (and specifically on roads where the speed limit is 50mph or above, rural roads where the speed limit is 40mph or above, or urban dual carriageways where the speed limit is 40mph or above) proposed signs should be erected on passively safe posts, ideally posts that are either 76mm or 89mm in diameter or if not on passively safe posts that comply with the British Standard. If it is proposed to mount a sign on a non-passively safe post, the justification should be recorded via a risk assessment which must be submitted with your design.

For all new schemes on roads where the speed limit is 50mph or above, rural roads where the speed limit is 40mph or above, or urban dual carriageways where the speed limit is 40mph or above proposed lighting columns should be passively safe in accordance with BS EN 12767:2007. If it is proposed to erect non-passively safe lighting columns the justification should be recorded via a risk assessment which must be submitted with your design.

## 16. Environment Agency

If the agreement works affect an existing watercourse or the works are to be drained through infiltration methods the consent of the Environment Agency is required and needs to be submitted with the agreement application form.

## 17. Traffic Management Act (S278 works only)

The Traffic Management Act 2004 places a responsibility on the County Council to manage the road network. The Traffic Manager has a duty to co-ordinate all works and events on the public highway and three months' advanced notification is required to programme works and inform the travelling public. A programme of your highway works should be submitted with your application **(taking account of note 9 above)**.

Once the application is registered as complete and the technical review commences the Traffic Manager will be advised of the application and will review road space availability three months in advance of this date. The Traffic Manager will advise if there are significant works in the area which may impact on the availability of road space.

Should the programme change it is the developer's responsibility to advise the Traffic Manager via [networkcoordination@westsussex.gov.uk](mailto:networkcoordination@westsussex.gov.uk).

Road space will not be confirmed and booked until the agreement is signed.

Formal road space booking must be applied for by the developer via [networkcoordination@westsussex.gov.uk](mailto:networkcoordination@westsussex.gov.uk).

## **18. Traffic Management (S278 Works only)**

The developer must obtain approval from the County Council for traffic management (TM) proposals prior to carrying out any works in the public highway. The TM must be designed by a suitably qualified person in accordance with Chapter 8 of the Traffic Signs Manual.

## **19. Lane Rental**

WSCC operates a [lane rental scheme](#). For information about lane rental contact [LaneRentalScheme@westsussex.gov.uk](mailto:LaneRentalScheme@westsussex.gov.uk).

## **20. Management of Claims made under Section 10 of the Compulsory Purchase Act 1965 and Parts I and II of the Land Compensation Act 1973**

Claims made under Section 10 of the Compulsory Purchase Act 1965 and Parts I and II of the Land Compensation Act 1973 relate to the depreciation in value of property affected by the proposed development and the works which will be secured under the S38 and/or S278 Agreement. Whilst the County Council is responsible for handling these claims and settling them, the developer will be bound under the S38 and/or S278 Agreement to indemnify the County Council against these claims. Due to resource constraints the County Council will expect the developer to manage these claims on behalf of the County Council whilst keeping the County Council informed at all stages and settle them with the final approval of the County Council. Details of who will manage these claims for the developer on behalf of the County Council will be requested during the legal process of the Agreement.

## **Technical Notes**

### **1. Drawings and Documentation**

Applications for a typical agreement must be accompanied by the following.

- a. All submissions are to be made digitally and should include the following: one copy of the Agreement plan and the supporting drawings including a general arrangement plan, setting out plan, longitudinal and cross section plans, drainage layout, signing and

lining plan, etc, and **one 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.**

**NB: The Agreements Engineer may request hard copies of drawings.**

The layout plans should be drawn to 1:500 scale and incorporate a location plan, drawn to either 1:1,250 or 1:2,500 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. The layout plans should be coloured in accordance with the advice given in Section 2 of these notes.

The following details should be shown on the above drawings:

- i. the layout of any proposed dwellings with plot numbers and driveways;
  - ii. road names and house numbers, if applicable;
  - iii. contours;
  - iv. details of sewers and surface water drains;
  - v. floor slab levels;
  - vi. landscaping details;
  - vii. a typical cross section showing the construction to be used;
  - viii. cross sections at 30m intervals which extend at least 3m outside of the highway boundary showing existing and proposed levels;
  - ix. signing and road marking details;
  - x. street lighting details;
  - xi. retaining wall details and other highway structures;
  - xii. carriageway and other associated dimensions;
  - xiii. junction visibility and forward visibility splays;
  - xiv. horizontal and vertical alignment.
- b. A Stage 2 Safety Audit Report and Designers Response is required if a Stage 1 Safety Audit was carried out in connection with the planning application or is considered necessary by the County Council.
- c. A Site Investigation Report 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).

- 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. Laboratory C.B.R. tests are required up to 30m intervals together with an assessment of the frost susceptibility of the subsoil. In-situ testing is not appropriate for the design stage.

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.

- d. Details of any Statutory Undertakers service protection or diversion works.

Following technical approval of the design of the proposed works, 14 coloured copies of the approved agreement plan and two copies of the supporting drawings together with an electronic copy of each plan are required for incorporation within the legal agreement.

## 2. Plan Colouring

The layout plans should be coloured, as follows.

### Section 38 Works (i.e. works within the Development Site)

Feature	Colour	R	G	B
Carriageway	Orangey Brown	233	116	81
Footway	Grey	104	104	117
Verge	Dark Green	0	112	0
Proposed Public Surface Water Sewers	Broken Blue Line	0	0	255
Proposed Highway Surface Water Drains	Solid Blue Line	0	0	255
Covenanted visibility splays	Hatched Black	0	0	0
Easement <sup>1</sup>	Orange	255	169	83
Hard landscaping	Bright Yellow	255	255	0
Retaining walls supporting the carriageway	Purple	121	108	184
Land owned by more than one Developer	Outline each ownership in a contrasting colour	-	-	-

<sup>1</sup> Where a proposed highway surface water drain passes through private land, an orange line should be placed adjacent to the blue line of the drain. This comment also applies to any adoptable street lighting columns that are situated beyond the adoptable area.

**Section 278 Works (i.e. works within the Public Highway)**

<b>Feature</b>	<b>Colour</b>	<b>R</b>	<b>G</b>	<b>B</b>
Carriageway	Yellow Ochre	245	197	44
Footway	Blue	153	204	255
Verge	Light Green	63	185	0
Proposed Public Surface Water Sewers	Broken Blue Line	0	0	255
Proposed Highway Surface Water Drains	Solid Blue Line	0	0	255
Existing Public Surface Water Sewers	Broken Black Line	0	0	0
Existing Highway Surface Water Drains	Solid Black Line	0	0	0
Hard landscaping	Violet	94	80	165
Easement (see footnote 1)	Orange	255	169	83

**An application will not be registered as complete and the technical review will not commence until all the information detailed in the general and technical notes (including the upfront payment of fees) has been received.**

If illuminated signs, street lights or other electrical apparatus are required in conjunction with the highway works, evidence will need to be submitted that orders have been placed with the electrical network supplier to install the electrical supply and equipment prior to completion of the legal agreement for major S278 works.