

S278 Agreements

The 1980 Highways Act

Only the Highway Authority is permitted to carry out works to the public highway. However, Section 278 of the 1980 Highways Act allows for the carrying out of works to the public highway for the benefit of a third party on behalf of the Highway Authority, where the Highway Authority is satisfied that the works are to the benefit of the public.

Section 278 Agreement

A Section 278 Agreement, between the Developer and the Highway Authority, is required to permit works on the public highway to be carried out and sets the specification and technical standards by which the works must be constructed. Works must not be commenced until the Agreement is completed.

The Section 278 Agreement also provides for the collection of fees associated with the approval of the works, their inspection, commuted sums for their future maintenance and the provision of a security bond to cover the costs of the highway works should the developer default on their obligations. In most situations a Section 278 Agreement will follow the grant of planning permission for development that requires the works in order to provide appropriate access arrangements and/or other associated highway infrastructure to mitigate the impact of the development.

Section 278 Design Checks and Technical Approval

In order to ensure that works are carried out in a manner and to a standard that is acceptable to the Highway Authority it is necessary that the detailed design works undergo a technical checking and formal approval process. This ensures the works meet the standards and requirements of the Highway Authority.

The technical approval process can typically take 3 – 6 months to complete and the Highway Authority is unable to guarantee a conclusion in any specific timescale. This is dependent on the quality of the proposed design, the nature of the works, and on the co-operation of the developer and / or their representatives in terms of any necessary amendments to submitted designs and Road Safety Audit procedures. Failure to

undertake and return amended designs in a timely manner can seriously affect the overall agreement completion time. Where a Traffic Regulation Order is necessary additional time may be required. It is the responsibility of the developer / applicant to provide sufficient lead-in time for works on the public highway.

It should be noted that where planning permission is subject to a condition requiring the submission and approval of details of works which will be subject to a Section 278 Agreement it is unlikely that the Highway Authority will be able to recommend that the condition can be discharged unless the technical approval process has been satisfactorily completed.

Please contact highwaysplanning@northumberland.gov.uk to be put in touch with the appropriate officer to discuss requirements for the technical approval and S278 Agreement process.

Road Safety Audits

A Stage 2 Road Safety Audit (assuming that Stage 1 has been undertaken at an earlier stage in the design process) must be carried out as part of the technical approval procedure.

All Road Safety Audits shall be undertaken at the developer's expense and in accordance with document GG119, which forms part of the national Design Manual for Roads and Bridges (DMRB), and the Highway Authority's Road Safety Audit protocol .

A Stage 3 Road Safety Audit shall be undertaken prior to adoption of the works by the Highway Authority.

Fees

The Highway Authority charges an initial fee for the technical design check and approval process. The level of this fee will be set out as part of the initial discussions and will be dependent on the complexity and scale of the proposed scheme. Typically it will be within the range of £2000 - £5000. However, the right is reserved to vary, increase or request additional payments where, for example, there is deemed to be a risk of abortive work.

The fee payable by the developer when the Agreement is entered into is 10% of the cost of the works. This will cover, but is not necessarily limited to: technical design check, negotiation of Agreement, inspection and approval of construction works, all administration including certification and adoption of completed works.

Commuted Sums

A commuted-sum payment is required in connection with all highway infrastructure that require “extraordinary” maintenance or are non-standard e.g. infiltration drainage systems, structures, ornamental street lighting columns, soft landscaping. Costs will be calculated based on design life of the specific asset and future year replacement / maintenance costs taking account of inflationary pressures.