

S38 Agreements

The 1980 Highways Act

Section 38 of the Highways Act 1980 enables Highway Authorities to adopt new roads and streets constructed by developers or other third parties to become maintainable at the public expense, subject to agreement. Such agreements are voluntary; a developer may not wish to offer roads for adoption, or the Highway Authority may not wish to adopt. In these circumstances the roads etc. will remain privately maintainable and it is likely that planning permission will be subject to a condition requiring details of a management and maintenance scheme.

Section 38 Agreement

A Section 38 Agreement provides for the developer agreeing to complete the street(s) covered by the Agreement in accordance with the plans that have received Technical Approval and referenced within the Agreement, along with any other works as the Highway Authority may require to ensure that the street(s) comply with the Authority's specification and adoption standards. On satisfactory completion and the serving of a maintenance period the streets etc. become maintainable by the Highway Authority at the public expense.

The Section 38 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 38 Agreement will follow the grant of planning permission for development that requires the works in order to provide appropriate access and layout arrangements.

Section 38 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. 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 38 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 S38 Agreement process.

Fees

The Highway Authority may charge 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 £1000 - £2000. 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 7.5% of the calculated 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.

The cost of the works is calculated using the Council's unit rates and the principle of this methodology is not negotiable. It is intended to provide an equitable and transparent arrangement for the calculation of works costs and derived fees on a countywide basis. It is recognised by government that the calculated works costs will generally exceed developer's tendered prices.

The Council's unit rates per linear metre are currently as follows but are subject to revision without notice:

6.7m carriageway	- £1522.19
5.5m	- £1258.63
4.8m	- £1165.71 (reduced if service strip).
Footpath link	- £298.75
3m Cycleway	- £433.40

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.