

WARWICKSHIRE COUNTY COUNCIL

DEVELOPERS' GUIDE TO HIGHWAY WORKS AGREEMENTS

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GENERAL INTRODUCTION

The purpose of this guide is to provide information for developers about the different types of highway works agreements, when each is applicable, and the procedures to be followed in each case to ensure matters can be dealt with expeditiously.

A condition or conditions imposed on a planning consent may require alterations or improvements to the public highway to be completed before a development is occupied or, in some instances, before it is commenced. In order for the necessary works to be executed the developer must enter into an appropriate form of highway works agreement with the Highway Authority most typically under S278 of the Highways Act 1980.

In some cases, where a condition has not been imposed, the requirement may be in the form of a planning obligation contained in an agreement made between the developer and Local Planning Authority under Section 106 of the Town and Country Planning Act 1990 relating to the planning consent. The County Council as Highway Authority may be signatory to such an agreement, or have otherwise agreed to the relevant clauses. In other instances an obligation contained in a Section 106 Agreement could require the developer only to fund certain types of highway alterations or improvements, or impose a traffic regulation order which the Highway Authority covenant to execute.

For some developments a condition might be imposed on the planning consent requiring the new roads serving it to be adopted as highways maintainable at public expense. The preferred method of satisfying such a requirement is for the developer to enter into an appropriate form of highway works agreement with the Highway Authority most typically under S38 of the Highways Act 1980. The type of agreement needed will depend on the scale, type and location of the works involved.

Legislation may change over time and the comments made are based on the information available at the time the guidance was produced. It is not necessarily comprehensive and is subject to revision in the light of further information.

This Guidance is not intended to be a definitive guide to, nor substitute for the relevant law and independent legal advice should be sought. Only courts can interpret statutory legislation with any authority.

This guide is specific to standard S278 highway works where the execution of the highway works will have a significant impact on the day-to-day operation of the public highway either during the construction of the works or upon completion of the development. Typical examples are where road widening, roundabouts or traffic signals are proposed, or where construction requires significant temporary traffic management.

PART D

SECTION 278 (HIGHWAYS ACT 1980) AGREEMENTS AS MODIFIED BY SECTION 23 (NEW WORKS AND STREET WORKS ACT 1991)

Introduction

- 1.** Section 278 - which falls within Part XIII, *Financial Provisions*, of the Highways Act 1980 - makes specific provision for persons who will derive special benefit from highway works to contribute towards them.
- 2.** WCC require a standard Section 278 Agreement whenever the Highway Authority considers that the proposed highway works by the Developer or persons who derive a special benefit have the potential to cause more than a slight impact on the day-to-day operation of the public highway either during the period of construction or as a result of the development.
- 3.** Subsection 1 of S278 enables a Developer to enter into an agreement with the Highway Authority for the execution of works which it has the authority to execute, subject to the Developer paying all relevant costs. It also enables a scheme to be modified (where the Authority already has its own proposals for alterations to the highway), or for the works to be undertaken at a particular time or in a particular manner in order that the Developer can comply with any relevant planning consent or agreement.
- 4.** Subsection 2 of S278 confirms that the Highway Authority is entitled to recover all costs associated with Section 278 works.
- 5.** Subsection 2 of S278 also provides for the acquisition of any land by the Highway Authority considered necessary to enable the works, and Subsection 4 confirms the normal powers of compulsory purchase are not affected because the scheme is being carried out under an Agreement. However, the Highway Authority will require to be entirely satisfied that the acquisition of any third party land is wholly within the public interest, and that all alternatives have been first considered and rejected on technical grounds, before invoking its compulsory purchase powers in connection with an Agreement.
- 6.** Subsection 3 of S278 provides for the Developer to pay for the maintenance of the works.

Procedure:

Before making an application to enter into an Agreement, the Developer or his or her Consultant should be entirely satisfied as to the scope of the works involved. If required, he or she may request a meeting at a mutually acceptable time and location with an appropriate County Council Officer and/or Engineer to discuss such matters. Fees will not normally be charged for this service but, where a meeting is particularly protracted or more than one meeting is requested, the Highway Authority reserve the right to consider their Officer's or Engineer's attendance as part of the design process and will advise the Developer in writing that fees may as such be retrospectively levied. Such a meeting may be arranged prior to the issue of

planning consent provided the Local Planning Authority case officer has first indicated that the Developer's proposals are being recommended for planning approval.

The time needed for completing the Agreement formalities can often be protracted. It is recommended therefore that, where a Developer considers time to be of the essence, he or she requests a pre-Agreement meeting with an appropriate Highway Officer and/or Engineer at the earliest practicable date and so as to enable the legal formalities and technical review to proceed as expeditiously as possible.

Note – Highways Act and Road Traffic Regulation Act Orders: The processes for obtaining Orders can often be very protracted. This includes Orders for the following

- Stopping-up or Diversion of the Public Highway;
- Stopping-up or Diversion of any Public Right of Way;
- Traffic Regulation Orders i.e. double yellow lines
- Speed Limit Orders

Where any of these are required to enable the works, it is important that the procedures are commenced at the earliest practicable date. A Statutory Consultation will be required and if any objections are received the issue may have to go before the relevant Portfolio Holder for a decision. Portfolio Holder decision making meetings occur at approximately monthly intervals and the Committee Report has to be entered on to the Forward Plan approximately 1 month before the meeting date.

Note – Traffic Management Act 2004: The TMA requires local highway authorities to publish the contents of their streetworks register and coordinate the management of road works, including with neighbouring authorities and Highways England. Warwickshire County Council operates a roadworks permit scheme. See www.warwickshire.gov.uk/roadworkspermitscheme for further details.

WCC will apply for the necessary roadworks permit for the highway works but it is the responsibility of the Developer to engage with statutory undertakers to arrange any diversionary or new connection work.

Note –Road humps, tables and cushions: The Highways (Road Humps) Regulations 1999 states the following:

“Where the Secretary of State or a local highway authority proposes to construct a road hump, he or they shall, as well as consulting the chief officer of police as required by section 90C(1) of the Act, also consult–

- (a) where the proposal is by a local highway authority in England which is the council of a County, any district council in whose district the highway is situated;
- (b) in all cases, the chief officer of the fire brigade for the area in which the highway concerned is situated and the chief officer of any body providing ambulance services under the National Health Service Act 1977(1) and operating in that area;
- (c) in all cases, organisations appearing to him or them to represent persons who use the highway to which the proposal related, or to represent persons who are otherwise likely to be affected by the road hump.”

The consultation process involves placing notices in the local papers and on site. If any objections are received the issue will have to go before the relevant Portfolio Holder for a decision. Portfolio Holder decision making meetings occur at approximately monthly intervals and the Committee Report has to be entered on to the Forward Plan approximately 1 month before the meeting date.

Note - Traffic calming (excluding roads humps, tables and cushions): The Highways (Traffic Calming) Regulations 1999 requires local highway authorities to consult with the police and any such persons or organisations representing persons who use the highway or who are otherwise likely to be affected by the traffic calming work as the highway authority thinks fit. Build-outs, chicanes, gateways, islands, overrun areas, pinch-points, or rumble devices or any combination of such works are classed as traffic calming works.

If any objections are received the issue will have to go before the relevant Portfolio Holder for a decision. Portfolio Holder decision making meetings occur at approximately monthly intervals and the Committee Report has to be entered on to the Forward Plan approximately 1 month before the meeting date.

Note - Pedestrian crossings (Zebra, Pelican, Puffin etc): Under the Road Traffic Regulation Act 1984, before establishing, altering, or removing a crossing a local authority shall:-

- (a) consult the chief of police about their proposal to do so;
- (b) give public notice of that proposal; and
- (c) inform the Secretary of State in writing.

If any objections are received the issue will have to go before the relevant Portfolio Holder for a decision. Portfolio Holder decision making meetings occur at approximately monthly intervals and the Committee Report has to be entered on to the Forward Plan approximately 1 month before the meeting date.

7. Following the issue of the relevant planning consent and before making an application to enter into a Section 278 Agreement, the Developer should be satisfied that, where appropriate:

- a feasibility layout of the proposed highway works on which the detailed design is to be based has been subjected to a Stage 1 Road Safety Audit
- any necessary exemptions from Standards and Safety Audits have been identified.
- any necessary Departures from Standards have been identified.
- he is aware of the necessary orders and consultations required before undertaking the works.
- it is also preferable if such a feasibility proposal has also *been submitted to and approved in outline by the Local Planning Authority.*

8. The Developer should then make **a formal application to enter into an Agreement** by sending the completed **application form** to Design Services at Warwickshire County Council, together with **a copy of an Ordnance Survey based land plan** to a suitable standard scale to clearly show:

- all relevant land within the developer's ownership edged red
- the name and/or number of the public highway or highways adjacent to or leading to the site
- a north point

- the name of the site, name of the applicant , date and scale in a title box.

Note: *Developers must complete the abortive costs undertaking which is included on the application form. Developers are responsible for all costs incurred by the County Council in connection with the scheme, regardless of whether the agreement is completed or the development proceeds.*

9. Upon receiving the application, the Agreement Administrator will inform the Developer in writing of his or her name and contact telephone number and also that of the Engineer who will be responsible for managing all technical matters. He or she will also inform the Developer of the appropriate fees for administering the agreement and the rates for completing the scheme design or technical approval (as appropriate), contract documentation, site supervision, and materials testing.

The Engineer will then inform the Developer of the amount of advance payment of **fees which are required before the technical review can commence.**

Note: *Developers may be required to pay a commuted sum for the future maintenance of specific elements of the works. The sum will be calculated for the routine maintenance of the various specific elements which comprise the works – e.g. traffic signal equipment, trees etc. Commuted sums will be calculated at appropriate current rates and will be payable on signing of the S278 agreement.*

10. The Administrator will instruct the Council's legal team to prepare a draft S278 Agreement who will then forward it to the Developer's legal representatives for their consideration and comment.

Note: *the Council's legal team will require advance payment of legal fees before commencing work.*

11. The Engineer will register the scheme as a Capital Works Scheme within the County Council's Capital Works Programme once the estimated works cost is available.

12. The design process can either be carried out by the Developer's design team or by WCC's Engineer. In the first case, the design will be subject to technical review by WCC's Engineer against the specification set out in the fee estimate sent to the Developer. In general terms, the specification ensures compliance with the Design Manual for Roads and Bridges and Warwickshire County Council's Highway Construction Details.

13. If WCC's Engineer carries out the Design Process it will include (briefly) the following:

- Topographical Survey
- Ground Survey
- Preparation of road works layout and vertical design
- Design of highway structures (where required)
- Processing of any related Traffic Regulation Order
- Making application for any Stopping-up of the Public Highway Order (where required)
- Making application for any Stopping-up or Diversion of Public Right of Way (where required)
- Traffic signal design (when required)
- Street lighting design (when required)
- Traffic sign and road markings design

- Highway drainage design
- Liaison with service providers with respect to diversions and/or protection of plant
- Road Safety Audit to include Stage 2
- Cycle and pedestrian audits
- Liaison with the S38 internal works designer regarding tie-in details
- Technical Approval

Note: When the Local Planning Authority require to approve the full details of the proposals, the Highway Authority will provide all necessary plans to enable the Developer to submit an appropriate planning application where WCC is the designer. Such an application should be made as soon as the details have been approved and satisfactorily subjected to a Stage 2 Safety Audit, and the necessary planning consent must be obtained prior to the commencement of works on site.

Note: On or before completion of the design or technical review process cost of the works will be estimated. If the S278 agreement is to be signed before the tendered works price is known, the bond will initially be set at 200% of the estimated cost of the works and the Developer will be notified of the sum required to be secured by the bond. Following award of the contract the Bond will be reduced to a sum representing 150% of the cost of the works (and any other sums due to the Council).

14. The Developer will provide the Administrator with **an electronic copy** of the final land plan.

15. The Administrator will obtain from the Engineer copies of all relevant plans and will forward these to the Council's legal team for binding into the formal Agreement

16. The Council's legal team will issue the Agreement and Bond to the relevant parties for signing and sealing. The Developer will be required to deposit the necessary Bond or cash to secure the works, and to pay any outstanding fees including legal fees at the time of signing.

17. WCC's Engineer will undertake the preparation of the Contract Documentation necessary to procure the works under an NEC3 Engineering and Construction Contract.

18. The Engineer will undertake the Tender Processing. Briefly, this will usually involve:-

- Electronic tendering via WCC's In-Tend portal
- Writing the Contract Award Authorisation Report
- Awarding of the Contract.

Note: Only contractors on the County Council's construction framework contract will be invited to submit tenders.

Note: The Contract will not be awarded and works will not be permitted to proceed within the limits of the public highway before the Agreement is signed by all relevant parties, the Bond to secure the works has been deposited and all fees have been paid and a Notice to Accept given to the Council by the Developer.

19. The Engineer will inform the Developer of the intended start date on site and make all the necessary arrangements for site supervision, materials testing and certification of payments.

20. The Engineer will supervise the construction of the works and issue Certificates to authorise payments to the Contractor in compliance with the Conditions of Contract. Alternatively, the Developer can perform specific actions of the NEC3 Project Manager role by agreement.

21. Upon the satisfactory inspection of the works the Certificate of Completion Certificate will be issued by the Engineer and provided the developer has made payment of the Financial Certificates/Statements, the Council will release the Bond to the extent of the payment received in accordance with the terms of the Agreement/Bond. The balance of the Bond will be retained for the period of time defined in the Section 278 Agreement. Note – the remaining Bond is to be retained for a number of years to cover any possible claims under Part 1 of the Land Compensation Act 1973 or any issues arising from Stage 3 or Stage 4 Road Safety Audits.

PART E

IMPORTANT ADDITIONAL NOTES

Further information can be obtained from The Highway Construction Details on the Warwickshire County Council web site at www.warwickshire.gov.uk/highwayconstruction and the County Road Construction Strategy which can be found at www.warwickshire.gov.uk/roaddesigns.

Highway Works Agreements

The guidance contained in the foregoing notes applies to all Highway Works where Developers need to enter into an Agreement with the County Council as Highway Authority.

The onus lies with the Developer to ensure an application is made to the Highway Authority for any Agreement.

Applications for standard S278 Highway Works Agreements should be made to the S278 Team, Design Services, Communities, Warwickshire County Council.

Applications for minor works S278 and S184 Highway Works Agreements should be made to Development Management, Communities, Warwickshire County Council.

Warwickshire County Council - Contact Telephone Numbers:

Agreements

Full S278 Agreements	01926 412110
Section 38 Agreements	01926 412274
Section 184, Minor Works S278 Agreements	01926 412362

Maintenance

North Warwickshire Area Team 01926 412515
Coleshill Heath Road, Coleshill B46 3HL

South Warwickshire Area Team 01926 412515
Old Budbrooke Road, Warwick. CV35 7DP

District and Boroughs - Planning Offices

North Warwickshire Borough Council	01827 715341
Nuneaton and Bedworth Borough Council	024 7637 6376
Rugby Borough Council	01788 533533
Stratford-on-Avon District Council	01789 267575
Warwick District Council	01926 410410