

Highway Requirements Part 6

INTRODUCTION

1. A Section 38 Agreement (made under Section 38 of the Highways Act 1980) is an agreement concerning the adoption of new estate roads which Developers may enter into as an alternative to the deposit of "Advance Payments" with the Highway Authority prior to the beginning of construction work, to cover the cost of bringing the estate road up to adoption standards.
2. It is clearly in the best interest of house purchasers, the purchasers of industrial premises and Developers that new estate roads are adopted and maintained by the Local Highway Authority. Purchasers need to be assured that adoption can take place without any further expense to themselves and if such assurances are available Developers will find it easier to sell their properties. The Highway Authority wishes to know that it is taking over a properly constructed road, and also that, in the event of failure by the builder to do so, roads can be completed without expense to the Authority or the owners of the properties fronting the road.
3. The following sets out the normal procedures that are followed in the process of drawing up and completing a Section 38 Agreement between Developers and Leicestershire County Council, together with advice as to best practice.
4. Within Leicestershire, seven District Councils operate Agencies on Highway matters for the whole or part of their administrative areas and therefore deal with Section 38 procedures in the place of the County Council. These authorities and the extent of their agencies are shown in the Section 38 Agreement Procedures section.

SECTION 38 AGREEMENT PROCEDURES

5. Before entering into a Section 38 Agreement, the Developer must first obtain full planning permission for the development from the Local Planning Authority, including the approval of any reserved matters relating to the highway. This will normally require the submission of, and approval by the Highway Authority of, a site layout plan of the development, including full details of all sewerage showing fully and manhole positions, longitudinal cross sections and construction details of all roads and sewers and floor levels of garages. Details of estimated

flows in sewers and calculations of surface water run-off will also be required to be submitted at this stage.

6. Building and sewerage works will also require approval under the Building Regulations. Within six weeks of the receipt of Building Regulation Approval, the Developer should receive a notice under Section 220 of the Highways Act 1980 assessing charges in respect of roads and footways which the Highway Authority considers should become adopted public highway on completion. The assessment is made by the Highway Authority and will either be in the form of charges for individual plots, or a block assessment covering the whole development. The Developer must pay the sums assessed, or alternatively enter into a Section 38 Agreement BEFORE any work commences on the construction of any building on the site. If, within six weeks of receipt of Building Regulation Approval, a Developer has not received such an assessment notice and there are roads or footways in the development which he considers should become adopted highway he should contact the Director of Planning and Transpiration as a matter of urgency.

7. It is normal practice for the Developer to avoid having to deposit monies to cover the assessed road charges by means of a Bond of Surety (normally with a bank or other financial institution which then forms a third party to the Section 38 Agreement) to cover the amount. The amount of the Bond is always assessed by the Highway Authority in a similar manner to the assessment of road charges. If the Developer wishes to enter into such an agreement he should write to the Highway Authority stating that he wishes to do so as soon as he receives the Section 220 notice.

8. As soon as possible after stating that he wishes to enter into a Section 38 Agreement, the Developer should forward to the Highway Authority for approval two drawings at a scale of 1:500, indicating the areas which are intended to form part of the Agreement, together with a set of sections. After approval of the drawing showing the areas to be adopted, the Highway Authority will return one copy of the drawing duly coloured and will then require 12 copies of this drawing and 2 copies of the road sections and construction details, for completion of the agreement, supervision, street lighting and search purposes. 6 copies of the drawing should be uncoloured and 6 copies should be coloured in the following manner:-

Carriageway – grey.

Footways, footpaths and other hard surfaced areas – yellow.

Verges – green.

All highway drainage should be coloured blue. All other necessary documents will be prepared by the County Council. It should be noted that Agent Authorities may differ in these requirements.

9. A charge is made by the Highway Authority for the work involved in the preparation and administration of the agreement and for the supervision of the works. The charge for administration and supervision is five per cent of the estimated cost of the roadworks as assessed by the Highway Authority, plus an additional fixed fee per agreement (including all supplemental agreements) to cover legal costs, which is fixed by the County Secretary and is reviewed annually. Additional charges may be made for roadworks involving structures.

10. The Highway Authority is responsible for the supervision of roads and footways which will be adopted. This is carried out by the appropriate Divisional Surveyor's staff or the relevant Agent Authority. A list of the County Council's Divisional areas is given on page 4. It is recommended that the Developer's staff make contact with the Divisional or Agency organisation as early as possible before work commences on site, and in any event the developer should give seven days notice in writing of his intention to begin construction work.

11. At least 1 working days notice must be given beforehand of the following stages of construction:-

Drainage works

Laying of sub-base or capping layer

Laying of roadbase

Kerbing

Final surfacing

12. It is normal practice for Developers to bring estate roads up to base-course level often at some considerable time prior to the final surfacing being carried out. In such cases, the Bond covering the full estimated cost of the roadworks will be greatly in excess of the amount which would then be required to bring the road up to adoption standards and the Highway Authority will, at its discretion, allow a reduction in the bond to a suitable figure which will, in its estimation, cover the cost of the outstanding works.

13. The normal requirement of a Section 38 Agreement is that the Developer must complete the roadworks within two years of the signing of the Agreement. However, roads and footways are not normally adopted until after the development has been substantially completed and at the discretion of the Highway Authority this requirement may be relaxed, provided always that the amount of the Bond is sufficient to cover the estimated cost of the outstanding roadworks at that time.

14. Upon completion of the roadwork's to the full satisfaction of the Highway Authority, and normally following a joint inspection of the works, a Provisional Certificate of Completion will be issued and the amount of Bond outstanding will be reduced to an amount sufficient to cover any defects which may arise. Following the issue of the provisional certificate, the roadworks will enter a 12 months maintenance period. During this time, the Developer will be responsible for carrying out such functions as road sweeping, fully emptying and the regular mowing of grassed areas. He is also expected to maintain the road in a safe condition and free from obstruction at all times.

15. Upon completion of the 12 months maintenance period, the developer will be given a list of any defects which have arisen during that time. After these have been rectified to the satisfaction of the Highway Authority a Final Certificate of Completion will be issued and the Bond will be terminated. All the areas which form part of the Agreement will then be adopted highway and maintainable at public expense.