

Highway Requirements Part 7

INTRODUCTION

- 1.** Section 106 Agreements are binding legal agreements with Developers and landowners made under Section 106 of the Town and County Planning Act 1990 (formerly Section 52 of the Town and Country Planning Act 1971) and are used to regulate developments where the use of a planning condition would not be appropriate, for example, where highway works are required on land which is outside the planning application site and outside the Developer's control. In such cases, the grant of planning permission is made subject to the Developer first entering into this voluntary agreement. They may cover a number of matters, such as landscaping, phasing of development, etc. as well as highway works. The Planning Authority will always be a party to such Agreements and it is normal for the Highway Authority to be a party to the Section 106 Agreement where highway works are covered by it.
- 2.** There are a number of other statutory provisions under which Developers and the Highway Authority can enter into agreements for the carrying out of highway works related to new development. They include Section 278 of the Highways Act 1980 and Section 33 of the Local Government (Miscellaneous Provisions) Act 1982. The appropriate provisions may depend upon the circumstances of the case, however, where only highway matters are involved such agreements may be more appropriate and be completed more quickly as there is one less party to consult.
- 3.** Such agreements provide a framework for the often complicated procedures which are associated with highway works and also offer protection to the Highway Authority should things go wrong. It is hoped in this document to explain these procedures in a way that will enable roadwork's associated with development to be carried out by the developer and to the satisfaction of the Highway Authority with the minimum of problems to both sides.
- 4.** In their operation in relation to highway works, all types of agreement will operate in a similar fashion. This document considers only the highways aspects of such agreements and the planning aspects of Section 106 Agreements should be raised with the relevant Planning Authority.
- 5.** The procedures involved are followed through in the approximate order in which they will occur from the grant of planning permission to the final completion of the roadworks; however the order may of course vary slightly from case to case. In order to help the reader, a flow chart showing the procedures and their usual relation to one another is

included on page 4, although the particular order of events may differ from case to case.

INITIAL DESIGN OF ROADWORKS

6. For large scale works, this will often take place at the same time as the planning application for the development is under consideration, since the Highway Authority will need to be assured that any proposed roadwork's are feasible within the land constraints of the development before it will recommend to the Planning Authority that the development is acceptable, and it will need to approve the preliminary design before entering into the Agreement. For smaller scale roadwork's, such as the provision of a footway, a preliminary design will not be required and only detailed design of the works will be needed.

7. In either case, it is strongly recommended that a reputable consulting engineer is employed to carry out both the preliminary and detailed design work, since poor quality work in design will lead to both problems and extra costs in the construction phase of the works. The Engineering Design Services Branch of the County Council's planning and Transportation may also be willing to undertake such design work on a fee basis, subject to workload at the time of the request.

8. Developers should appreciate that the costs of any diversions to underground equipment belonging to any of the Statutory Undertakers and private service companies which are made necessary by roadwork's may well be high. They should therefore ensure that at this stage of the process either they or their consulting engineer consult these bodies over the proposals, in order to determine the costs of any such diversions before they are committed to the works going ahead.

DETAILED DESIGN OF ROADWORKS

9. The Agreement will require that all detailed design, including any signing or street lighting works and proposals for the phasing of the roadwork's, should be completed, submitted to and approved by the Highway Authority before any work starts.

10. At this stage, the Developer should also request the Highway Authority to serve formal PUSWA 10 notices on the various Statutory Undertakers and private service companies. These notices are required to be served by the Highway Authority under the Public Utilities Street Works Act and "officially" inform the bodies concerned of the works, together with the anticipated starting date.

STRUCTURES

11. Where the highway works involve structures such as bridges or retaining walls, additional responsibilities and costs may fall on the Developer and his consulting engineer. For major structures the design will be subject to the

technical approval procedure set out in the Department of Transport Standard BD 2/89 Part 1 "Technical Approval of Highway Structures on Motorways and Trunk Roads", except that the Technical Approval Authority will be the County Council. Additional design checking and supervision fees will normally be required by the County Council where structures are involved.

APPROVAL OF CONTRACTOR

12. It is advisable for the Developer to put the work out to competitive tender to a number of reputable contractors, so as to obtain the best value for money. The Highway Authority must approve the contractor used for the roadworks and so the list of tenderers should be submitted to it for approval prior to the tenders being invited. Contractors who have not been so approved will not be permitted to carry out work within the public highway.

BOND

13. The Highway Authority requires to be protected against the risk of unforeseen expenditure due to the roadwork's being left unfinished by the Developer, for whatever reason. For this reason, the provision of a surety bond (usually with a bank or other financial institution) by the Developer is usually required. The amount of the bond will be sufficient to cover the cost of the roadworks, together with the costs of the diversion of any Statutory Undertaker's or private service company's equipment. This is normally fixed following the award of a contract for the works to the successful tenderer. No work within the highway will be permitted until this provision has been made.

CONTRACTORS'S INSURANCE

14. The Agreement will require the Developer to indemnify the Highway Authority against any claims by third parties arising from the roadworks. This is normally done through the contractor's indemnity insurance and an insurance certificate is routinely obtained by experienced contractors for each job of work. The Highway Authority will need to be satisfied that satisfactory arrangements have been made regarding this indemnity, before work will be permitted within the highway.

NOTICE TO START OF WORKS

15. The Developer must give the Highway Authority at least five weeks prior notice to the proposed date on which works will start within the highway. Once this date is known, the Authority will serve formal PUSWA 11 notices on the various Statutory Undertakers and private service companies in order to inform them of the start date.

PROGRAMME OF WORKS AND PRE-CONTRACT MEETING

16. Prior to the start of work within the highway, the contractor must furnish to the Highway Authority details of his construction programme and of any traffic management measures which will be necessary during the roadworks. At this time it will be appropriate to arrange for a pre-contract meeting between the Highway Authority's supervisory staff, the contractor's agent, the Developer's representative on site and representatives of services undertakers if necessary. Such meetings can be very useful in sorting out any problems before they occur on site and in all parties knowing who to contact about each aspect of the job.

DEDICATION OF LAND

17. The Agreement will usually provide for land which forms part of the roadwork's and which is not part of the existing highway to be formally dedicated as highway before work within the existing highway can start.

SUPERVISION OF WORKS

18. The Developer is responsible for the day-to-day supervision of the roadwork's construction in his role as client under the normal Institution of Civil Engineers form of contract. The representatives of the Highway Authority must be given unhindered access to any may visit the works in progress at all times. Such visits in no way absolve the Developer from his responsibility for supervising the work and ensuring that it is carried out in a proper and safe manner, and in accordance with the Specification. The Agreement will require that the roadworks must be carried out to the satisfaction of the Highway Authority and therefore any reasonable instructions and requests by the Highway Authority's representatives to the Developer should be complied with.

19. The Highway Authority makes a charge for this supervision work, normally of 5% of the total cost of the roadworks, including any service diversion works. However, where the roadwork's are unusually complicated or involve large structural elements it is normal for the Authority to recharge the actual costs involved, rather than a percentage.

SUBSTANTIAL COMPLETION

20. Following the substantial completion of the works the Highway Authority will issue a Certificate of Substantial Completion to the Developer and the Bond may then be reduced to 10% of its total value. Depending on the details of the Agreement, it is the normal case that the Development which is associated with the development may now be brought into use.

LAND COMPENSATION ACT 1973 & NOISE INSULATION

21. Under this Act, compensation can be claimed by owners of property where its value is depreciated by noise and other specified physical factors arising from the use of a new or altered highway. The Noise Insulation Regulations 1975 require the Highway Authority to make offers of noise

insulation or grant to occupiers of dwellings subjected to noise at or above a specified level due to the use of new or altered highway. It is normal practice for a clause to be included in the Agreement in which the Developer agrees to indemnify the Highway Authority against the full cost of any payments made in these respects.

MAINTENANCE PERIOD

22. The maintenance period is usually twelve months following the issue of the Certificate of Substantial Completion, and allows for any defects in the works to become apparent after being brought into use. The Highway Authority is responsible for the normal maintenance of the works during this period, such as gully emptying, sweeping, etc. However, if any serious defects arise in the work during this time it is the Developer's responsibility to rectify them.

23. At the end of the twelve months maintenance period a joint inspection of the roadworks will be arranged between the representatives of the Highway Authority, the contractor and the Developer, and any defects in the roadworks will be noted. The Developer is responsible for ensuring that these defects are remedied to the satisfaction of the Highway Authority.

24. Once the defects have been remedied and the whole of the works have been completed to the satisfaction of the Highway Authority, a Final Certificate of Completion will be issued and the Bond may be terminated.

SECTION 106 AGREEMENT PROCEDURES

