Nottinghamshire County Council

Commuted Sums

Part 8.0

Introduction

8.1 In the context of this guidance commuted sums are financial contributions made by third parties to the County Council as compensation for taking on the future maintenance responsibility for newly created highways or highway improvements. They are typically secured through legal agreements made with developers and landowners under Sections 38 and/or 278 of the Highways Act 1980 ("the Act").

8.2 The calculation of the commuted sum is the subject of individual agreements. This note sets out our common approach as to how the commuted sum is calculated. This Authority has adopted the Adept (formerly County Surveyors Society) guidance document 'Commuted Sums for Maintaining Infrastructure Assets'.

Legal Background

New roads adopted under Section 38

8.3 Section 38 of the Act is a power allowing highway authorities to adopt newly constructed roads by agreement with landowners and developers. Section 38(6) states as follows:

"An agreement under this section may contain such provisions as to the dedication as a highway of any road or way to which the agreement relates, the bearing of the expenses of the construction, maintenance or improvement of any highway, road, bridge or viaduct to which the agreement relates and other relevant matters as the authority making the agreement think fit".

8.4 The Court of Appeal has emphasised the wide and unqualified nature of the Section 38(6) powers. There are no limitations as to how the commuted sum should be calculated (Redrow Homes Ltd v Knowsley MBC [2015]) and this need not be limited to "extra over" costs.

Existing roads improved under Section 278

8.5 Section 278 of the Act is a power allowing highway authorities to secure improvements to existing roads by agreement with landowners and developers.

8.6 Section 278(3) states as follows:

"The agreement may also provide for the making to the highway authority of payments in respect of the maintenance of the works to which the agreement relates and may contain such incidental and consequential provisions as appear to the highway authority to be necessary or expedient for the purposes of the agreement".

8.7 Section 278 is therefore drafted in the same wide and unqualified terms as Section 38 of the Act.

Application

8.8 The need for paying commuted sums can be divided into four broad categories.

- The cost of maintaining areas and construction which, under our normal design guidance are not required for the safe and satisfactory functioning of the highway. Examples are additional

areas of carriageway, such as a 'square' surrounding a turning head, hard landscaping, grass verges, and so on.

- The cost of maintaining some features of the adoptable works which can be considered as extra over. Examples include highway structures, public transport infrastructure, landscaping, trees, shrubs and so on, additional or non-usual street furniture and noise fencing. These costs represent an increase in our future maintenance liability which will be more than the anticipated normal funding generated by the development.
- The additional cost of maintaining permitted alternative materials and features which are extra over. Examples include surfacing materials and street lighting equipment. These additional costs are in excess of what we would have incurred if the materials and features used had been to the standard specification.
- Sustainable drainage systems (SUDS), for example, flow-attenuation devices, swales and storage areas.

Note: Where you are proposing SUDS, you must hold discussions with all relevant parties at an early stage (and certainly before any planning application) to agree ownership and responsibility for the facility.

8.9 This is not an exhaustive, detailed list. It is only intended to illustrate broad principles. Cases where commuted sums will normally be required are set out in other parts of this document. You should always discuss with us where commuted sums might be required at the earliest possible opportunity and certainly before any planning application.

Calculating commuted sums

8.10 We work out the cost your maintenance obligation using this formula:

Commuted sum = $\sum Mp/(1+D/100)^T$

Mp = Estimated periodic maintenance cost

D = Discount rate (effective annual interest rate) (%)

T = Time period before expenditure will be incurred (years)

Maintenance unit costs (Mp)

8.11 Maintenance unit costs are based on contract rates current at the time of calculation and the frequency of treatment or intervals of replacement, based on planned frequencies or historic information. A sum of 10% of the works costs will be added to cover our design and supervision costs.

Discount rate (D)

8.12 The discount rate (effective annual interest rate) is worked out as follows:

D = (1.045/1.0225) – 1

= 2.2%

Where 1.045 is the interest rate (4.5% based on long-term neutral base rate) and 1.0225 is the inflation rate (2.25% based on RPI-X that is RPI excluding mortgage payments)

Time period (T)

8.13 There is a case for using a time period equal to the expected life of the development in the case of development roads. However, for the time being, a time period of 60 years will be used to calculate the commuted sums, with the exception of highway structures when a 120-year period will apply, in accordance with the standard design life requirement.

Agreement, Bond, & Timing

8.14 You will be required by the relevant agreement with us to pay us a commuted sum. Any commuted sums you must pay will be included in the bond required under the Section 38 or Section 278 agreement. The commuted sum will be payable before we issue the final certificate.

8.15 For Section 278 works we will not normally apply commuted sums for the existing area of carriageway unless replaced with a non-standard material (in that case the commuted sum would be the difference between the commuted sum for the standard and non-standard material). A full commuted sum would be required for any additional carriageway created (e.g. a right turn lane), or any new feature created (e.g. refuge/splitter island, additional lighting, bollards etc). This is because the additional carriageway and features created above those already existing are only required to provide the access for the new development, and therefore it is reasonable to require a commuted sum to maintain them in the future.

Commuted sum example

Annual maintenance cost for example £100
Replacement cost for example £500
Design life for example 20 years
Discount rate 2.2% (0.022)

Calculate for each year up to 60 years including replacement cost as required:

Year 1 - £100 ÷ (0.022% + 1)^{1} = £97.85

Year 2 - £100 ÷ (0.022% + 1)^{2} = £95.74

Year 3 - £100 ÷ (0.022% + 1)^{3} = £93.72 and so on up to year 20

Year 20 - £500 ÷ (0.022% + 1)^{20} = £323.56

Year 21 - £100 ÷ (0.022% + 1)^{21} = 63.32 and so on up to year 40

Year 40 - £500 ÷ (0.022% + 1)^{40} = £209.38

Year 41 - £100 ÷ (0.022% + 1)^{41} = £40.97 and so on up to year 60

Year 60 - £500 ÷ (0.022% + 1)^{60} = £135.49

Each value for each year is then summed.

[End]