

# New Streets, the Advance Payments Code, and Section 38

## 6.1 The Advance Payments Code (“the Code”) Section 219 to 225 Highways Act 1980 (“the Act”)

In accordance with Section 220 of the Act, a person who submits plans for building regulations approval which includes new buildings that would face a private street is liable for the cost of the private street works. The County Council is required to serve notice on that person seeking payment of the County Council’s estimated cost of the street works as security unless a Section 38 agreement is in place, or the development is specifically exempt from Section 220 by way of Section 219.

**WARNING** - If works start on any building without paying the sum specified in the notice, the landowner will be committing an offence, and the County Council may take them to court.

Once the payment of the sum specified in the Section 220 notice has been made, this will be returned if a Section 38 agreement has been entered into or when the works are finished to a standard that we judge will provide a durable construction and being satisfied that there is no prospect of the street requiring further private street works in the future. Note that completing the works does not mean that the street will be of an adoptable standard. In the absence of a Section 38 agreement, the street will remain private, and will not be maintained at public expense. A fee will be charged if you wish the detailed design of the street works to be approved and the construction to be inspected to allow highway adoption to be considered in the future.

## 6.2 Private streets

If you clearly indicate that you would not wish for a street to be adopted, you must submit a plan to the County Council under Section 31(6) of the Act identifying the extent of the private street. If the County Council deem it appropriate, the Council may then exempt the development from the Code once satisfactorily completed, subject to the owner(s) of the site having entered into a legal agreement under Section 106 Town and Country Planning Act that indemnifies the County Council against future petitioning by residents to adopt their street under Section 37 of the Act and to secure future private maintenance arrangements for the street.

## 6.3 Section 38 legal agreements

Section 38 of the Act is the mechanism used to ensure most streets constructed as part of development become highways maintainable at public expense (adopted) by way of entering into a Section 38 agreement and providing a bond. Parties to the agreement must include all landowners. The County Council and most builders prefer the Section 38 agreement route to highway adoption as it offers more certainty and ensures the return of the security sum once the terms of the agreement have been met. The security can either be a cash deposit or a bond backed by a financial institution. The value will be equal to the County Council’s works cost estimate.

### **6.3.1 Section 38 detailed designs and design checking and inspection fees**

Prior to the County Council being able to consider entering into a Section 38 legal agreement, a detailed design of the street works will first require submitting for technical approval. Before carrying out any technical approval checks, the County Council will require payment of our initial fees for checking the design and inspecting the works. The initial fee will usually be circa 50% of the total fee which is 7% of the final estimated cost of the works. The balance of the design checking and inspection fee will be payable prior to the signing of the agreement. Additional fees may apply.

The following information is required before the Section 38 design check can be processed:

#### **Layout**

- Plans indicating the position of all carriageways, footways, footpaths, cycle tracks, verges, service strips, visibility splays, traffic calming features, surface water drainage including gully positions, position of dwellings, gradients of driveways, garaging and/or parking spaces with vehicular crossings, traffic signs, road markings, structures, bus stops, and bus stop infrastructure.
- For layouts not conforming to normal HA standards, a drawing and schedule indicating different materials proposed together with appropriate areas for use in the calculation of commuted sums.
- Drawings in pdf format will be printed and distributed as required.
- Quality Audit if required.

#### **Vertical alignment:**

- Longitudinal sections of the carriageway showing; existing and proposed levels for the centre line and channels, gradients, and vertical curves with the appropriate horizontal road layout drawn below the section.
- Longitudinal sections must also indicate surface and foul water sewer profiles including the position of manholes, gradients, pipe sizes etc.

#### **Standard details:**

- Typical cross sections showing carriageway, footway and verge construction including details of kerbs and edgings (as per standard drawings).
- Typical construction details of footways, footpaths, cycle tracks, vehicular accesses, pedestrian crossing points, kerbs, manholes, and pipe bedding (as per standard drawings).

#### **Ground conditions:**

- A geotechnical report, including CBR test results at formation.

#### **Drainage:**

- Details of existing and proposed surface and foul water drainage, including a highway gully layout.
- Calculations of surface water run-off, 'micro drainage' etc.
- A manhole schedule.
- Details of deeds of easements and discharge consents.

#### **Landscaping:**

- Details of planting and additional maintenance proposals.

## Other features:

- Any specialist information regarding bridges, culverts, headwalls and retaining walls supplied on separate drawings.

## Streetlighting:

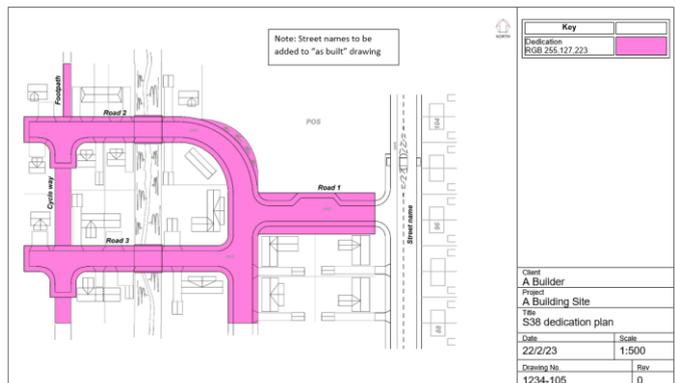
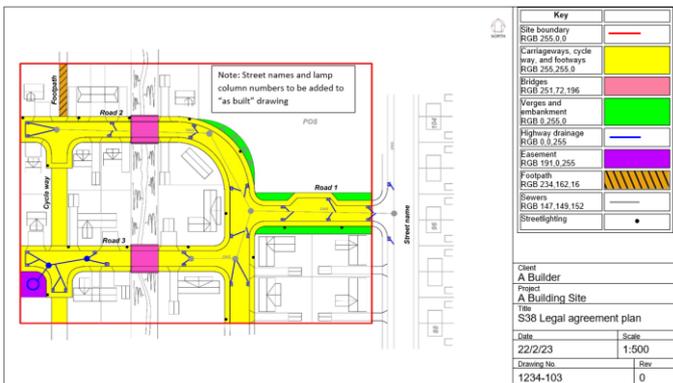
- Street lighting layout and specification in accordance with BS5489, together with details on any impact on the existing lighting system.

The County Council will only issue technical approval after all additional information and requested amendments have been received. The estimated bond value and any commuted sums will be confirmed on approval.

### 6.3.2 Section 38 legal plans

The design will require accompanying plans to be inserted in the Section 38 agreement including:

- a Section 38 coloured legal plan, and
- a highway dedication plan.



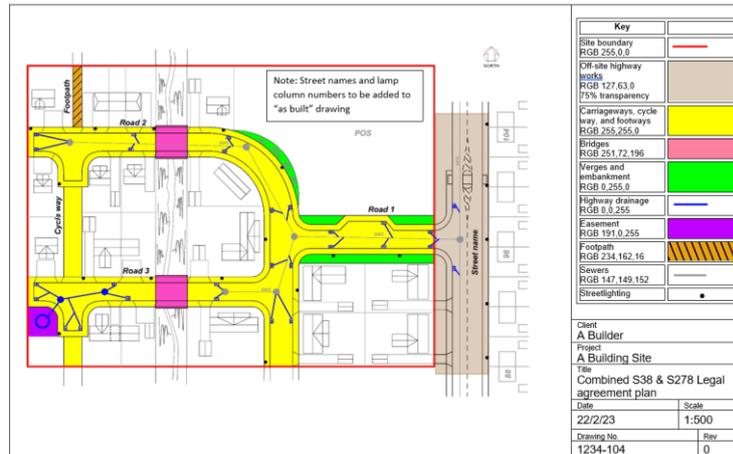
The County Council's legal and highway dedication plan colouring requirements can be viewed at Appendix G, Figures D and F.

## Notes:

- The red line site boundary and the road layout must abut the public highway or another Section 38 agreement(s) plan that does.
- Remove all superfluous information from the plan i.e., visibility splays, specifications, levels, annotations etc. but leave sufficient information so the street layout can be understood in relation to the buildings it is intended to serve i.e., include the building layout.
- Only include colouring on the plan where required for highway adoption purposes as indicated at Appendix G. All other detail on the drawing should be black or grey.
- Annotate road numbers or names.
- Provide a north point and colour key.
- Include sufficient existing spatial references (streets, field boundaries, buildings, etc.) so the site can be precisely located in relation to the surrounding area.
- Include the phase number if the site is to be split into more than one Section 38 agreement.

### 6.3.3 Off-site highway works

Off-site highway works would normally be subject to a separate Section 278 legal agreement. However, where those works are of a relatively minor nature and where it would be expedient to do so, it may be possible to cover both the private street works and off-site highway works in one agreement. There is an example of a legal plan at Appendix G, Figure E which includes the County Council's colouring requirements for a combined Section 38 and Section 278 legal agreement.



### 6.3.4 Information required for the Section 38 legal agreement

Once the design has been approved and to process a Section 38 agreement, the County Council will require details of the following:

- the name and address of the landowner,
- the name and address of the developer,
- the name and address of any bondsman or confirmation that there will be a cash deposit,
- the name and address of your solicitor including an email address (note: legal representation is not mandatory, but strongly recommended),
- proof of ownership of the land, and
- proof of an intention to enter into a Section 104 agreement and any deeds of easements.

Our solicitor will seek an undertaking from your solicitor confirming that our legal fees will be met.

### 6.3.5 Pre-commencement

You must not begin construction unless and until:

- we have given you technical approval,
- the Section 38 agreement has been completed and signed and the bond is put in place,
- you have notified the Health and Safety Executive that you are client for the works for the purposes of the Construction (Design and Management) Regulations,
- all necessary fees have been paid to us,
- you have complied with the New Road and Street Works Act minimum notification periods,
- the contractor (including any subcontractor) has been approved,
- you have demonstrated that £5m public liability insurance is in place including indemnity to principal,
- a pre-start meeting has been held.

### **6.3.6 Site inspection**

You are responsible for the day-to-day supervision of the roadworks construction. The County Council will only arrange inspection of the works to check that they are being constructed in accordance with the approved drawings and the County Council's requirements. You must always give our representative access to the works in progress. If problems arise, we will be happy to discuss possible solutions with you, but it will still be your responsibility to instruct your contractor and make sure that the works are satisfactorily completed in accordance with our requirements.

### **6.3.7 Substantial completion**

We will issue the first certificate of completion once:

- you have substantially completed the roadworks to our satisfaction,
- you have completed all street lighting to our satisfaction and provided up to date electrical test certificates,
- you have provided a CCTV survey of all highway drainage runs and connections,
- any new planted landscaping areas, grassed areas, trees, shrubs and so on that we are to adopt have been fully planted and established,
- the works (including any existing and new planted landscaping areas and so on) have been jointly inspected (that is by us, you, and your contractor) and no significant defects have been identified, or where they have, you have agreed to remedy them to our satisfaction, and
- where required, a stage 3 safety audit has been completed and all changes that we require have been made satisfactorily,
- you have provided 'as built' drawings in an electronic form, including an updated coloured legal plan and dedication plan with street names added,
- you have provided proof that you have entered into a sewer adoption agreement(s) with the relevant water company.

Once we issue a first certificate, the amount of bond can usually be reduced at the County Council's discretion. The bond cannot be reduced to a value less than any commuted sum unless the commuted sum has been paid.

You will then be responsible for maintaining the roadworks; for a minimum period of twelve months, whilst the streets are being subjected to construction traffic, until the sewers are adopted, and until such time as the streets connect to an existing highway maintainable at public expense.

### **6.3.8 Final Completion**

The County Council will issue a second certificate of completion when the following actions have taken place:

- You must contact us at the end of the maintenance period to arrange a further joint inspection of the roadworks (including any landscape planting, trees, grassed areas and so on). We will issue you with a list of any outstanding remedial works we require you to do, which you must then complete to our satisfaction.
- You must have maintained the roadworks to our satisfaction during the maintenance period.
- You must provide us with proof of sewer adoption by the relevant water company.
- You must provide us with up-to-date electrical test certificates.
- You must provide us with a CCTV survey of all highway drainage runs and connections.
- You must pay us any commuted sums and outstanding charges that are required.

- You must provide us with the health and safety file in an electronic form produced in line with the Construction (Design and Management) Regulations.

After the above has been done to our satisfaction, we will:

- issue a second certificate of final completion,
- inform you that the bond can be cancelled, and
- adopt all areas dedicated within the Section 38 agreement as highway to be maintained at public expense.

### **6.3.9 Soft landscaping**

Where there are areas of including trees, grassed areas and so on intended to be adopted as public highway, these may be subject to a three-year maintenance period to ensure that the planting has been sufficiently maintained to become established. A proportion of the bond will be retained until the expiration of the three years, until such time as all dead or diseased landscaping has been replaced, and until the landscaped area is established.

[End]