

NCC-047166-20 S278/ S38 agreements

Dear Requester,

Further to your request for information under the Freedom of Information Act Please see below in response. However please notes that; Most of the information has been the same for the last two years, but a number of the question have been refused under Section 12 of the Freedom of Information Act, as they would require a significant amount of staff time to answer.

We have dealt with more than 400 S38/ S278 over the requested period. As we do not hold the data requested in a format that can be easily be aggregated or interrogated it could take between 5 and 15 mins per agreement to extract the relevant data required to answer these questions resulting in between 33 and 100hrs hours of staff time to answer. This would considerably exceed the limits under the Act. **The questions where possible have been answered**

Dear Sir/Madam,

The Home Builders Federation is the representative body for house builders in England, Wales, and Scotland. HBF's membership of more than 300 companies build the majority of open market homes for sale completed in England and Wales and encompasses private developers and registered providers.

The HBF host a series of dedicated technical subgroups to support the housebuilding sector in a bid to share best practice, knowledge and understanding. The subgroup topics range across key industry areas, with highway related matters being one of the most pivotal parts in the delivery in much needed new homes that requires an industry coordinated approach.

The HBF Highways subgroup has formulated a series of questions of which, we have been asked to submit to several Local Authority Highway Departments under a Freedom of Information request. There is also a survey at the end of this document asking for your opinion on certain aspects of S278/ S38 agreements, and we would be very grateful if you could fill this in for us along with the FOI request.

Kind regards

We kindly request that you do not provide web links, or Excel Spreadsheets as answers to any of the questions as we have had issues with links not working or spreadsheets not opening correctly in the response to our last FOI request. To make it easier for you to provide the answers to our questions I have created tables for you to fill in which will hopefully make the process of responding easier for you.

Highway Bond Provision

1. Please could you confirm which of these individual elements your Authority includes within your bond requirement for all highways work for S278 and S38 agreements?
Please use the tick boxes provided.

Elements	S278		S38	
	YES	NO	YES	NO
All elements	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Carriageways	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cycleways	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Drainage	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Earthworks	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Footways/paths	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fencing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Highway Retaining Structures	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kerbing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Landscaping	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Road Construction	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Road Works	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Service Strips	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Signage	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Street Furniture	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Street Lighting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Traffic Calming	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Traffic Signals	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trees	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Verges	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Do not hold information	<input type="checkbox"/>		<input type="checkbox"/>	

Not applicable	<input type="checkbox"/>	<input type="checkbox"/>
Other/Additional Comments:		
<p>All works required to fulfil the requirements of the agreement are included in the bond</p>		

2. Please could you provide the total bond value for S278 and S38 agreements for the past 3 financial years, and the total number of bonds completed in each year?

Financial Year	S278			S38		
	2017-2018	2018-2019	2019-2020	2017-2018	2018-2019	2019-2020
Total bond value						
Total number of completed bonds						
Additional Comments:						
<p>We do not hold keep rolling records of bond values, to provide this information accurately would require extraction from the relevant agreement and a running total to be calculated. As an Authority we have dealt with approximately 400 S278 / S38 agreements in the time period requested. Assuming a simple 5 min check per agreement it would take in excess of 33 hrs hours of staff time to answer this question. It is therefore refused under Section 12 of the Act.</p>						

3. Please confirm what items of adoptable highway infrastructure currently attract commuted sums, and what are the individual costs?

Item of adoptable highway infrastructure	YES	NO	If yes – Individual cost per unit
Blockwork	<input type="checkbox"/>	<input type="checkbox"/>	
Bollards	<input type="checkbox"/>	<input type="checkbox"/>	
Bridges	<input type="checkbox"/>	<input type="checkbox"/>	

Bus Shelters	<input type="checkbox"/>	<input type="checkbox"/>	
Carriageways	<input type="checkbox"/>	<input type="checkbox"/>	
Crossings	<input type="checkbox"/>	<input type="checkbox"/>	
Culverts	<input type="checkbox"/>	<input type="checkbox"/>	
Cycle Stands	<input type="checkbox"/>	<input type="checkbox"/>	
Cycleways	<input type="checkbox"/>	<input type="checkbox"/>	
Drainage	<input type="checkbox"/>	<input type="checkbox"/>	
Earthworks	<input type="checkbox"/>	<input type="checkbox"/>	
Footways/paths	<input type="checkbox"/>	<input type="checkbox"/>	
Fencing	<input type="checkbox"/>	<input type="checkbox"/>	
Highway Retaining Structures	<input type="checkbox"/>	<input type="checkbox"/>	
Hydrobrakes	<input type="checkbox"/>	<input type="checkbox"/>	
Illuminated Signage	<input type="checkbox"/>	<input type="checkbox"/>	
Kerbing	<input type="checkbox"/>	<input type="checkbox"/>	
Landscaping	<input type="checkbox"/>	<input type="checkbox"/>	
Paving	<input type="checkbox"/>	<input type="checkbox"/>	
Retaining Walls	<input type="checkbox"/>	<input type="checkbox"/>	
Road Construction	<input type="checkbox"/>	<input type="checkbox"/>	
Road Works	<input type="checkbox"/>	<input type="checkbox"/>	
Service Strips	<input type="checkbox"/>	<input type="checkbox"/>	
Signage	<input type="checkbox"/>	<input type="checkbox"/>	
Soakaways	<input type="checkbox"/>	<input type="checkbox"/>	
Street Furniture	<input type="checkbox"/>	<input type="checkbox"/>	
Street Lighting	<input type="checkbox"/>	<input type="checkbox"/>	
Swale Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	
Traffic Calming	<input type="checkbox"/>	<input type="checkbox"/>	
Traffic Signals	<input type="checkbox"/>	<input type="checkbox"/>	
Trees	<input type="checkbox"/>	<input type="checkbox"/>	
Verges	<input type="checkbox"/>	<input type="checkbox"/>	

Do not hold information	<input type="checkbox"/>
Not applicable	<input type="checkbox"/>
<p>Other/Additional Comments:</p> <p>For S278 works all additional items outside the existing Highway Inventory which we expected to maintain attract a commuted sum.</p> <p>For S38 works items which are considered extra ordinary or not required for the core function of the Highway are subject to a commuted sum.</p> <p>Committed sums could theoretically apply to all the above items.</p> <p>I am unable to provide the individual 'catch all' rates requested as they will vary based on the item used, the fact that commuted sums apply to 'non- standard' items means they will vary depending on what is proposed by the developer.</p> <p>For example, Blockwork could refer to anything from Tegula paving, to clay paviments both of which vary considerably in price.</p> <p>A spreadsheet containing standard rates was provided to you last year when you made this request. It can be provided again if required.</p>	

4. Please could you confirm your inspection fee or percentage applicable relevant to the bond provision for S278 and S38 agreements?

S278		S38		Both	
Fees	Percentage	Fees	Percentage	Fees	Percentage
<p>Additional Comments:</p> <p>S278 10% of first £100k of bond value and 6% thereafter.</p> <p>S38 7% flat fee.</p>					

Highway S38/S278 Timescales

Section S278 Agreements relating to residential developments during each of the past 3 financial years.

1. Please could you confirm the average time taken to from a technical submission to technical approval?

S278 – Average time from Technical Submission to Technical Approval.			
Financial Year	2017-2018	2018-2019	2019-2020
Average time in weeks			
Additional Comments: We do not hold keep rolling records of the average time taken from submission to approved to provide this information accurately would require extraction from the relevant job file and liaison with our colleagues who undertake the design check on behalf of the Council. A running total and average time would then to be calculated. As an Authority we have dealt with approximately 400 S278 / S38 agreements in the time period requested. Assuming a 10-15 min check per agreement it would take in excess of 66 hrs hours of staff time to answer this question. This question is therefore refused under Section 12 of the Act.			

2. Please could you confirm what is the average time from technical approval to the completion of a Section 278 legal engrossment?

S278 – Average time from Technical Approval to completion of Legal Engrossment.

Financial Year	2017-2018	2018-2019	2019-2020
Average time in weeks			
Additional Comments:			
<p>As per 1 above we do not hold this information. Consequently, it would a similar timescale to calculate. This question is therefore refused under Section 12 of the Act.</p>			

3. Please could you confirm the average time to grant a Streetworks Permit, post execution of Legal Engrossment?

S278 – Average time to grant a Street Works Permit, post Legal Engrossment.			
Financial Year	2017-2018	2018-2019	2019-2020
Average time in weeks			
Additional Comments:			
<p>The question is unclear. What is meant by a 'Street works permit', what type permit is being referred to? The County Council issue several different permits for works in the Highway.</p> <p>Notwithstanding this, the time between Engrossment and a developer applying to work in the Highway is entirely dependant on the developer as they are the one who make the application for the relevant permits to allow them to work in the Highway.</p>			

Section 38 Road Adoptions relating to residential developments during each of the past 3 financial years.

1. Please could you confirm what is the average time taken from technical submission to a response to the submission?

S38 – Average time from Technical Submission to a response to the submission.			
Financial Year	2017-2018	2018-2019	2019-2020

Average time in weeks		
Additional Comments:		
<p>As per the above we do not hold this information, calculating would take a considerable amount of staff time. This question is therefore refused under Section 12 of the Act.</p>		

2. Please could you confirm what is the average time taken from the response to Technical Approval?

S38 – Average time from the response to Technical Approval.			
Financial Year	2017-2018	2018-2019	2019-2020
Average time in weeks			
Additional Comments:			
<p>As per the above we do not hold this information, calculating would take a considerable amount of staff time. This question is therefore refused under Section 12 of the Act.</p>			

3. Please could you confirm what is the average time taken from Technical Approval to the completion of a Section 38 legal agreement?

S38 – Average time from Technical Approval to Legal Agreement.			
Financial Year	2017-2018	2018-2019	2019-2020
Average time in weeks			
Additional Comments:			

As per the above we do not hold this information, calculating would take a considerable amount of staff time. This question is therefore refused under Section 12 of the Act.

4. Please could you confirm what is the average time taken from the completion of a Section 38 legal agreement to the commencement of the maintenance period?

S38 – Average time from Legal Agreement to commencement of the Maintenance Period.			
Financial Year	2017-2018	2018-2019	2019-2020
Average time in weeks			
Additional Comments: As per the above we do not hold this information, calculating would take a considerable amount of staff time. This question is therefore refused under Section 12 of the Act.			

5. Please could you confirm what is the average time taken from the commencement of the maintenance period to the date of formal adoption?

S38 – Average time from Commencement of the Maintenance Period to Formal Adoption.			
Financial Year	2017-2018	2018-2019	2019-2020
Average time in weeks			
Additional Comments: As per the above we do not hold this information, calculating would take a considerable amount of staff time. This question is therefore refused under Section 12 of the Act.			

6. Please could you confirm the average time from the issue of the Final Certificate to the cancellation of the bond?

S38 – Average time from issue of Final Certificate to cancellation of the bond.			
Financial Year	2017-2018	2018-2019	2019-2020
Average time in weeks			
Additional Comments: <p>As per the above we do not hold this information, calculating would take a considerable amount of staff time. This question is therefore refused under Section 12 of the Act.</p>			

7. If you reduce the value of the bond as a development progresses at what stages do you reduce the value, and by what percentage?

Stage the value is reduced	Percentage of reduction
Additional Comments: <p>Our Legal agreements allow for an interim certificate to be issued at any time and bond reduced accordingly. Each request for reduction is considered on its own merits and determined based on factors such as risk to the Authority and safety.</p>	

Survey Questions

1. What in your opinion is an appropriate timescale for the submission and final execution of a S38/ 278 Agreement, and why?

Appropriate timescale for the submission and financial execution of an S278/S38 agreement

	S278	S38	Both
Appropriate Timescale			
Reason			

This asking for an opinion which is subjective, rather than information.

2. Do you have target timescales for submission to final execution? If yes, what are they?

Your target Timescales for submission to financial execution						
	S278		S38		Both	
	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Target Timescale						

3. What improvements do you think could be made to the overall process from submission to engrossment?

Answer
Again this is a request for a subjective opinion rather than a request for information

4. What improvements are you already considering/ have already implemented? For example, Hampshire have created a developer portal which allows the developer and HA to monitor the progress of any S278/S38 agreements at all stages.

Answer

We are looking at potentially automating applications and payment via a page on our website.

5. Would you consider using the developer obtained tender value for calculating the bond provision for S278 and S38 agreements? What conditions would you need in place to do/consider doing this?

	S278	S38	Both
Yes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
No	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Maybe	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Conditions			

We already do, it depends on the scale of works. If we would be likely to put the works out to tender in the event of a default, then we may consider using tendered rates. It depends how reasonable those rates are and whether we consider we would be able to obtain such favourable rates ourselves. The purpose of the bond is secure enough monies to allow us to complete the works ourselves in the event of default, consequently we can only use rates we are likely to achieve ourselves as an Authority.

6. Are you currently planning to/ do you use Novation Agreements for step in rights for developers and contractors where original contractors do not complete works?

	S278	S38	Both
Yes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
No	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Maybe	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Reason			
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This is a specific legal question and the answer would vary based on individual circumstances. We do not sign agreements with contractors hence there should be no need to Novate agreements if they go bust. About Developers it would depend on the individual circumstances and reasons why Novation has been requested.

7. Would you accept applications for and grant Street Works Permits prior to Legal Grossment on the proviso that planning permission has been granted?

	S278	S38	Both
Yes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
No	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Maybe	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Other	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Reason			

See answer above, not entirely sure what is meant by Street works Permit. We issue numerous different permits and licenses for works within the Highway these can be applied for at any time. We do not permit works to commence in the Highway prior to completion of the relevant legal agreement.

8. What in your opinion is an appropriate timescale for Technical Submission to Formal Adoption for both S278 and S38 agreements?

Appropriate timescale from Technical Submission to the Formal Adoption of an S278/S38 agreement			
	S278	S38	Both
Appropriate Timescale			

Reason

This a request for information not opinion. The answer is subjective.

9. Would you consider completion of a legal agreement before confirmation of Land Title Registration?

Answer

Not unless the existing land owner is a signatory to the agreement. We do however, accept proof of transfer in lieu of Registration.

We trust this now resolves your enquiry and where we have not been able to provide details we expect that this information is not held by Nottinghamshire county Council at this time.

We suggest all requesters search under our publication scheme in advance of requesting information under the freedom of information act.

Nottinghamshire County Council regularly publishes previous FOIR, s and answers on its website, under Disclosure logs. (see link)

<http://site.nottinghamshire.gov.uk/thecouncil/democracy/freedom-of-information/disclosure-log/>

you can use the search facility using keywords. i.e. un regulated / care / home etc.

If you are unhappy with the service you have received in relation to your request and wish to make a complaint or request a review of our decision, you should write to the Team Manager, Complaints and Information Team, County Hall, West Bridgford, Nottingham, NG2 7QP or email complaints@nottscc.gov.uk .

Kind Regards

Complaints, Information & Mediation Officer Chief Executive's Department Nottinghamshire County Council County

