

# New Roads, 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, all new buildings that would face a private street are liable for the cost of the private street works unless specifically exempt by way of Section 219 or a Section 38 agreement has been previously entered into. Otherwise we are required to serve notice on the person who submitted plans for building regulations approval seeking payment of our estimated cost of the streets works.

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

Once payment has been made, this will be returned if a Section 38 agreement has been entered into or the works are finished to a standard that we judge will provide a durable road construction and being satisfied that there is no prospect of the road requiring further private street works in the future. Note that completing this process does not mean that the road will be of an adoptable standard, in which case, it will remain private and we will not be maintain it at public expense. A fee will apply similar to a Section 38 agreement if you wish the detailed design of the road and works construction to be approved by us to allow future adoption.

We and most builders prefer the Section 38 agreement route to highway adoption as it offers more certainty with respect future road adoption and the return of the security sum.

## 6.2 Private Roads

If you clearly indicate that you would not wish for a street to be adopted, you must submit a plan to us under Section 31(6) of the Act identifying the extent of the private street, enter into a legal agreement under Section 106 Town and Country Planning Act to indemnify us 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. We may then be in a position to exempt the development from the Code once completed if we deem this to be appropriate.

## 6.3 Section 38 agreements

Section 38 of the Act is the mechanism used to ensure most roads constructed as part of development become highways maintainable at public expense (adopted) by way of entering into a Section 38 agreement. Parties to the agreement must include all landowners as well as the developer if different.

## 6.4 Approvals

Before carrying out any technical approval checks, we will require payment of our costs for any checking of the design. This will usually be circa 50% of the total fee. The balance of the

administration and inspection fee will be payable on signing of the agreement. Additional fees may apply.

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

#### **6.5 Layout:**

- Plans indicating the areas of proposed highway offered for adoption;
- Plans indicating the position of all carriageways, footways, footpaths, cycle ways, 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.

#### **6.6 Vertical Alignment:**

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

#### **6.7 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 ways, vehicular accesses and pedestrian crossing points kerbs, manholes and pipe bedding (as per standard drawings);

#### **6.8 Ground Conditions:**

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

#### **6.9 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.

#### **6.10 Landscaping:**

- Details of planting and additional maintenance proposals.

#### **6.11 Other Features:**

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

## 6.12 Street Lighting:

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

## 6.13 S38 Plan

We will only issue technical approval after all additional information and requested amendments have been received.

The design will require accompanying by a plan to be inserted in the Section 38 agreement coloured up as follows:

- Site boundary - red
- carriageway – grey
- footways, footpaths, cycle ways and other hard-surfaced areas – yellow
- shared-surface roads – brown
- traffic-calming features – brown
- verges – green
- highway drainage – blue
- additional highway structures – pink
- special surfacing – purple
- Street lighting - red

## 6.14 Section 38 plan example



We will prepare all documentation for the Section 38 agreement. Details to be provided at this time include:

- the name and address of the landowner;
- your name and address as the developer;
- the name and address of any bondsman or confirmation of cash deposit;
- the name and address of the solicitor;
- 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.

### **6.15 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 an appropriate surety is set 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.

### **6.16 Site inspection**

You are responsible for the day-to-day supervision of the road works construction. We will only inspect the works to check that they are being constructed in accordance with the approved drawings and our requirements. You must give our representative access to the works in progress at all times. 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.

### **6.17 Substantial completion**

We will issue the first certificate of completion once:

- you have substantially completed the road works 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, any stage 3 safety audit has been completed and all changes that we require have been made satisfactorily;
- You must provide us with 'as built' drawings, preferably in an electronic form.

When we issue a first certificate, the amount of bond excluding the commuted sums element can be reduced, usually to 40% of the original amount. The exception to this is where you are paying us a commuted sum in which case the bond cannot be reduced to a value less than the commuted sums that we have calculated.

You will then be responsible for maintaining the roadworks for a minimum period, usually twelve months. This allows any defects in the works to become apparent after they are brought into use.

### **6.17 Final Completion**

We 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 road works (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 a copy of the provisional certificate of adoption for the drainage and sewers, as issued 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 all of 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.

[End]