

APPROACH PRINCIPLES COLLABORATION DEVELOPMENT



the Kent design guide

making it happen - technical assessment and adoption
(advance payment code)

Overview

This part of making it happen includes advice and guidance about the advance payments code as defined under S.219 of the Highways Act 1980.



advance payments code

Introduction

The creation of more private streets is to be avoided wherever possible. This can be achieved by the correct application of the Advance Payments Code procedure (APC) as defined in Section 219 of the Highways Act 1980.

The APC procedure is a statutory tool that provides for the future making up of private streets.

The Divisional Manager is responsible for the application of the APC procedure, together with the administration and operational activities of Section 38 Agreements, including adoptions.

All of this activity will be exercised in accordance with Kent Design, Statute and our current Model form of Agreement.

General

We will apply rigorous application of the APC procedure for all developments that have more than five dwellings in order to protect the frontagers' interests.

The only exception being for in-fill plots on existing private streets, developments off existing private streets or developments that are to remain private.

Where we agree with you that a development can remain private, we will issue an exemption notice retrospectively in line with our policy on private developments.

The cost of the APC sum will reflect our estimated costs of the proposed street works.

The fact that an APC payment has been made to us does not guarantee future adoption of any street works.

Private Street Definition

Section 203 of the Highways Act 1980 defines a private street, briefly, as a street not being a highway maintainable at the public expense.

It includes, for the purpose of the APC procedure, any land shown as a proposed street on plans, either deposited with the local District Planning Authority seeking building regulation approval or planning permission, or where approval has been granted by NHBC.

Legislation

The following extract from Section 219 of the Highways Act 1980 is reproduced for information:-

“219 (1) Subject to the provisions of this section, where:

- it is proposed to erect a building for which plans are required to be deposited with the local authority in accordance with building regulations, and
- the building will have a frontage on a private street in which the street works authority have powers under the private street works code to require works to be executed or to execute works.
 - (1) No work shall be done in or for the purpose of erecting the building unless the owner of the land on which it is to be erected or a previous owner thereof has paid to the street works authority, or secured to the satisfaction of that authority the payment to them of such sum as may be required under section 220 below in respect of the cost of street works in that street.
 - (2) If work is done in contravention of sub-section (1) above, the owner of the land on which the building is to be erected and, if he is a different person, the person undertaking the erection of the building, is guilty of an offence and liable to a fine not exceeding level 3 on the standard scale and any further contravention in respect of the same building constitutes a new offence and may be punished accordingly.
 - (3) Where the person undertaking the erection of the building is not the owner of the land on which it is to be erected and is charged with an offence under sub section (2) above, it shall be a defence for him to prove that he had reasonable grounds for believing that the sum required under section 220 below had been paid or secured by the owner of the land in accordance with sub section (1) above.”

Proceedings in respect of offences committed

Proceedings under Section 219 sub-section (2) shall not be taken by any person other than the street works authority.

APC Procedure

Within six weeks of either Building Regulation approval being granted by the local District Planning Authority or an Initial Notice (issued by the NHBC) being received, the Divisional Manager will where appropriate serve a notice under Section 220 of the Highways Act 1980.

The notice will specify the amount to be deposited or secured in respect of street works charges for those dwellings for which approval has been granted.

Where the Divisional Manager has served a Section 220 notice, you must not carry out any work to erect dwellings (including foundations) until the sum specified in the Section 220 notice has been deposited or otherwise secured to our satisfaction.

If you commence any building works before the advance payment sum is secured with us, it will result in enforcement by way of prosecution. Work carried out on different buildings will constitute a separate offence as will work on the same building at different times.

It is usual for estate developers to discharge their obligations under Section 220 by completing an agreement with us under Section 38 of the Highways Act 1980.

Even though it is proposed to complete such an agreement, it is still an offence to commence building works (including foundations) before either the agreement is signed or the APC sum has been deposited or secured.

If you wish to start building before the agreement is signed you must either make a deposit, or provide the necessary security in accordance with the Section 220 notice.

The amount specified in the Section 220 notice may be broken down, on request, to cover individual dwellings or parts of the development where appropriate.

Deposits paid to us will, upon completion of the agreement, be refunded to you together with all accrued interest.

We will refund any payments initially paid to us where subsequently we agree that the development can remain private.

An exemption notice will be served retrospectively for private developments or where we agree your proposals are not covered by the advance payments code procedure.

All notices, payments or security received are registrable as a local land charge with the local District Planning Authority and will be disclosed where appropriate.

Form of Security

The Highways Act 1980 does not specify the exact form of security to be given, and it is for the street works authority to decide what form the security should take.

We have decided that the following securities are acceptable in lieu of a cash deposit:

- a mortgage or second mortgage on the development land;
- a completed Section 38 Agreement; or
- a temporary bond. The bond must be in the standard form acceptable to us (see typical form of bond on page 6).

TYPICAL FORM OF BOND FOR ADVANCE PAYMENT CODE SECURITY

BY THIS BOND whose registered office is situated at (“the Developer”) and..... whose registered office is situate at..... (“the Surety”) are jointly and severally bound to THE KENT COUNTY COUNCIL of County Hall Maidstone Kent ME14 1XQ (“the Council) this..... day of..... 20 in the sum of £(..... Pounds) to be paid to the Council for which payment the Developer and the Surety jointly and severally bind themselves and their successors and assigns.

WHEREAS

1. The Developer wishes to erect a building or buildings on land in the private street called and the Council has in accordance with Sections 219 and 220 of the Highways Act 1980 (“the Act”) served a Notice (“the Notice”) requiring that the expense of street works amounting to £ (Pounds) shall be paid or secured such sum being the amount which would be recoverable under the Private Street Works Code in respect of the frontage of the proposed building or buildings on the street if the Council were then to carry out such street works as it would require under the said Code before declaring the street to be a highway maintainable at the public expense.
2. It is intended that this bond shall be in respect of the sum now due under the Notice and shall secure the said works required to be carried out under the Notice namely the construction of the estate roads and footpaths to be undertaken by the Developer.

NOW THE CONDITION of this Bond is such that of the Developer shall well and truly and faithfully comply with all the requirements of the Council in respect of the said works or if on default by the Developer the Surety shall satisfy and discharge the sum due from and payable by the Developer to the Council in respect thereof up to the amount of this Bond then this obligation shall be null and void otherwise it shall remain in full force PROVIDED ALWAYS that the giving by the Council of any extensions of time or any other forgiveness

THE COMMON SEAL of was hereunto affixed in the presence of:

Director

Secretary

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Director

Secretary