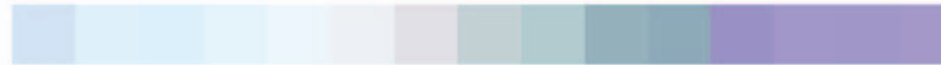


APPROACH PRINCIPLES COLLABORATION DEVELOPMENT



the Kent design guide

making it happen - technical assessment and adoption
(section 278 agreement)

Overview

This part of making it happen includes advice and guidance about completing agreements under section 278 of the Highways Act 1980.



section 278 agreement

General

We recommend that you read our Section 278 Agreement Guidance Notes for Developers that explain in more detail, the procedures, responsibilities and what to do, to ensure that you carry out works on the highway safely and speedily.

The Section 278 Agreement Guidance Notes for Developers are included in the reference section on our website.

Legislation

Works funded or executed by a party other than ourselves on the highway, usually as a result of planning permission, are carried out in most instances under Section 278 of the Highways Act 1980.

Section 278(1) of the Act (as amended by the New Roads and Street Works Act 1991) says:

“A highway authority may, if they are satisfied it will be of benefit to the public, enter into an agreement with any person – on terms that that person pays the whole or such part of the cost of the works as may be specified or determined in accordance with the agreement.”

- for the execution by the authority of any works which the authority are or may be authorised to execute, or
- for the execution by the authority of such works incorporating particular modifications, additions or features, or at a particular time or in a particular manner.

This section of the Act is used to allow you to carry out the works yourself and directly employ a contractor, approved by us, to work on the existing public highway.

You will be responsible for all aspects of the works on the public highway, including the design, supervision of the construction and ensuring that the works are completed to our satisfaction.

Section 278(3) of the Act, says:

“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 works.”

This section of the Act entitles us to seek payment for future maintenance and we do this through commuted sums where necessary.

Committed sums allow us greater flexibility to adopt non-standard materials and other items without placing undue burdens on our maintenance budget or council tax payers.

Nevertheless, even where a commuted sum payment is offered, we may not adopt the works if the proposals are inappropriate or unacceptable on highway safety grounds.

Section 278 agreements are normally used in conjunction with agreements under Section 106 of the Town and Country Planning Act 1990. Such arrangements, involving the local District Planning Authority, ourselves (where highway works are covered by S. 278 agreement), and a landowner and/or a developer, are used to regulate developments where the use of planning conditions would not be appropriate.

The granting of planning permission may depend on the landowner and/or the developer entering into a Section 106 agreement. Section 106 agreements may cover a number of matters such as securing off-site highway works, landscaping, phasing of the development, paying sums of money and so on.

Both Section 106 and Section 278 agreements operate in the same way in relation to highway works. They follow procedures involved from initial consultations through to final completion of the highway works.

The legal agreement allows the other party - 'the Developer' - to carry out and/or fund the works.

Our Legal and Secretariat will prepare the agreement on behalf of the Divisional Manager, who is responsible for overall project management of the scheme. Copies of our legal agreements are included in the reference section on our website.

Procedure

Before you can enter into a Section 278 agreement, you normally need to obtain full planning permission for the development from the local District Planning Authority. This must include approval of any reserved matters relating to the highway works.

You must seek Stage 1 Approval before planning permission is granted to ensure that the scheme is acceptable to us.

If you intend commencing any works before planning consent is granted, you must agree to refund all of our costs in the event that planning consent is not granted or the development does not proceed for any reason.

We use standard Section 278 model agreements at all times, however it may be necessary to make amendments in some instances, for example to allow for specific structures and commuted sums to be included.

We must be protected against the risk of unforeseen expenditure if the highway works are unfinished for any reason.

We will calculate the cost of the highway works, including any highway structures, highway drainage works, works to Statutory Undertakers' apparatus and commuted sums (where applicable).

Before commencing work on the highway you must arrange for an appropriate surety equal to our calculated cost.

The surety may be in the form of:

- a bond with a recognised financial institution; or
- the equivalent sum of monies lodged with us.

You must meet all costs associated with the scheme as detailed in our Section 278 Agreement Guidance Notes for Developers.

We require all highway works to be designed by either Chartered Consulting Engineers or consultants that have relevant experience in such works. We will need to approve the Consulting Engineers or Consultants that you intend using to design the highway works. We maintain a list of approved Consulting Engineers and Consultants that you can use to select from if you wish.

You must supply relevant details of the Consulting Engineers or Consultants, that you wish to use.

The scheme design must comply with the Design Manual for Roads and Bridges and the Specification for Highway Works as extended and amended by us.

We require that safety audits (to HD19-03) are carried out for all highway works covered by Section 278 agreements.

An accredited safety auditor, independent from the design consultant, is required to undertake the safety audits. You will be responsible for commissioning and paying for any work associated with the safety audits.

You must comply with all aspects of the Construction (Design and Management) Regulations 1994, and indemnify us (protect us from legal responsibility) against all claims, liabilities and actions if you fail to do so.

Feasibility Stage

You must agree the need for any off-site highway works and their general nature with us before submitting a planning application.

We must be satisfied that any proposed highway works:

- will off-set the highways and transportation impacts of the development; and
- are possible within the land constraints of the developments.

These requirements are necessary before we recommend to the local District Planning Authority that the development is acceptable.

You will be required to supply key information (this is included in our Section 278 Agreement Guidance Notes for Developers) at the feasibility stage in order that we can be satisfied that the proposed highway works are possible.

Preliminary Design Stage

When we have agreed the general scheme layout at the feasibility stage, the approved consultants will be required to submit a preliminary design. This should minimise the need for a lot of design changes at the detail design stage.

When we have received confirmation that you will be responsible for all the costs if planning permission is not granted, we will arrange for the Stage 1 submission to be audited.

At this stage, you must talk to other parties, for example access groups, Statutory Undertakers or the Environment Agency, who could have an influence on the design of the works.

You need to carry out consultations about the scheme with the parish council, the local county councillor and nearby residents about the scheme and all responses should be analysed and sent to us for a decision.

When Stage 1 Approval has been granted the Divisional Manager will seek Members' approval to enter into a S.278 Agreement with you. Work on preparing the legal agreement will not commence until Members' approval has been obtained.

Detailed Design Stage

When the scheme has received Members' approval for Stage 1, it will be necessary for you to submit the detailed design.

The legal agreement will state that we must approve the detailed design before any construction works commence.

Technical Approval Checks

Before carrying out any technical approval checks, we require you to pay an advanced sum to cover our estimated costs for checking the design, preparing the legal Agreement and any general management issues relating to the scheme. We deduct our costs from the advance sum as the scheme progresses.

The design package must include all those relevant items defined in the Section 278 Agreement Guidance Notes for Developers. You should allow plenty of time for the checks to be made, as it can be a lengthy process.

A Stage 2 safety audit (to HD19-03) must be submitted with the design package.

We will only issue technical approval after:

- a satisfactory design package has been submitted;
- stage 1 and stage 2 safety audits have been satisfactorily completed; and
- any additional or amended details required have been submitted and approval.

Traffic Calming and other Traffic Management Schemes

Where the works include traffic calming or other traffic management measures we will consult all interested parties - including the parish or town council, the local county councillor and residents – about such measures.

This may include a public exhibition and/or other consultations beyond the minimum statutory requirements.

We will forward any feedback from these consultants to you. You must incorporate any necessary changes to the design as a consequence of these consultations

You will be required to pay all costs associated with the consultations, whether or not the outcome is successful.

The consultation process can be a very lengthy one and a successful outcome is not guaranteed. It is recommended that you seek advice from us on the likely time-scale and take this into account when you programme your works.

Structures

You must follow the requirements set out in the Highway Structures section where a highway structure is included or affected by the works.

Traffic-Signal Equipment

Where traffic signal equipment is proposed for the scheme, we will design it based on detailed road-layout drawings supplied by you.

We normally specify that all permanent traffic-control equipment forms part of the highway works and we will procure its installation. You will be required to pay all costs associated with supplying and installing the equipment to us.

You will also be required to pay us a commuted sum towards the future maintenance of all traffic-signal equipment.

Fees payable to us

We charge for the work involved in:

- preparing and managing the Section 278 agreement;
- checking the design of the highway works, any associated structures and any highway drainage;
- safety audit design checks;
- inspecting the works on site; and
- conducting surveys for inventory information.

Before commencing work you must;

- take out a bond with a Bank or other financial institution approved by us for the full cost of the works. This will include Statutory Undertakers' works, consultant's supervision costs and any other payment required by us. A percentage of the bond will be released when the First Certificate has been issued; or
- Alternatively you may deposit a sum of money (the Performance Security) with us for the same amount. The performance security is kept in an interest bearing account and all interest accrued is added to the initial sum.

We will charge you for checking the design and for all site inspections relating to highway structures based on actual costs and may also charge additional fees, based on actual costs, for Sustainable Drainage Systems (SUDs) and non-standard drainage systems.

You must also pay the actual costs of preparing each agreement, plus disbursements, to our Legal and Secretariat.

An additional fixed fee of £500 will be required for any supplemental agreement.

If a period of two years or more has elapsed since the First Certificate was issued and the Second Certificate has not yet been issued, we may charge

a further fixed fee of £500 for any additional administration costs.

Commuted Sums

We will charge commuted sums to cover maintenance in certain circumstances.

Commuted sums allow us greater flexibility to adopt non-standard materials and other items, without placing undue burdens on our maintenance budget or council tax payers.

Where we are prepared to adopt them, commuted sums are required for:

- structures;
- soakaways (those defined as non-structures);
- traffic signal equipment;
- additional adoption areas exceeding those that are required for the safe functioning of the highway;
- materials not included in our Specification;
- non-standard or additional street furniture or street lighting;
- landscaping within the proposed highway, including trees; and
- sustainable drainage systems (SUDS), for example, flow-attenuation devices, swales and storage areas).

If your design proposals include the provision of a SUDS solution, you must hold discussions with all relevant parties at an early stage (and certainly before you submit your planning application) to avoid delays and expensive redesign work and to agree ownership and responsibility for the facility.

Further information and advice is included in the Commuted Sums section.

Notification of Start of Works

You are required to give us at least three weeks' notice in writing of your intention to begin construction works.

Construction Works Procedure

You will not be permitted to start work on the highway until:

- the Section 278 Agreement has been completed by our Legal and Secretariat and the Bond is in place or the equivalent sums of monies has been paid;
- the Divisional Manager has given Stage 2 Technical approval and Safety Audit approval (including risk assessment for potential claims under the Land Compensation Act);
- you have consulted the Divisional Manager on the co-ordination of your works with other works on the local highway network;
- your contractor has been approved by us including his insurance liability;
- the programme and traffic management proposals have been approved;
- advance notification has been posted to the local Community/ County Council Members; and
- all necessary fees have been paid to us.

The audit site supervision engineer will keep the Divisional Manager informed about the progress of the works and will confirm when they are substantially complete so that the First Certificate can be issued.

It is essential that all street lighting and illuminated bollards are fully operational and have gazetteer references on them prior to the First Certificate being issued. All units are included in our street lighting maintenance contract and will be subject to the lighting contractor's patrolling regime.

You must ensure that the site is safe at all times.

You are also required to submit to us full details of any traffic management proposals required in connection with the works.

When the First Certificate is issued, a copy will be sent to our Legal and Secretariat with an instruction to proceed with the land transfer and to release part of the Bond or performance security.

A copy will also be sent to the audit site supervising engineer.

The Divisional Manager will issue the Second Certificate upon expiry of the maintenance period providing you have;

- paid all fees and payments to us;
- completed all remedial works to the satisfaction of the audit site supervising engineer;
- submitted the Health and Safety File and adoption drawings to us; and
- completed the land transfer (where necessary).

When the Second Certificate is issued, a copy will be sent to our Legal and Secretariat with an instruction to release the remainder of the Bond or performance security.

Contractor Approval

All road works carried out on the existing highway must be done by a contractor (including any sub-contractor) that has relevant experience and competency for this kind of work. The contractor and subcontractor must be approved by us prior to commencing work on the existing highway.

Public Liability Insurance

You must indemnify us (protect us from legal responsibility) against any claims by third parties arising from any work included in the Section 278 Agreement.

You must also provide us with written evidence that your contractor or sub-contractor has, as a minimum, a £5million public liability insurance with no limit on the number of claims.

Health and Safety

You must comply with all aspects of the Health and Safety at work Act 1974 and the Construction (Design and Management) Regulations 1994 and indemnify us (protect us from legal responsibility) against all claims, liabilities and actions from third parties arising from any of these matters.

Commencement of Works

You are responsible for arranging a 'pre-start' co-ordination meeting with us to ensure that everybody involved in the works understands the following:

- the agreed drawings that have been issued;
- all testing procedures;
- all inspections of the works;
- all traffic control procedures/measures;
- emergency telephone numbers;
- agreed start dates;
- programme of works;
- method statement; and
- the H & S Plan.

The 'pre-start' co-ordination meeting should, at the very least, be attended by your representative, our site supervising engineer, the contractor's representative and our representative.

You are advised to meet with our site supervising engineer to take photographs of the site prior to commencement of the works, so that any damage to the existing highway can be assessed where necessary.

Site Inspection

You are responsible for the day-to-day supervision of the road works until they are adopted. Our site supervising engineer will only inspect the works to check that they are being constructed in accordance with the approved drawings and any other requirements.

You must ensure that the works are supervised by a competent site engineer who is experienced in supervising highway works. They must be included on our approved list of consulting engineers for site supervision.

The level of supervision required will depend on the nature and scale of the works. For larger schemes, supervision must be provided at all times. We will agree with you the level of site supervision required at the pre-start meeting.

You must allow our site supervising engineer 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 ensure that the works are satisfactorily completed in accordance with the agreement.

Our inspection of the works does not absolve you from any responsibility for supervising the work and making sure that they are carried out in a proper and safe manner, and in line with the specification.

Timescale for completing the highway works

As soon as the works on site have begun it is your responsibility to complete them to our satisfaction. You must also ensure that the works are completed within the period stated in the agreement to minimise any potential disruption to highway users.

We reserve the right to call on the bond or to use the performance security to complete the works or determine the Agreement, where you do not conclude the works satisfactorily.

Drawings Required

You will be required to provide drawings as part of your technical submission in accordance with our Section 278 Agreement Guidance Notes for Developers.

Completion Certificates and Bond

Normally two certificates will be issued under the Section 278 Agreement. The exception is where soft landscaping works are included, in which case three certificates will be issued.

First Certificate

We will issue the First Certificate after:

- the highway works have been substantially completed;
- all street lighting units have been installed and are operational;
- all landscaped areas, planting, grassed areas, trees and shrubs are fully established;
- the works (including any existing and/or new landscaping areas) have been jointly inspected (that is by all parties) and no significant defects have been identified, or where they are you have agreed to remedy them;
- the Stage 3 safety audit has been completed and all changes required have been satisfactorily completed; and
- information and drawings in accordance with our Section 278 Agreement Guidance Notes for Developers have been supplied.

After the First Certificate has been issued the Bond will be reduced or the performance security released in accordance with agreement.

You will remain responsible for maintaining the highway works for a minimum period of twelve months after the first certificate is issued

Second Certificate

We will issue the Second Certificate after:

- you have arranged a joint inspection of the highway works (including any landscaped areas, planting, grassed areas, trees and shrubs) with us, at the end of the maintenance period. A list of any outstanding remedial works that are required will be sent to you which must be completed to our satisfaction;
- all highway works have been maintained during the maintenance period to our satisfaction;
- you have paid us any commuted sums that are required;
- any required land has been transferred to us;
- you have provided information and drawings in accordance with out Section 278 Agreement Guidance Notes for Developers; and
- you have provided us with the Health and Safety file.

After the Second Certificate has been issued the outstanding bond or performance security (or where soft landscaping is included a relevant proportion) will be released.

When all of the above matters have been completed to our satisfaction, the works will be adopted and maintained at public expense (other than the soft landscaping works).

Third Certificate

We will issue the Third Certificate after:

- all existing and/or new landscaping areas have been maintained during the maintenance period to our satisfaction; and
- you have arranged a joint inspection of the soft landscaping works with us, at the end of the extended maintenance period. A list of any outstanding remedial works that are required will be sent to you, which must be completed to our satisfaction.

When the Third Certificate has been issued the outstanding bond or performance security will be cancelled or released.

After the above matters have been completed to our satisfaction, the soft landscaping works will be adopted and maintained at public expense.