

Leicestershire Highway Design Guide

Part 4c: Highway adoption and section 278 agreements

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1. Overview

1.1 This section of the LHDG details the council's requirements for the construction of works on the existing public highway under Section 278 of the Highways Act, including:

- Technical details, including road safety audits and drawings (see Road Safety Audits), to enable the council to approve developer proposed highway works
- Completing a Section 278 legal agreement, to provide for the construction of highway works;
- Constructing and maintaining the highway works before the council takes over their maintenance; and
- The council's fees and other payments relating to the construction and maintenance of the road.

1.2 Our '[Highways Status Search](#)' tool helps to identify whether roads are adopted

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2. Requirements for the preparation of a Section 278 agreement

- 2.1 An [application form](#) to request entering into a Section 278 agreement is available on the LHDG website.
- 2.2 The council has a standard format for Section 278 legal agreements. However, the agreement can be adapted to allow for specific circumstances relating, for example, to structures and commuted sums.
- 2.3 Full planning permission must be granted for the development from the planning authority, including approval of any reserved matters relating to the highway works before commencing the S278 process.
- 2.4 A full list of the information required to enable the preparation of a Section 278 agreement is available in the application form provided above. The council must be protected against the risk of unforeseen expenditure if the highway works are unfinished for any reason. This should be in the form of:
 - A bond with a recognised financial institution; or
 - The equivalent sum of monies lodged with the council.

Fees and sureties

- 2.5 The surety sum will comprise the developer's estimate for completion of all highway works (including Utility Company costs) and the council's cost for any commuted sums. The applicant must indemnify the council against all and any abortive costs.
- 2.6 The technical approvals process will only begin following receipt of surety or cash deposit.

Supplementary fees

- 2.7 If, following four technical approval submissions, the design is still considered to be unacceptable or requires further amendments, then the council will charge an additional fee for each subsequent submission.
- 2.8 Post technical approval, changes to the design that are submitted for approval will incur an additional fee, this includes sub-division of submissions into multiple phases.

- 2.9 Developers should also refer to the councils [Surface Materials Palettes](#), which details out the preferred material choices for highway works.

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3. Section 278 and technical approval

Requirements overview

- 3.1 For information regarding the Infrastructure Planning team's role at the feasibility and preliminary design stages of the development please refer to [Highway Development Management](#) 'Preparing Development Proposals'.
- 3.2 Road works, including structures, should be designed in accordance with the Design Layout and Materials and Construction sections of the LHDG. The developer should also refer to the councils Palettes of Materials when designing a scheme.
- 3.3 Technical approval will only be issued by the council when:
 - All checks are completed, and the council are satisfied that the design meets all required standards
 - The stage 1 and 2 safety audit processes have been satisfactorily completed
 - Ordinary Watercourse Consent is completed (where required)
 - Existing carriageway and drainage surveys and investigations have been submitted.
- 3.4 Drawings issued must meet the council's format requirements (See LHDG [Legal Agreement Applications](#) and [Plan Requirements](#)).
- 3.5 It is vital that the highway works are designed by reputable, chartered consulting engineers with experience in designing highway works. Please inform the council of developer proposed design consultant prior to starting design work. In some case will request additional details to assess their suitability. The council reserves the right to determine the acceptability of consultants who are proposed to prepare designs for works involving the public highway.
- 3.6 Road safety audits are required for all highway works covered by Section 278 agreements. Audits must be carried out by an accredited safety audit team that is independent from the designers.
- 3.7 Technical approval does not guarantee the buildability of the proposed scheme which is undertaken based on the details provided with the design

submission. It's the responsibility of the developer to ensure designs are buildable on site.

Detailed design

3.8 Detailed design must be submitted to the council in accordance with the completed checklist provided with the application form.

3.9 At this stage the council will also require:

- The results of surveys and investigations with utility/statutory undertakers companies
- The results of surveys and investigations in relation to the composition and condition of the existing highway network (carriageway construction)
- Details of the developer's street lighting design.

3.10 When the suitability of the detailed design has been agreed, technical approval will be issued. Please note that technical approval does not discharge any responsibilities under the terms of the s278 agreement. As required, works must be amended to the standards and specifications contained within the agreement and satisfy the recommendations of the Stage 3 road safety audit.

3.11 Technical approval is valid for 12 months from the date of the approval notification. If a legal agreement has not been signed by both parties at the point at which the approval expires, then the approval documents will need to be resubmitted to the council for review and the bond recalculated. Additional fees will be charged for any subsequent reviews of approval documents submitted following a lapse in the validation period.

Structures

3.12 Where the highway works involve structures, please refer to [Design Layouts](#) Highway Structures for design requirements.

Traffic-signal equipment

3.13 Please contact the Highway Authority at an early stage for advice regarding traffic-signal equipment, procedures, design, supply and installation

requirements of traffic-control equipment which forms part of the highway works.

- 3.14 To assist the carrying out of future maintenance and installation work, council officers should be allowed access to any part of the site on which cables, pipes, ducts or other apparatus associated with the traffic-signal equipment is to be installed or is located at all reasonable. Please refer to the submission requirements for '[traffic signals equipment](#)'.

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4. Section 278 and traffic regulation orders

- 4.1 Where a development requires changes to an existing [traffic regulation order](#) (TRO) or the making of a new order, the developer will be required to pay all costs associated with this, including all consultation and legal costs.

Traffic calming and other traffic management schemes

- 4.2 Where the works involve traffic calming and/or other traffic management schemes, the council will consult with interested parties, such as the parish or town council, the local county councillor, and residents. This may include a public exhibition and other consultations, beyond minimum statutory requirements. The council will also carry out consultations on other traffic management schemes, in line with normal policies and procedures (which will provide advice during the design process). The council may require changes to the design resulting from the consultation.
- 4.3 Developers must pay the costs of consultation regardless of the outcome. The consultation procedure can be lengthy which will have implications on the programme of works.

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5. Constructing section 278 highway works

Before works begin

5.1 To minimise risk to LCC, construction works must not start until the following conditions have been met.

Technical approval legal agreements, surety and fees

- Technical approval has been issued and the Section 278 agreement has been completed and signed by all parties.
- Road space booking has been obtained and any required Temporary Traffic Regulation Orders (TTROs) have been secured.
- An appropriate surety is in place and all fees have been paid.

Health and safety

- Written confirmation must be provided that the [Health and Safety Executive](#) has been notified of the Client for the works for the purposes of the Construction (Design and Management) Regulations. The legal agreement will indemnify the council against all claims, liabilities and actions. This process is administered by Development Approvals and Legal Services as part of the legal agreement process.
- Developers are also required to submit full details of any traffic management proposals for the construction of the road works for approval by the appropriate area office inspector.

Contractor approval and insurance

- It is essential that a reputable contractor with relevant experience is employed to carry out the construction works. The council reserves the right to determine the acceptability of the developer's proposed contractor and sub-contractors. References must be provided on request.
- The council must be indemnified (protected from legal responsibility) against any claims by third parties arising from the road works. Before approving the contractor, written evidence must be provided that they hold a minimum of £10 million public liability insurance with no limit on the number of claims.

Notification of start

- Five weeks' notice must be given by email to the road adoptions team road.adoptions@leics.gov.uk of the intention to begin or restart construction work.

Pre-start meeting

- A 'pre-start' meeting will be required, this will be arranged by the County Council once the legal agreement has been completed. The developer can find a list of people who should be present at the meeting, and a typical agenda, in the Pre-start Meeting Guide.

Site inspection

- 5.2 Inspections will only be undertaken to check that works are being constructed in accordance with the approved drawings and requirements. The developers are responsible for the day-to-day supervision of the road works construction.
- 5.3 An inspections checklist will be issued to the works promoter at the pre-start meeting and will need to be completed and signed off by the relevant Development Inspector prior to the issue of provisional and final certificates.
- 5.4 Works must be supervised by a competent and experienced engineer.
- 5.5 Access to the works must be given to council representatives as required. Please contact the road adoptions team to discuss concerns regarding construction, however satisfactory completion in accordance with requirements remains the responsibility of the developer.

Timescale for completing the highway works

- 5.6 Once the developer has begun work on site it is the developer's responsibility to complete the highway works to the council's satisfaction and within a 'reasonable' period, as stipulated in the agreement, to minimise any potential disruption to highway users. A programme of works should be provided.

- 5.7 Where developers do not complete the highway works within the specified time limit and an extension will be agreed, the council reserves the right to charge fees towards the council's additional administrative and inspection costs. The council may call on the bond or use the surety monies lodged to complete the works.

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6. Section 278s certification and maintenance

Issuing a provisional certificate

6.1 We will issue a provisional certificate of completion when:

- Any adoptable assets are completed and inspected to council satisfaction and no defects have been identified
- Installation of all illuminated assets is completed to council satisfaction and the appropriate electrical test certificates are provided;
- Any green infrastructure that the council adopt has been appropriately planted and established in accordance with the agreed specification
- The Value of Trees toolkit is currently being trialled; a 10% discount from the full commuted sum is being offered to developers for employing the toolkit during scheme development. Please speak to Forestry for further information
- The Provisional Certificate will not be issued until as built drawings and relevant details have been supplied to council specification
- Stage 3 road safety audit has been completed, where required, and all necessary changes have been completed to the council's satisfaction
- A drawing has been provided that clearly illustrates the extent of land that is to be dedicated/adopted as part of the process, and the land ownership extent of the dedicating parties.

Bond reduction

6.2 When a provisional certificate is issued, the amount of bond can be reduced to 20% of the original amount or £10,000 (whichever is the greater). The exception to this is where the developer is paying a commuted sum in which case the bond will be reduced to 20% of the original amount or £10,000 (whichever is the greater), plus the total value of the commuted sum.

The developer's maintenance period

- 6.3 Typically, the developer is responsible for maintaining the highway works for a minimum period of 24 months. This allows for any defects in the works to become apparent during use.
- 6.4 Where Section 278s form part of a multiple phase development, an extended maintenance period may be included within the legal agreement, particularly where it is expected that the completed 278 works will be subject to construction traffic during the remaining development phases. The duration of the maintenance period will depend on the overall timescales for the development and therefore will be determined on a case-by-case basis.

Minor changes to technically approved plans

- 6.5 Where minor changes to the technically approved plan(s) that form part of the completed s.278 agreement have been proposed by the Developer, these must be approved in writing (email acceptable) by the Relevant Officer within a reasonable time; the approved replacement plan(s) showing any/all minor variations to areas originally proposed for dedication as public highway, will be inserted within the completed section 278 deed packet.
- 6.6 The council defines a minor change to s.278 plans as an inconsequential variation to the extents of features already included in the original plans. Where new features have been included, or where features have been entirely removed from plans, then a supplemental agreement may be required. The council retains the right to request a supplemental agreement on a case-by-case basis.

Final certificate

- 6.7 A final certificate of completion will be issued when:
- Following the maintenance period, an inspection of all adoptable assets will be carried out to ensure works have been completed and maintained to the council's satisfaction. A list of any outstanding remedial works will be compiled, which must be completed to the council's satisfaction

- All commuted sums are paid following calculation of the uplifted commuted sum value by council development approvals engineer
- All other costs and charges are paid including costs for the bulk clean and lamp change for illuminated signs and/or street lighting
- Where the new road is subject to a road safety audit, stage 4 must have been completed to council satisfaction. We will decide whether the council can issue the final certificate once the 12-month report has been completed
- Provision of the health and safety file, in electronic format, in accordance with the latest Construction (Design and Management) Regulations
- Agreement of the land dedication plan.
- All relevant clauses in the council's [standard conditions](#) have been adhered to.

6.8 The council will then inform developers that the bond can be cancelled and highway can be adopted to be maintained at public expense. The Council will consider the adoption of Section 278 works prior to associated Section 38 works being complete but this will be assessed on a case-by-case basis further to discussion with the relevant approvals officer.

Extension to the agreed construction programme

- 6.9 If the highway works are not complete after the time limit specified in the agreement, the council may grant an extension of up to twelve-months. However, the bond will be reassessed and a fee will be charged.
- 6.10 If a period of three years has elapsed since the issuing of the provisional certificate and the issuing of the final certificate is outstanding, a further extension may be granted and additional charges made.

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7. The Land Compensation Act 1973 and the Noise Insulation Regulations 1975

- 7.1 The impacts of noise, air and light pollution should be mitigated through the design of the scheme where possible, in accordance with planning conditions. Under the Land Compensation Act 1973 compensation can be claimed if the value of their property is depreciated by noise and other specified physical factors arising from the use of a new or altered highway. The Noise Insulation Regulations 1975 require the council to offer noise insulation or grants to occupiers of dwellings subjected to noise at or above the specified level due to the use of a new or altered highway. The agreement contains a clause requiring the developer to indemnify the council against the full costs of any payments made under these regulations. The council will notify the developer about any claim received and any offers of noise insulation made.

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